



REPORT OF THE ADJUDICATOR

Complaint reference number : 26148

WASPA Member: : SMS Portal (SP)
Connet IT Systems Pty Ltd (1036) (IP)
Mobile Applications (1115) / Mobivate (Pty)Ltd (IP2)

Membership number(s) : 1115 / 1036,

Complainant : Louis Rossouw
Type of complaint : Breach of Code of Conduct

Date complaint was lodged : 17th March 2015

Date of the alleged offence : 17 March 2015

Relevant version of the Code : Version 13.6

Clauses considered : 3.7, 4.3 , 5.8, 5.16 and 16.12

Complainants Complaint:

- The following SMS was received by the Complainant:

"Hi, Would you like to reduce your debt/account repayments and have extra cash left over each month? SMS YES to see if you qualify :-) or NO to optout"

From: 082007229173890

- It is also alleged by the Complainant that the WASPA Member SMS Portal (hereafter known as the "SP") that clause 3.7 of the Code has been breached as it is alleged that its customer is not following the WASPA Code of conduct (hereafter known as the Code). It is also alleged that the SP is failing to disclose the name of their customer.

- It is also alleged by the Complainant that the SP has breached clause 4.3 of the WASPA code and is not acting lawfully as it is not providing the source of the “personal contact information” of the complainant.
- It is also alleged by the Complainant that the WASPA Member the SP has breached the WASPA code, in particular clause 5.8 of the code as they did not allegedly provide the complainant with contact details on the SMS sent to him.
- It is further alleged by the Complainant that clause 5.16. of the WASPA Code has been breached in that they did not provide him with details as to where they got his personal contact information.
- Lastly Complainant alleges that clause 16.12. of the code has been breached by the SP in that the SP is refusing to provide him with the details of the sender . He also states that that he had to ask Vodacom to assist him with ascertain this information.

The complaint progressed as follows:

- Complaint #26148 is the escalation of informal complaint, concerning an unsolicited SMS received by the complainant.
- The informal complaint was sent to the SP on 31 March 2015 and they replied on the 31 March 2015 requesting to handover the informal complaint. The WASPA secretariat e-mailed the SP on the 14 April 2015, advising that the informal complaint will be escalated to a formal complaint.
- The formal complaint was sent to the Connet IT Systems Pty Ltd (the “IP”) on the 14 April 2015 and Mobile Applications (Pty)Ltd (hereafter referred to as “IP2”). SP replied on the 14 April 2015 requesting the complaint be handed over to affiliate an member namely.
- The formal complaint was sent to the IP and IP2 on the 15th April 2015.
- The IP2 replied on the 15th April 2015 stating that the complained ought to be assigned to affiliate members Mobivate (also IP2) which had used its platform to send the SMS in question.
- The IP and IP 2 and the WASPA secretariat exchanged emails from the 15th May 2015 until the 21 May 2015 concerning the complaint been re-directed towards Mobivates’s client by the name of Siyaya Debt Help which had a valid WASPA membership or alternatively was in the process of applying for same.

It however transpired that no such membership existed and that there was no pending application for WASPA membership as alleged by Mobivate (IP2) by Siyaya Debt Help.

- The Mobivate (IP2) replied with their formal response on the 27 April 2015, but emailed again on the 28 April 2015, requesting an extension for 10 (ten) days.
- The WASPA secretariat responded on the 29 April 2015, advising that the extension was granted.

- The IP2 emailed their formal response on the 15 May 2015.
- The complainant on the 18 May 2015 further wrote to the WASPA secretariat and alleged further breaches of the code inter alia its right to privacy having been invaded as a result of the SP's and IP's alleged failure to delete his personal information and by calling him to make attempts to settle this adjudication as asking for further censorship of the IP's and SP's.

Decision:

- The issue here is whether on the complainant's version the WASPA Code was breached as alleged above in particular 3.7, 4.3, 5.8 , 5.16 and 16.12 of the code.
- Based on the evidence before me I rule that,
- SP, IP and IP2 have not breached clause 4.3 of the WASPA code and have not acted "unlawfully lawfully" as the source of the "personal contact information" of the complainant was identified by Mobivate (IP2) which is its former client Siya Debt Help (which was using IP2's SMS service) and the contact details of same have been provided by Mobivate (IP2).
- I grudgingly rule that I may not Rule on the alleged breach of clause 5.8 of the WASPA code as the SMS sent by its client Siyaya Debt Help did not provide the complainant with contact details on the SMS sent to him. I however note what clause 5.6 of the code deals with which is not the compliant before me – had the correct Clause 5.6 have been cited I would have ruled in favour of the complainant - but my hands are tied.
- Despite the admissions made by IP2 I will be acting *ultra vires* if I rule on issues that were not referred to me for adjudication by the complainant.
- I am however referring this complaint back to WASPA in terms of Clause 24.32. WASPA may lodge a new complaint against the member using clause 5.6 as a basis for the compliant.
- I grudgingly once again rule that SP and IP2 have not breached *clause 5.16. of the WASPA Code as no evidence has been led that the complainant right to privacy was infringed by SP and IP2.*

Despite the admissions made by IP2 I will be acting *ultra vires* if I rule on issues that were not referred to me for adjudication by the complainant.

It was also alleged by the complainant that the SP and IP2 were failing to disclose the name of their customer but that issue is also not dealt with in clause 3.7 of the Code but rather in clause 5.6 of the code as alluded to previously in this Ruling.

- The WASPA Secretariat is also requested in future to provide online services or telephonic assistance services to assist complainants in formulating their WASPA complaints with more clarity and certainty and assistance with reference to the correct WASPA clauses and version of the relevant

WASPA code at the time of the breach of the Code. This will save time, costs, and will avoid re-referrals back to WASPA such as in this case.

- Lastly Complainant alleges that clause 16.12. of the code has been breached by the SP in that the SP is refusing to provide him with the details of the sender . He also states that that he had to ask Vodacom to assist him with ascertain this information.

As much as the SP and IP2 have not breached the code by virtue of what is alleged by the Complainant as summarised above with reference to clause 16 .2.

It is clear on the face of the sms transcript provided as well as the logs presented by IP2 and reading the complaint in context, it is clear that there were no contact details to allow the recipient to ask the sender to cease or identify himself / itself in terms of the rules for Direct Marketing SMS as prescribed by clause 16.2 of the Code

I am furthermore rule that SP, and IP2 are responsible for the said breach of the Code by Siyaya Debt Help in terms of clause 3.7 of the Code.

Sanction :

- IP2 has made representations on mitigation such as immediately terminating Siyaya Debt Help's service on receipt of the complaint - which I accept and have considered.
- The appropriate sanction in the circumstances a fine of R 30 000.00 payable by the SP, and IP2 (jointly and severally) within 7 (seven) days hereof.