



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	#31455
Cited WASPA members	JS Mobile (Jimstu) (1286)
Notifiable WASPA members	n/a
Source of the complaint	Public
Complaint short description	Required details and terms and conditions not displayed on member's website. Opt-out mechanism not functioning correctly.
Date complaint lodged	2016-09-05
Date of alleged breach	s/a
Applicable version of the Code	v14.5
Clauses of the Code cited	5.6; 5.7; 16.15; 16.16
Related complaints	n/a

considered	
Fines imposed	None
Other sanctions	None
Is this report notable?	No
Summary of notability	n/a

Complaint

1. This complaint involves direct marketing messages received by the complainant from the member.
 2. The complainant alleges that the member has breached the provisions of clauses 5.6 and 5.7 of the WASPA Code because the member's website is completely blank and contains none of the required information.
 3. The complainant also alleged further that the member has breached the provisions of clauses 16.15 and 16.16 in that the complainant used the opt-out mechanism provided (i.e. sms'd the reply "OUT") but the member did not honour the opt-out request and the complainant received another direct marketing message 2 weeks later.
 4. The complainant logged a complaint on the WASPA website which was initially dealt with according to the informal complaint procedure. However, the complaint was not successfully resolved and was then referred to formal adjudication.
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Member's response

5. The member denied that its website was blank and did not carry the required information in terms of clauses 5.5 and 5.6 of the WASPA Code.
 6. The member states that it tested the website on a MacBook Pro and on a Windows machine, using several browsers (including Chrome, Firefox and Internet Explorer).
 7. The member stated further that it was in the process of redeveloping its website and would pay special attention to making sure that the site is viewable on as many devices and browsers as possible.
 8. The member also attached message logs for the relevant MSISDN and confirmed that, according to its logs, the complainant did not send the word "OUT" in reply to the first marketing message that was sent on 25 August 2016.
 9. Instead, a reply with the word "STOP" was sent on 5 September 2016 and the member responded to this message as an opt-out request and added the complainant's MSISDN to its block-list to ensure no further marketing messages were sent.
 10. The member confirmed that no further messages were sent after 5 September 2016.
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Sections of the Code considered

11. Clause 5.6:
Each member must provide contact details on their main corporate web site, which must include the member's registered company name, telephone number, email address and physical address.
12. Clause 5.7:
A web page containing the full terms and conditions of a service must be readily available to current and potential customers of that service.

13. Clause 16.15:

If technically feasible, a recipient must be able to opt out of any further direct marketing messages sent by SMS by replying to a message with the word "STOP". If this is not technically feasible then clear instructions for opting out must be included in the body of each marketing message.

14. Clause 16.16:

If the words "END", "CANCEL", "UNSUBSCRIBE" or "QUIT" are used in place of "STOP" in an opt-out request, the member must honour the opt-out request as if the word "STOP" had been used.

Decision

15. After receiving a direct marketing message from the member, the complainant has alleged that they tried to access the member's website at <http://www.jsmobile.co.za/> and they found that it to be "completely blank".
16. It is implied from the complainant's statement in this regard that the details required by clause 5.6 of the Code were therefore not displayed; and no webpage containing the relevant terms and conditions for the promoted service were displayed.
17. The member has denied this and has stated that their website is compliant and has been tested for a number of devices and browsers.
18. When I accessed the member's website at <http://www.jsmobile.co.za> on 9 February 2017 at 7:44pm, I was able to access a working webpage which displayed the member's details as well as terms and conditions for the various services offered by the member, including its WINA subscription service, which was the service promoted in the direct marketing message received by the complainant.

19. Unfortunately I am not able to determine whether the complainant was or was not able to access the member's website in August 2016, and therefore I cannot make a ruling on this aspect of the complaint.
20. The complaint with respect to the alleged contravention of clauses 5.6 and 5.7 of the WASPA Code cannot be upheld.
21. With regard to the alleged contravention of clauses 16.15 and 16.16, the complainant has not expressly stated in their complaint that they sent an opt-out message using the word "OUT" after receiving the first marketing message from the member.
22. The member in turn has provided message logs in support of their version, i.e. that they only received an opt-out message from the complainant on 5 September 2016. The member immediately actioned the request and the complainant's MSDN was removed from the member's database.
23. The complainant was properly advised of the member's response and was given an opportunity to respond further. They have failed to do so.
24. In the absence of any further proof from the complainant to contradict the member's version, which is supported by the message logs presented by the member, I cannot uphold the complaint in this regard either.
25. The complaint is therefore dismissed in its entirety.