



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	SMS Cellular Services
Information Provider (IP)	Not disclosed
Service Type	Unsolicited SMS
Source of Complaints	Public
Complaint Number	#0350

Complaint

A complaint was received from a member of the public (who is employed by a WASPA member, but which employment appears to be co-incidental) concerning unsolicited SMS messages of a potentially fraudulent nature.

The complainant indicates:

*Repeatedly receiving SPAM SMS from mobile phone number +2782007009310804 that reads as follows:
"URGETNLY CONTACT MDB ATTPRNEYS REGARDING AN IMMINENT LEGAL MATTER. TEL (011) 504-4599 QUOTE 0107000005016576"*

Is a complete spoof - can't find details of MDB attorneys and there is no legal matter. When you call the number keep you holding for a long time, then request reference number, which with all the zeros they take a long time to confirm. Then just say they will get back to you. I believe the intention is to create call revenue to the number on which the organisation sending the SMS earns a revenue share.

The following Clauses of the WASPA Code of Conduct were considered:

3.3.2. Services must not be unreasonably prolonged or delayed.

3.9. Information providers

3.9.1. Members must bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct.

3.9.2. The member must suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct.

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

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

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

5.1.3. Where feasible, persons receiving commercial messages should be able to remove themselves from the database of a message originator using no more than two words, one of which must be 'STOP'.

5.1.4. Any mechanism for allowing a recipient to remove him or herself from a database must not be premium rated.

5.1.5. Upon request of the recipient, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained.

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.

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.

SP Response

The Secretariat received a response from the SP indicating simply:

We investigated the complaint and added a filter which will remove the customer's cellular number who complained from receiving these messages in future.

Decision

The Adjudicator referred to previous decisions concerning his ability to deal with a complaint where the specific section of the WASPA Code of Conduct is not referenced.

The Adjudicator noted the complainant's allegations of fraud or dishonesty regarding the message transmitted by an unknown IP through the SP or possibly the SP itself. The SP has chosen not to deal with this aspect of the complaint at all, however this is

not sufficient to justify a finding of fraud or dishonesty in terms of the WASPA Code of Conduct.

The SP's response contains an admission that the SMS messages were sent off its system and further contains an implicit admission that such messages are unsolicited, however the Adjudicator considered this aspect further. The SMS message appears to be that of a debt collection agency or firm of attorneys, however the SP's response is again so devoid of detail as to be inconclusive. If this were a legitimate firm of attorneys or debt collectors, the argument could be made of a direct and prior commercial relationship between the complainant and either the IP or the client on whose behalf the IP is collecting the debt. Again, no indication is given in this regard by the SP in its response.

In the absence of any justification by the SP or IP, the Adjudicator must accept the bona fides of the complainant that the SMS message received is unsolicited. The message further appears to be commercial in nature.

As such, the Adjudicator found that the repeated sending of the SMS message as indicated by the complainant is a breach of Clause 5.3.1 of the WASPA Code of Conduct.

The Adjudicator noted the steps taken by the SP to filter SMS messages in order to prevent them from being delivered to the complainant's mobile phone, however considered this insufficient in the circumstances.

As such, the Adjudicator imposed the following sanctions:

1. The SP is reprimanded for the breach of the WASPA Code of Conduct;
2. The SP is ordered to disclose the name of the IP (if any) on whose behalf the SP provided the SMS messaging service;
3. The SP is ordered to terminate the service to the IP (if such IP exists) or if no IP exists, to refrain from sending out any further such messages itself;
4. The SP is ordered to pay a punitive fine in the amount of R5 000,00 in respect of its breach of the WASPA Code of Conduct.

The Adjudicator notes that only Sanction 5 will be suspended in the event of an appeal being lodged by the SP and the remaining sanctions are to be implemented in accordance with the WASPA Code of Conduct.