



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	19630
<b>WASPA member(s):</b>	Cellfind (0019)
<b>Membership number(s):</b>	See above
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Spam and failure to honour opt-out requests
<b>Date complaint was lodged:</b>	2013-02-14
<b>Date of the alleged offence:</b>	2012-11-22, 2013-11-27, 2012-12-03 and 2013-01-24.
<b>Relevant version of the Code:</b>	12.1
<b>Clauses considered:</b>	
<b>Relevant version of the Ad. Rules:</b>	N/A
<b>Related cases considered:</b>	17872

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### Complaint

Complaint 19630 is the escalation of unsubscribe request 3831491. The formal complaint was sent to the WASP on 2013-02-22. The complainant responded to complaint notification on the 2013-02-22. Secretariat informed WASP of no response and handover to adjudication on the 2013-03-04. WASP replied advising of submitting response on the 2013-03-05. WASP responded on 2013-03-19.

The Complainant complains that, despite numerous opt out requests being sent to the WASP, the WASP is not honouring such requests as well as not providing the correct messages on receipt of an opt out request.

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### WASP response

The WASP responded that they did indeed receive an opt out request from the Complainant and did honour such request. However, the gateway in question is utilised by several message originators and were not necessarily from Cellfind.

They go further to state that with reference to section 5.1.1 of the Code of Conduct provision is made to use the name of the message originator as identifier. The two messages received were transmitted from separate sources and although opt out instructions were received via returned SMS by Momarc (affiliated WASP) on behalf of Stuttafords. The second WASP in question did not receive any response.

Following the WASPA unsubscribe request the Complainant's details were loaded on the Cellfind exclusion database but it must be noted that Cellfind is neither responsible for any transmission nor did it have any record of the Complainant. Kindly note that Cellfind only transmits via +27839000217 (MTN Identifier).

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## 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.

## **5.2. Identification of spam**

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

- (a) the recipient has requested the message;
- (b) the message recipient has a prior commercial relationship with the message originator and has been given a reasonable opportunity to object to direct marketing communications
  - (i) at the time when the information was collected; and
  - (ii) on the occasion of each communication with the recipient; or
- (c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

5.2.2. Any commercial message is considered unsolicited after a valid opt-out request.

5.2.3. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

## **5.3. Prevention of spam**

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.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

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I agree with the WASP in that there has not been a breach of the Code of Conduct. The WASP is only responsible for messages with their originating number.

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## **Sanctions**

I am going to dismiss the claim.