



REPORT OF THE ADJUDICATOR

Complaint reference number:	20761
WASPA member(s):	W2M GmbH (IP) (1127) / Mira Networks (Pty) Ltd (SP) (0011)
Membership number(s):	See above
Complainant:	Competitor
Type of complaint:	Automatic subscription
Date complaint was lodged:	2013-06-05
Date of the alleged offence:	2013-01-18
Relevant version of the Code:	12.1
Clauses considered:	5.2, 5.2 8, 9.1.1.
Relevant version of the Ad. Rules:	N/A

Related cases considered:

Complaint

Complaint 20761 is the formal complaint lodged, concerning unsolicited sms's and other breaches of the Code.

The formal complaint was sent to the WASP on 2013-06-12 and they responded on 2013-06-18.

The complainant refused resolution on 2013-06-24 and 2013-09-17.

The WASP provided additional information on 2013-09-23.

Complaint

The complainant alleged various breaches of the Code, namely spam, service not complying with the law, message not complying with the Code, namely opt out link in SMS gives page not found SMSza.co/stop and charging R10 for entry into text competition.

I received an sms on the 5th June 2013 stating:
GREAT NEWS for 25070507! Get 48h video access at R10/sms and answer question.....
T&C-SMSza.co/stop:txt stop to 30825 FREE

WASP response

The WASP disputed the Complainant's view of events and stated that:

1. We do not send unsolicited messages of any kind. The complainant's MSISDN was contained in a database purchased by us in 2010 from a data broker who is a member of DMASA and whose data is legitimate according to WASPA standards. If any further information is requested either from the complainant, the Secretariat, or the Adjudicator we will be pleased to supply it.
2. This point raised an immediate and urgent concern with us. However, both our database supplier and our own technicians have doubled checked the DMASA no contact list and the complainant's number does not appear.
3. As the complainant states: "I am blocked at Vodacom from receiving SPAM" and he clearly received our message, the only comment I can offer is that Vodacom did not consider our message as 'spam'.
4. Section 11.2.5 of the WASPA Advertising Rules states: "Contact details of the sender are obligatory. The contact details must not use any premium rated fax, PSMS, USSD, WAP, or IVR lines. A web site address is the preferred method". As can be seen in the complainant's quoting of our message (and the attached log file), the 'preferred method' was clearly used as the message provides the web site address (SMSza.co).
5. As the complainant has noted, the SMS reads: T&C-SMSza.co/stop:txt stop to 30825 FREE . The website address given for the T&Cs - SMSza.co does work, and will take the consumer to the relevant site to view the T&Cs.
6. The instruction; stop:txt stop to 30825 FREE is also correct.
7. We have assumed from the complainant making point 4 that the / between these two instructions was confusing to him. We are grateful for this feedback and have now removed the / from the messages.
8. As the complainant quotes above, the message reads: "Get 48h video access at R10/sms". There is no charge for participating in the promotional game "SMS Challenge", as the message continues to state: "and answer this question correctly for your chance to win a TOYOTA at NO extra cost." In our case no subscription (as defined in the Lotteries Act) is charged to enter the competition. The charge of 10R is to buy a service, which is the video access. The competition is at no extra cost (free) and the consumer may participate or not, by his own will. He can buy the video access without any obligation to answer the quiz and participate in the competition.
9. This is a promotional competition, there is no subscription to enter into a lottery. The price charged for the video content doesn't exceed what is ordinarily charged for such content. The competition is to promote the purchase of the video service and not to enter into the competition, which is free.

Complainant's Further Response

The Complainant refused resolution on the basis that it disputes what the WASP is stating namely that:

1. Point 1 - I did not request to be contacted by your company nor representatives thereof. Receiving unrequested/unsolicited messages proves that you send unsolicited messages.
2. Point 2 - My number exists in DMMA. My number is blocked at Vodacom - you can not send a message through standard vodacom bind to my number, if you are using a grey route, then it is possible, although may be against your wasp agreement and wasp rules.

WASP Response

As previously stated, both our database supplier and our own technicians have doubled checked the DMASA No Contact list and the complainant's number does not appear.

Furthermore, regarding the message sent to the complainant, we have contacted our aggregator (Miranetworks) to confirm the route taken, and have this response:

"We sent it through Vodacom.

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2013-06-05T08:58:48.213+00,MT,7.0,[231] Sent SMS [Network:1]
[ACT:vel@_dma_bulk_vc_dlr]
[from:2782003915244422] [to:27825070507] [smsid:1370422727614284]
[transid:20F42BCCDBE1E21A83A5C0A5BDEDF0D]
[msg:116:s%20rugby%20team%20is%20based%20in..%0AA%3A%20Cape%20Town%0AB
%3A%20Pretoria%0AReply%20NOW%20with%20A%20or%20B%21%0A%0AT%26CSMSza.
co%2Fstop%3Atxt%20stop%20to%2030825%20FREE] [udh:6:%05%00%03%0A%02%02]
[smscid:07%2F%2Fc8aefdc800070c7800000000aad418c00f30701%2F1227825070507]
[usmsgref:]
[parsedmscid:MGA_5798_774488968989816%3A27825070507] [operator:65501]
[svcid:a9433eb8db699ff3@131e4195c546bf] [cost:0] [upstream:MIRA-VODACOM-ZA]
2013-06-05T08:58:48.283+00,MT,7.0,[231] Sent SMS [Network:1]
[ACT:vel@_dma_bulk_vc_dlr]
[from:2782003915244422] [to:27825070507] [smsid:1370422727690784]
[transid:211A7B60CDBE1E21A9F35C0A5BDEDF0D]
[msg:153:GREAT%20NEWS%20for%2025070507
%21%0AGet%2048h%20video%20access%20at%20R10%2Fsms%20and%0Aanswer%20this%
20ques@on%2
[udh:6:%05%00%03%0A%02%01] [smscid:07
%2F%2Fc8aefdc800070c7a00000000aad485000f30701%2F1227825070507] [usmsgref:]
[parsedmscid:MGA_5798_774488968989818%3A27825070507] [operator:65501]
[svcid:a9433eb8db699ff3@131e4195c546bf] [cost:0] [upstream:MIRA-VODACOM-ZA]"
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Sections of the Code considered

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.

9.1. Provision of information

9.1.1. The total cost for any entry into a promotional competition shall not exceed R1.50.

Decision

I read the content of both the complainant and the WASP's correspondence and the Code. After considering the allegations above in light of the provisions of the Code I do not find the WASP to have breached the Code of Conduct.

The fact that spam blocks attempted to be instituted by the complainant at both Vodacom and the DMMA did not work does not mean that the WASP was in breach of the Code. As frustrating as this may be for the complainant.

As such, with no clear evidence of breach of the Code, I have no option but to dismiss the complaint.

Sanctions

No sanction.