



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	iTouch
Information Provider (IP) (if any)	N/A
Service Type	Commercial SMS
Source of Complaints	Public
Complaint Number	#1744
Date received	3 August 2007
Code of Conduct version	5.3

Complaint

The Complainant is a blood donor who subscribes to an SMS reminder service with regard to reminder to donate, which service is run by the SP. The essence of the Complaint is that the Complainant received numerous unsolicited commercial SMSs as a result of his subscription to the reminder service.

The Complainant provided an example of such unsolicited commercial SMS:

"\spice up your love life! sms XXX to 36060 & get unlimited downloads, saucy poems, love tones & hot graphics PLUS chat @ 1c a msg! (R5/5 daysSubscriptionService)."

The Complaint continues:

"I find it invasive and unacceptable that this service provider uses its position to gain and utilise confidential information about its customers' databases for their own benefit in ways other than intended."

....

"I have spoken to an itouch representative about this matter - the response is that the databases were mixed up, they had a problem and apologise. Unfortunately, contractually that is not acceptable."

SP Response

Complainant's claim that he has received numerous unsolicited sms' was never mentioned in the initial complaint lodged, and if this had been mentioned previously a more in depth investigation would have been made regarding the alleged other unsolicited messages received both with the complainant and internally.

As mentioned previously to the complainant telephonically, when actioning bulk sms campaigns, we run all data through our in house applications. These applications provide target lists of msisdns based on requested brands that we target on a regular basis to opted in users. At no time do we ever request corporate databases as firstly, we do not have access to action this function for obvious reasons of sending unsolicited sms' in error and secondly it is not our practice to intentionally target consumers that have not interacted with us previously.

Furthermore, our target lists are further cleaned prior to sending sms' campaigns of which all blacklisted, unsubscribed and opted out msisdns are removed from the original list.

In this case however, the initial report run pulled through msisdns in error, so when the target list was scrubbed further, the discrepancy was not detected, as the complainant was neither opted in, subscribed or blacklisted from any of our services.

When this complaint was brought to our attention, we immediately requested an internal systems check with our technical department. We are also currently implementing new software (Cognos IQ) and moving our reporting server to a separate server in order to improve day to day tasks.

The complainant's allegation that we are abusing in house databases, is incorrect and unfounded, especially in light of the fact that as a WASPA we are fully aware of the consequences thereof, and as mentioned above, we go to extensive measures to ensure that the databases we target are opted in to receive marketing correspondence from us.

A full apology and explanation was provided to the complainant, and over and above

offering a more detailed account of the events that led to the complainant being targeted in error in the first place, we feel that we have followed up as much as we can in this regard.

Sections of the Code considered

The following sections of version 5.3 of the Code of Conduct were considered:

5.2.1. Any commercial message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;
- (b) the message recipient has a direct and recent prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator; or
- (c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

5.3.1. Members will not send or promote the sending of spam and will take reasonable measures to ensure that their facilities are not used by others for this purpose.

Decision

The SP has admitted and apologised for its conduct as set out above, The Adjudicator, in confirming that there has been a breach of section 5.3.1 read with section 5.2.1 of the WASPA Code of Conduct, accepts the version of the SP with particular reference to its statement that the breach occurred as a result of an error and not as a result of the intentional abuse of in-house databases for its own marketing purposes.

Notwithstanding the above the Adjudicator also understands that the Complainant continues to feel aggrieved and has pursued the Complaint through the informal into the formal process. The sending of spam remains a major issue for the WASP industry and instances of spam such as that complained about here do a great disservice to the industry.

Held: The SP has breached breach of section 5.3.1 read with section 5.2.1 of the WASPA Code of Conduct.

Sanction: The following factors were considered in evaluating an appropriate sanction in this matter:

- The Adjudicator's acceptance of the SP's version that the breach was unintentional
- The industry imperative to root out the sending of spam
- The prior record of the SP with regard to breaches of section 5.3.1 read with section 5.2.1 of the WASPA Code of Conduct, with particular regard to the sanctions imposed under Reports 0103 and 1767 (which was delivered prior to the finalisation of this matter).

The SP is fined the sum of R8 500, payable to the WASPA Secretariat within five , days of notification hereof.