



REPORT OF THE ADJUDICATOR

WASPA Member (SP): ExactMobile
Information Provider (IP): Not applicable
Service Type: Spam sms
Complainant: Mike Silber
Complaint Number: 4921
Code Version: 6.1
Advertising Rules Version: Not applicable

Complaint

The Complainant lodged the following complaint:

“Received the following message from the SP (+27820070182) on the above number (#####):

Get superb full tracks (20,000 to choose from) for only 50c each! at www.exactmobile.mobi. Limited offer. No subscription. SMS stop to 36175 (50c) to stop msgs.

I have not had a direct and recent (within the last six months) prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator.

As such the message falls within the definition of spam in terms of the WASPA Code of Conduct.”

Service provider’s response

In its response the SP stated the following:

“Exactmobile runs numerous services for itself as well as for many external clients. The basic system is the same however Premium Rated SMS numbers for different clients are tagged with unique client ID reference numbers so that the messages are kept separate.

Exactmobile periodically uses SMS as a marketing tool to invite previous clients to purchase exciting new content and offer new services. Mobile

numbers are carefully selected based on users' recent interactions with Exactmobile. The criteria to select the mobile numbers for marketing campaigns are chosen by Management and the task is then allocated to a developer to extract the data. In this specific case, due to an external client PRS number being incorrectly allocated as an Exactmobile number, this user's mobile number was selected as a "valid" number.

After receiving the complaint, Exactmobile has done a very thorough check (with several layers of testing) on the systems and has now ensured that all numbers are correctly allocated. Hence we are confident that we will not inadvertently send the wrong people messages again. This was an honest error and Exactmobile apologizes to the user affected. After careful analysis we found there to be a small amount of numbers that received the message in error.”

Sections of the Code considered

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

- (a) the recipient has requested the message;
- (b) the message recipient has a direct and recent (within the last six months) prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator; 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. 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.

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 SP's response and paid attention to the section of the Code alleged to be breached by the SP.

It is common cause that the Complainant in this matter neither requested the said message, nor did he have any prior commercial relationship with the SP within the 6 months preceding the complaint. It is therefore clear that the message sent, did indeed constitute spam according to section 5.2.1 of the Code of Conduct.

In its response the SP did not deny that the message, which constitutes spam, was sent.

The Adjudicator has therefore no alternative but to find the SP in breach of section 5.3 and to uphold the complaint.

Sanctions

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

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct; and
- The SP's subsequent conduct in eradicating any breaches.

While the Adjudicator has given full consideration to the SP's allegation of an "honest error", the Adjudicator is less convinced that the SP had "now ensured that all numbers are correctly allocated" as stated in its response.

The Adjudicator draws its reference from a previous complaint lodged against the SP for a similar matter.

In the referenced complaint, which was adjudicated upon under Adjudication 4827, the SP stated the following:

"After receiving the complaint, Exactmobile has done a very thorough check (with several layers of testing) on the systems and has now ensured that all numbers are correctly allocated. Hence we are confident that we will not inadvertently send the wrong people messages again. This was an honest error and Exactmobile apologizes to the user affected. After careful analysis we found there to be a small amount of numbers that received the message in error."

This is the exact response received in this matter. It becomes clear that the SP in its response in Adjudication 4827 did its own confidence harm by stating:

"Hence we are confident that we will not inadvertently send the wrong people messages again."

This is exactly what happened in this matter and the Adjudicator is not satisfied with the response it received from the SP.

The SP further claimed that they have ensured that all the numbers were then correctly allocated.

The SP clearly failed in this and hence the complaint.

This must be considered in a serious light. It would almost suggest that the SP responded purely for the sake of responding but without taking real measures to combat the breach effectively.

The SP is fined R 20 000 – 00 for its breach of section 5.3 of the Code of Conduct.

The SP is also ordered to, within 10 working days of receiving notice of this adjudication, present the WASPA Secretariat with a report containing the following information:

- the substance of the information received by it pertaining to the Complainant from which it acquired the Complainant's MSISDN,
- the source of such information,
- the date such information was received, and
- the purpose for which the information was provided to the SP.

The WASPA Monitor is requested to review the report and take further action should the manner in which the SP obtained the Complainant's MSISDN constitute a breach of the Code of Conduct.
