



REPORT OF THE ADJUDICATOR

Complaint reference number:	26196
WASPA member(s):	Infobip Africa
Membership number(s):	0143
Complainant:	Public
Type of complaint:	Unsolicited SMS
Date complaint was lodged:	2015-03-25
Date of the alleged offence:	2015-03-02
Relevant version of the Code:	13.6
Clauses considered:	4.3, 5.15, 5.16, 16.4 & 16.9 – 16.16.
Relevant version of the Ad. Rules:	N/A
Clauses considered:	N/A
Related cases considered:	20095, 23610 & 25719

Complaint

The Complainant in this matter received alleged unsolicited marketing material via text message. He was subsequently unsubscribed and blocked but was not happy and requested formal adjudication.

Service provider's response

The SP in this matter only provided a response issued by its client, which stated the following:

“Demographica is a customer insight provider for a number of service providers and credit grantors. We are a member of the Direct Marketing Association of SA and we carry the industry accreditation of Centre of Excellence.

There are various ways to obtain consumer data, public domain being the source we mostly obtain our data from. There is a reply stop to opt out which Demographica ensures that this request is adhered to and honoured.

The DMA SA runs a National Do Not Contact database www.nationaloptout.co.za and we will make sure that your details are suppressed in our internal database and may I humbly request that you consider registering on this platform which is a mandatory industry body requirement for all 280 member companies of the DMA to use before any direct marketing is undertaken. This is in line with Section 11 (2) of the Consumer Protection Act and the relevant regulation 12.”

Sections of the Code considered

4.3. Members must conduct themselves lawfully at all times and must co-operate with law enforcement authorities where there is a legal obligation to do so.

5.15. Members must respect the constitutional right of consumers to personal privacy and privacy of communications.

5.16. Members must respect the confidentiality of customers' personal information and will not sell or distribute such information to any other party without the explicit consent of the customer, except where required to do so by law.

16.4. Any member authorising, directing or conducting any direct marketing must implement appropriate procedures to facilitate the receipt of a demand from a person who has been approached for the purposes of direct marketing to desist from initiating any further communication (an "opt-out request").

16.9. A member may engage in direct marketing, or permit their facilities to be used for the purpose of direct marketing, to a person who has given his or her consent.

16.10. A member may engage in direct marketing, or permit their facilities to be used for the purpose of direct marketing, to a person who:

(a) has provided the party responsible for sending the direct marketing communication with his or her contact details in the context of the sale of a product or services, and the responsible party's own similar products or services are being marketed, and

(b) has been given a reasonable opportunity to object, free of charge, and in a manner free of unnecessary formality, to such use of his or her details at the time when the information was collected and on the occasion of each subsequent direct marketing communication sent to that person.

16.11. A member may not engage in direct marketing, or permit their facilities to be used for the purpose of direct marketing other than as provided for above.

16.12. Any communication for the purpose of direct marketing must contain the details of the identity of the sender or the person on whose behalf the communication has been sent and an address or other contact details to which the recipient may send a request that such communications cease.

16.13. Upon request of the recipient of a direct marketing message, the member must, within a reasonable period of time, identify the source from which the recipient's contact details were obtained. The member must also provide proof that the recipient has given consent to receive that message, or alternatively provide proof that the recipient has provided his or her contact details in the context of the sale of a product or service the same as that being marketed.

16.14. Once a recipient has opted out, a message confirming the opt-out must be sent to that recipient. This confirmation message must specify the marketing from which the customer has been opted out, and the customer must not be charged for this message.

Reply STOP option for SMS messages

16.15. If technically feasible, a recipient must be able to opt out of any further direct marketing messages sent by SMS by replying to a message with the word 'STOP'. If this is not technically feasible then clear instructions for opting out must be included in the body of each marketing message.

16.16. If the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the member must honor the opt-out request as if the word 'STOP' had been used.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent reply.

The Adjudicator after having reviewed the SP's response via its client, is not satisfied that the specific request to provide proof of an opt-in request has been met by the SP, which fact is not disputed by the SP.

This is therefore seen as a breach of clause 16.13, which in itself is indicative of a further breach of 16.9.

There is also no proof that the SP fulfilled clause 16.10 in the alternative, which implies a further breach of 16.11.

The Adjudicator understands that the SP's client is under the impression that its assumed compliance with the DMA's code of conduct renders its database compliant for use by WASPs. This is however not the case and the SP, by way of its client failed to illustrate compliance with WASPA's code of conduct, and more specifically insofar it relates to the sections or clauses dealing with Direct Marketing.

Unfortunately for the SP, it is the SP that carries the brunt being a member of WASPA and it is the SP that has the responsibility to uphold the WASPA code of conduct and it is further the SP who is accountable for ensuring its clients compliance.

Further to the breaches indicated above, the SP's message did not comply with clauses 16.15 or 16.16 as no provision was made for any opt-out request. The SP also failed to provide any response explaining the absence thereof. The above breaches are also indicative of a further breach of clause 16.4.

The Adjudicator could not establish with the facts in hand whether there was indeed a breach of clause 5.16.

The overall impression that is created by the SP in this matter is that it lacks the intention to enforce consumers' right to privacy. The Adjudicator therefore also finds the SP in breach of clause 5.15.

The Complaint is upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SPs with regard to breaches of the relevant sections of the Code of Conduct; and
- The SPs' subsequent response

Due to the number of complaints against the SP for similar breaches, the SP is fined R50 000-00 for its various breaches of clause 16 and subsequent breach of clause 5.15, payable to the WASPA Secretariat within five (5) working days after receiving notice hereof.