



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Intermobile Communications (Pty) Ltd
Message Originator (MO)	Telkom SA Limited
Service Type	Unsolicited SMS Message
Source of Complaints	Public
Complaint Number	#0257

Complaint

A complaint was received from a member of the public concerning an alleged unsolicited commercial SMS message. The complaint reads:

I have not given this company permission to send me sms- I therefor (sic) classify this message as SPAM

The message itself is alleged to read:

*Telkom Reminder: Our records indicate tel no 011882**** is in arrears with R523.78. Please pay immediately & contact 10210 with receipt particulars*

The complainant referred to Clauses 5.2. of the WASPA Code of Conduct. There are also two definitions relevant to this complaint, namely those of a “commercial message” and “spam”.

The relevant Clauses indicate:

2.8. A “**commercial message**” is a message sent by SMS or MMS or similar protocol that is designed to promote the sale or demand of goods or services whether or not it invites or solicits a response from a recipient.

2.20. “**Spam**” means unsolicited commercial communications, including unsolicited commercial messages as referred to in section 5.2.1.

5.2. Identification of spam

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 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.

Decision

The Adjudicator considered the definition of a commercial message and identified that the message received by the complainant does not appear to promote the sale or demand of goods or services, rather reminding an existing customer of the MO of the amount payable in respect of his account. However the definition of Spam goes beyond only commercial messages as defined in the WASPA Code of Conduct and includes all "unsolicited commercial communications".

The complainant admits that he is a customer of the MO, though claims that he is compelled to have this relationship because of the MO's monopoly status. As much as the Adjudicator sympathises with the complainant, it is not true that the complainant is compelled to have a commercial relationship with the MO and as such the Adjudicator recognised the admitted prior commercial relationship between the complainant and the MO.

The Adjudicator notes that the provisions of clause 5.2.1. (a) to (c) are read in the alternative and thus the presence of any one of these three specified grounds will render a commercial message acceptable and not Spam.

In the instant complaint:

- The message received by the complainant does not appear to be a commercial message. As such it could still constitute Spam, however this is not clear from the WASPA Code of Conduct;
- Even if the message received by the complainant is an unsolicited commercial communication, because of the direct and current commercial relationship between the complainant and the MO, it cannot be Spam.

If the message received is in fact a commercial message, the complainant can demand the removal of his details from the MO's database. However this appears to apply only in respect of commercial messages and is unlikely to be relevant in the instant case.

The complaint is accordingly dismissed.