



REPORT OF THE ADJUDICATOR

Complaint reference number:	15569
WASPA member(s):	Opera Interactive (SP) (0068) Sprint Media (IP) (1168)
Membership number(s):	See above
Complainant:	Public
Type of complaint:	Spam and opting out
Date complaint was lodged:	2011-11-15
Date of the alleged offence:	2011-11-01
Relevant version of the Code:	11.0
Clauses considered:	5.1
Relevant version of the Ad. Rules:	N/A
Related cases considered:	15568 and 15574

Complaint

Complaint 15569 was logged by a competitor regarding a commercial message received.

The complaint progressed as follows:

- Complaint 15569 is the escalation of unsubscribe request 2287452 regarding unsolicited sms's promoting a subscription service.
- The formal complaint was sent to the IP on 2011-11-15.
- The SP was also notified of this complaint on 2011-11-15.
- The IP responded on 2011-11-22.
- The secretariat provided clarification on 2011-11-23.
- The IP responded on 2011-11-23
- The complainant refused resolution on 2011-11-27.
- The IP provided a further response on 2011-11-28.

The Complainant alleges that he received a commercial message and that the opt out link in the message did not work thus not allowing him to opt out easily.

Service provider's response

The SP referred the complaint to the IP.

Information provider's response

The IP responded that they had complied with the requirements of section 5.1 of the Code which require that there is an opt out facility in any commercial message. They also pointed out that the Code requires that you inform people of their right to opt out and how this happens but not that the actual opt out in the commercial message is a clickable hyperlink.

Sections of the Code considered

5.1. Sending of commercial communications

5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's direct marketing database, so as not to receive any further direct marketing messages from that message originator.

5.1.3. For SMS and MMS commercial communications, a recipient should be able to stop receiving messages from any service by replying with the word 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate. The reply 'STOP' procedure should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent. If it is not technically feasible for the recipient to reply to a specific message then clear instructions for unsubscribing must be included in the body of that message.

5.1.4. For SMS and MMS communications, a message recipient must be able to opt out at the lowest tariffed rate available (with the exception of reverse billed rates). If replying 'STOP' as set out in 5.1.3 will result in a charge greater than the lowest tariffed rate available, then instructions for the lowest tariffed rate opt-out must be included in every message sent to the customer.

5.1.5. The reply "STOP" or alternative opt-out procedure must be included in all direct marketing communications. A "STOP" reply in this instance will refer to all direct marketing communications from the message originator.

5.1.6. Notwithstanding clause 5.1.3, members are not obliged to honour an opt out request for communications that are necessary for the conclusion or performance of a contract to which the recipient is a party.

5.1.7. Notwithstanding clause 5.1.3, members are not obliged to honour an opt out request for communications required by law.

5.1.8. Once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message.

5.1.9. Where the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the service provider must honour the opt-out request as if the word 'STOP' had been used.

5.1.10. Upon request of the recipient of a direct marketing message, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained, and provide proof that the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

5.1.11. Direct marketing messages may not be sent on Sundays, public holidays, on Saturdays before 09:00 or after 13:00, or on all other days between 20:00 and 08:00, unless expressly agreed to in writing by the recipient.

Decision

Although the IP responded (adequately in my view) on the question of spam and unsolicited promotional messages, the Complainant in this case was not complaining about being sent a promotional message but rather that he felt the mechanism for unsubscribing was insufficient and specifically intended to prevent a consumer from opting out of promotional messages.

In this instance, although I understand the Complainant's frustrations, the IP has complied with the WASPA Code. The Code in 5.1 (included above in full for clarities sake) sets out the various measures which an IP must take when sending promotional messages to consumers in order to allow them to opt out of receiving such messages. In this instance, the provisions of 5.1.3 and 5.1.5 are most pertinent.

The IP in this instance both informed the consumer of their right to opt out and the mechanism for doing so. There is no obligation anywhere in the Code that this opt out must be in the form of a clickable hyperlink. Advising the consumer that they can opt out by sms'ing the word stop in the manner detailed in section 5.1 of the Code is sufficient.

I agree with the IP that often a lack of understanding about how various digital services works leads to confusion and thus occasionally unwarranted frustration. I think the confusion arose in this case due to the fact that in email communications you normally have a clickable opt out hyperlink. However, as is the norm with mobile promotional SMS messages, normally there is only a link to the wap or web site and the opt out information is just that, information.

Sanctions

I am not going to sanction the IP in this case.

I also suggest that WASPA continue with investigating mechanisms for assisting the public in understanding how WASP services work.