



REPORT OF THE ADJUDICATOR

Service Provider (SP): Smartcall Technology Solutions

Information Provider (IP): Nexus Enterprises Limited

Service Type: Subscription services

Complainant: WASPA Monitor

Complaint Number: 25556

Code Version: 13.0

Complaint

The original complaint read as follows:

We are aware that Direct marketing SMS campaigns, as detailed below, are being sent to consumers again. This Subscription Service marketing approach created much unhappiness in our industry in the past year and was therefore extensively highlighted in the wasp industry as problematic.

The media monitoring team consider this potential breach as a serious possible violation of the WASPA Code of Conduct.

We were also informed by an end consumer that repeated messages were received from the Provider.

The message reads:

\\"Important: Your picture MMS will expire soon! Click www.m2u.me/p1/h.php?n [REDACTED] now to view yourtr Mesage. info@ph6.pw optout? sms stop\\"

The media monitoring team had a look at this message and upon investigation found the following problem areas that could potentially be in breach of the WASPA Code of Conduct:

Subscription services must be marketed for the merits of the subscription service. The use of one piece of content (a photo) does not promote the Subscription service adequately or honestly. There is no mention that this is subscription service. There is no any pricing.

WASP's response

The IP responded.

In essence, it submitted that the pricing and subscription information does not need to be in the initial advertising and that all the relevant information was clearly displayed on the landing page and at the confirmation step.

The SP, in essence, aligned themselves with this response.

Sections of the Code considered

The following sections of the Code were identified in the complaint:

- 5.4 Members must have honest and fair dealings with their customers.
- 5.5 Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.
- 8.2 For a subscription service, the "pricing information" consists of the word "subscription" and the cost to the customer and frequency of the billing for the service. The cost and frequency portion of the pricing information must follow the following format, with no abbreviation allowed: "Rx/day", "Rx/week", or "Rx/month" (or Rx.xx if the price includes cents). For services billed at an interval other than daily, weekly or monthly, the required format is "Rx every [time period]", with no abbreviations permitted when specifying the time period. Examples of pricing information: "Subscription R5/week". "R1,50/ day subscription", "Rx every three days", "Rx every two weeks".
- 15.5 A member may offer an incentive for joining a subscription or notification service, provided that it is clear that the benefit only applies once the customer has joined the service. (Example: "if you join this subscription service, you will be entered into a monthly draw for a prize".)
- 16.17 All WAP push direct marketing messages must contain a short code, or some other similar means by which the recipient can easily identify the members providing the service being marketed.

Decision

I have considered all the clauses before me. This is a challenging exercise as this version of the Code is new and there is very little precedent on which I can rely. While the spirit of previous decisions on previous versions of the Code may be of guidance to me, it is imperative that the new code is applied in accordance with the wording of that Code.

I note in this regard that the same issue as that currently before me was considered in matter 23939, but that matter was considered on a previous version of the Code.

I agree with the WASP that there is no particular requirement in Clause 8.2 that the pricing information should appear in the first marketing communication. It is also true that the pricing information appears on the Call to Action page, and that a person who clicks on the "ACCEPT" button will be reasonably aware that they are subscribing to some sort of subscription service.

However, this is not the only clause before me.

Clause 5.5 states:

Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

In matter 25349, the adjudicator considered this clause. The gist of that ruling is that a member will be in breach of Clause 5.5 if they knowingly lead consumers to expect something other than what they are receiving.

In this matter, the first communication according to the Monitor is "Important: Your picture MMS will expire soon! Click. . . now to view yourtr Mesage (*sic*). . .".

The WASP claims that prior to this message is a message that appears *ex facie* to simply say, "Click on the link. . .".

The respondent appears to justify all its communication with the assertion that, "All relevant information is displayed on our Call to Action page".

In the first place, the message "Important: Your picture MMS will expire soon!. .." creates the impression that the recipient has been sent an MMS in the normal course of telecommunications, and that they need to click on the link to access this message. This is not true. The recipient has not received anything.

In the second place, the Call to Action page, contrary to the WASP's assertions, contains almost no information. In fact, it continues the fiction that the person has a personal MMS awaiting retrieval:



While the user will be aware that if they push "Accept" they will be subscribed to something, it is completely unclear what that something is. At this point they may well be under the impression that they need this subscription to access any MMS that they receive.

This reasoning is in line with the finding in matter 23939 in which the adjudicator found that the message was misleading in that a subscription service was being disguised as a consumer having received an MMS.

Given the above, the initial messages as well as the call to action page are in breach of Clause 5.5 in that "members must not knowingly disseminate information that is . . . likely to mislead by inaccuracy, ambiguity, exaggeration or omission."

In addition to this, Clause 16.17 says, "All WAP push direct marketing messages must contain a short code, or some other similar means by which the recipient can easily identify the members providing the service being marketed."

The response is the assertion that, "the initial message sent to the user had the identification of the service . . . The URL in the follow up message relates to the service."

The message contains neither a short code nor any identification of the service. In order to identify the member, the user would have to follow the URL. I am of the opinion that the specific intention of Clause 16.17 is to allow the user to identify who is sending them the message *without* having to access any further webpages.

The WASP is therefore also in breach of Clause 16.17.

Sanctions

With regard to Clause 5.5:

The IP and SP have been fined R30 000 in matter 23939 for the same material, and on materially the same grounds. Given that this ruling has only recently been published, I will not impose a further sanction. However, should the IP or the SP or both be found to have continued similar campaigns after the release of this ruling, I impose a suspended fine, jointly and severally, of R100 000 in addition to the fine imposed in that future matter.

With regard to Clause 16.17:

This issue has not previously been considered. The introduction of the new WASPA Code required WASPs to re-evaluate their campaigns in light of the new rules. The IP and the SP patently failed to apply Clause 16.17, and I impose a fine of R10 000 jointly and severally in respect of this breach.