



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Celerity Systems (Pty) Ltd
Information Provider (IP) (if any)	Vox
Service Type	Unsolicited commercial sms
Source of Complaints	Mr S Ireton
Complaint Number	4662
Date received	9 August 2008
Code of Conduct version	6.1

Complaint

The complainant received an unsolicited commercial sms from the IP at 1:48 am on a Sunday morning. It appears from further information provided that the IP had trawled classified advertisements and picked up the complainant's number in an advert for the sale of his car.

The complaint was initially dealt with through the informal complaint procedure and the complainant's number was blocked by the SP from receiving any further commercial communications via its services. However, the complainant has also requested that the complaint be dealt with in terms of section 13.5 of the Code.

SP Response

The SP has responded by suspending the IP from using its services with effect from 8 August 2008.

Sections of the Code considered

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 (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.

13.5. Information provider notices

13.5.1. If the adjudicator has determined that an information provider is operating in breach of the Code of Conduct, and the adjudicator is of the reasonable opinion that the information provider may persist in such breach, whether through the member against whom the complaint was lodged or another member, the adjudicator may instruct the secretariat to issue a notice to WASPA's members.

13.5.2. The notice referred to in 13.5.1. must clearly identify the information provider and the relevant breach or breaches of the Code of Conduct, and must specify a date from which the notice applies.

13.5.3. Any member permitting the information provider to operate in breach of the Code of Conduct (in the same or substantially similar manner to that identified in the

notice referred to in 13.5.1), after the date specified in the notice, will be automatically in breach of the same part or parts of the Code of Conduct as the information provider. Such members will be subject to sanctions determined by the adjudicator in accordance with section 13.4, read in conjunction with section 13.3.11.

Decision

I am satisfied that the SP has adequately dealt with the complaint by suspending the IP from using its services in future. The complaint against the SP is accordingly dismissed.

Furthermore, I am of the view that the information provider, Mr A Fadel, is operating in blatant disregard to the provisions of section 5.2 and 5.3 of the Code. Based on the information provider's *modus operandi* for collecting his database of numbers, I am of the reasonable opinion that the information provider may persist in such breach, whether through the SP or another WASPA member.

I therefore instruct the secretariat to issue a notice, to all WASPA's members that Mr Fadel, a Vox dealer, has and may continue to breach section 5.2 and 5.3 of the Code. Such notice will operate with effect from the date of publication thereof.

Any member permitting the information provider to operate in breach of the Code of Conduct (in the same or substantially similar manner to that identified above) after the date of publication of the notice will automatically be in breach of the same part or parts of the Code of Conduct as the information provider and will be subject to sanctions determined by the adjudicator in accordance with section 13.4, read in conjunction with section 13.3.11.
