



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number</b>	: 25672
<b>WASPA member(s)</b>	: Space Trading and projects (IP) / MTN (WASP Service) (SP)
<b>Membership number(s)</b>	: 1474 / 0035
<b>Complainant</b>	: Unilever
<b>Type of complaint</b>	: Breach of Code of Conduct - alleged false advertising – marketing during unauthorised times – sending SPAM and refusing to provide information how customers details obtained – Opt-Out
<b>Date complaint was lodged</b>	: 8 <sup>th</sup> Jan 2015
<b>Date of the alleged offence</b>	: 21 and 22 December 2014
<b>Relevant version of the Code</b>	: Version 13.1
<b>Clauses considered</b>	: 5.5, 5.15 and 5.16, 16.8, 16.3, 16.4, 16.5, 18

### **Complaint:**

- Complaint 25672 was logged by Unilever after it had discovered that Space Trading was running a SMS campaign in breach of the WASPA code of conduct

- The complainant contends that,

- Clause 5.15 and 5.16 of the Code relating to privacy and confidentiality of consumers details has been breached by Space Projects in an SMS Scam using Unilever's Rama brand to mislead consumers. It appears that consumers are receiving promotional messages.
- Complainant also alleges that Clause 16.8 of the Code which relates to prohibited times for direct marketing SMS Messages was breached as SMS Messages are being sent to consumers outside permitted office hours.

- Complainant also claims that Clause 16.3 of the Code has been breached as complainant also wishes to know how consumer's details are being obtained.
- Complainant finally alleges that "the scam smss are sent without any opt-out provisions. R5/R10 are deducted from consumers mobile accounts, when they respond to the message" and that clause 16.4, 16.15 (which relate to Opt-Out/ Stop Option) and 18 of the Code have been breached.
- The Complainant is also seeking additional relief that the consumers affected be reimbursed the monies deducted by the WASPA member that according to the complaint has conducted a SMS Scan.

### **Procedural history of this complaint:**

- Complaint 25672 is the formal complaint concerning false or SMS scan as stated by the Complaint advertising by a WASPA member which took allegedly place on the 20<sup>th</sup> and 21<sup>st</sup> Dec 2014.
- The Complainant sent a complaint 24<sup>th</sup> Dec 2014.
- The formal complaint was sent to the WASPA on 8<sup>th</sup> Jan 2015.
- The SP responded on the 16<sup>th</sup> Jan 2015.

### **SP reply :**

- MTN-WASP Service (hereafter referred to SP) replied to the complaint on the 16<sup>th</sup> Jan 2014 , the SP stated that the Unilever had also sent them a letter about the alleged transgressions of the Code by Space Projects (hereafter the IP) a customer of the SP and WASPA affiliate on the 24<sup>th</sup> Dec 2014 .
- The SP further stated that it had entered into an agreement the IP to adhere to all WASPA Rules and Codes.
- The SP also further advised that on receipt of the complaint it advised the SP to immediately cease the SMS campaign which the IP according to the SP did within hours of receipt of the complaint.
- The SP went on explaining that it had initiated internal investigation about the said transgression.

### **Decision and Sanction**

- The issue here is whether on the complainant's version the WASPA Code was breached, in particular Clause 5.5, 5.6, 5.15 , 5.16 , 16.3 , 16.4 ,16.6 , 16.8 as well as 18 of the Code. It is

important to note the although the IP replied that it did not at any stage deny failing to comply with the Code and by implication was passing the buck to the SP and also made mention of the further investigations it would make. To date no further finding or documents were filed by the SP with WASPA.

- I cannot rule that Clause 5.15 and 5.16 of the Code relating to privacy and confidentiality of consumers details has been breached by the IP or the SP - would have expected that under the circumstances that the complainant would have referred clause 5.6 of the Code which specifically deals with conduct of WASPA members in relation to :

“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.”

However the Complaint did make reference to the words “mislead” in its complaint and I accept that it must have been an oversight by not referring back to Clause 5.5 and 5.6 and find that same has been breached by the IP as the unauthorised association to the Unilever Trademarks, Product and or Trade names namely “Rama” which may have resulted in loss of reputation to Unilever brand.

The Complainant in respect of the above transgression is also seeking additional relief that the consumers affected be reimbursed the monies deducted by the WASPA members and I agree

- Complainant also claims that Clause 16.3 of the Code has been breached as complaint also wishes to know how consumer’s details are being obtained.
- The IP failed to address me on how the consumers’ details were obtained and I must find in favour of the complainant that Clause 16.3 has been breached.

Complainant also alleges that Clause 16.8 of the Code which relates to prohibited times for direct marketing SMS Messages was breached as SMS Messages are being sent to consumers outside permitted office hours. I don’t have any evidence from the Complainant as to what time the SMS were being sent save for the allegation that it was outside the permitted hours. The relevant part of the Code reads as to unpermitted hours.

*“16.8 Prohibited times for direct marketing”*

*“16.8. Unless a consumer has expressly or implicitly requested or agreed otherwise, a member may not engage in any direct marketing directed to a consumer on:  
(a) Sundays, public holidays contemplated in the Public Holidays Act, 1994;”*

However based on the fact that the SP nor the IP failed to reply to the allegation made that the SMS were sent during hours outside the permitted times by the Code I accept that Clauses 16.8 have been breached as the 22<sup>nd</sup> of December 2014 was a Sunday .

I do not accept the SP’s version in which it is passing the buck on the IP. The SP failed to put in place mechanism or adequate date and time systems to ensure that its client’s adhere to the WASPA code in particular that no SMS campaigns be sent via its electronic infrastructure

as SP during prohibited times. The SP cannot hide behind the fact that it is a mere conduit it also has rights and duties in terms of the WASPA that must be adhered to be it and it IP's

- Complainant alleges that “the scam smss are sent without any opt-out provisions. R5/R10 are deducted from consumers mobile accounts, when they respond to the message” and that clause 16.4, 16.15 (which relate to Opt-Out/ Stop Option) and 18 of the Code have been breached. I once again only have the version of the Complainant and find in favour of the Complainant that the Code has been breached in so far as Clause 16.4 and Clause 16.5 in that were no op out or stop option to the SMS instead responding to the SMS resulted in a deduction of R 5 to R 10 on the consumers account.
  
- I have no evidence in respect of a breach of Clause 18 and dismiss that part of the Complaint.

I rule that,

1. The IP and SP jointly and severally pay a fine of R 50 000.00;
  
2. That the IP and SP produce a list of all affected consumers and that same be refunded within (7) seven days of this Ruling ;