

Report of the Adjudicator



Wireless Application Service Providers' Association

Complaint number	#37695
Cited WASPA members	Interactive Telephony (Pty) Ltd (1281)
Notifiable WASPA members	Cellfind (Pty) Ltd (0019)
Source of the complaint	Public
Complaint short description	Alleged SPAM
Date complaint lodged	Cellfind (Pty) Ltd (0019)
Date of alleged breach	2018-01-26
Applicable version of the Code	15.4
Clauses of the Code cited	16.13
Related complaints considered	N/A
Fines imposed	N/A
Other sanctions	N/A
Is this report notable?	N/A
Summary of notability	N/A

Initial complaint

The Complainant in this matter wanted the Member to provide it with proof that it had obtained her written consent to receive commercial messages.

Member's response

The Respondent initially responded by contacting the Complainant and subsequently removing and blocking her number.

Complainant's response

The Complainant responded by stating that such action does not prove to be sufficient and that she wanted to know where the Respondent obtained her number.

Member's further response

The Respondent provided her with the requested details of where the telephone number was obtained, and no further communication was received from the Complainant thereafter.

Sections of the Code considered

16.13. Upon request of the recipient of a direct marketing message, the member must, within a reasonable period of time, identify the source from which the recipient's contact details were obtained. The member must also provide proof that the recipient has given consent to receive that message, or alternatively provide proof that the recipient has provided his or her contact details in the context of the sale of a product or service the same as that being marketed.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the Respondent's subsequent replies.

The Complainant in this matter neither confirmed nor denied that she was satisfied with the information received from the Respondent in its further response.

The Adjudicator is of the opinion that the Respondent in this matter only partially fulfilled its obligation in terms of section 16.13 of the Code, by having only provided the Respondent with the source of the Complainant's contact details.

It failed however to address the Complainant's original request of providing her with proof that it had obtained her subsequent consent for sending her commercial messages.

The Respondent in its response indicated that it acted according to the “Act”, which the Adjudicator assumes could either refer to the Electronic Communications and Transactions Act of 2002, the Consumer Protection Act of 2008, or the Protection of Personal Information Act of 2013.

Be as it may, the Respondent in this matter, as a member of WASPA, has an obligation to comply with the WASPA Code of Conduct and the Adjudicator’s only function is to adjudicate on the said Code and more specifically in this matter, on section 16.3 thereof.

The Adjudicator therefore find the Respondent partially in breach of section 16.3, as it has failed to provide the Complainant with proof that she has given consent to receive the contested message, or in the alternative having failed to provide proof that the Complainant has provided her contact details in the context of the sale of a product or service the same as that was being marketed to her.

The Complaint is therefore upheld

Sanctions

The Respondent is hereby ordered to provide the Complainant with proof that her consent was obtained for the commercial message received, or in the alternative, with proof that she has provided her contact details in the context of the sale of a product or service the same as that was being marketed to her, within 5 working days after having received notice hereof.

Should the Respondent fail to comply within the allotted timeframe indicated above, the Respondent shall be fined R 15 000-00 (Fifteen Thousand Rand) for its breach of section 16.13 of the Code, which amount shall be paid to the WASPA Secretariat within 5 working days after expiry of the allotted timeframe allowed above.

Matters referred back to WASPA

N/A