



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Exact Mobile
Information Provider (IP) (if any)	Exact Mobile
Service Type	Unsolicited commercial message
Source of Complaints	Mr S Higgs
Complaint Number	3357
Date received	19 February 2008
Code of Conduct version	5.7

Complaint

The complaint is in regard to unsolicited commercial messages sent to the complainant by the SP on 26 January and 9 February 2008. It appears from the complaint that the complainant's telephone number was previously used by someone else who had subscribed to a subscription service offered by the SP.

The complainant had previously requested that he be removed from the SP's "system".

The complainant alleges that by sending further messages advertising its services, the SP has breached 5.2.1 of the WASPA Code of Conduct.

SP Response

The SP has acknowledged that it did not remove the complainant's number from its marketing database and has since rectified the error. It also states in its response that its systems are being amended to ensure that this does not happen again.

Sections of the Code considered

Section 5.2.1

Decision

I do not have the benefit of the exact wording or transcript of the opt-out instruction given by the complainant in October 2007. It must be noted that a request to cancel a subscription service on its own cannot be interpreted to qualify as a request to no longer receive any further communication from the SP at all, unless more is said. While it may be possible to imply from the wording of the unsubscribe request that the subscriber wants no further communications from the SP, it would be better if such a request is expressly made.

In the current complaint, the complainant did in fact expressly state to the SP that he did not want to receive any further communications from it. The SP has acknowledged that this request was erroneously not actioned and the complainant's number remained on its marketing database.

Section 5.2.1 of the Code provides that an SP must take reasonable steps to ensure that its services are not used to send spam. In the current matter, such reasonable steps were not taken and the SP has breached section 5.2.1 of the Code.

The complaint is accordingly upheld.

Sanction

The SP is hereby given a formal reprimand and is ordered to furnish the Secretariat, within 10 (ten) days of receiving notice of this report, with written confirmation of the

steps it has taken to amend its internal processes to ensure that express opt-out instructions from consumers are properly captured and actioned on its system.