



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	41820
Cited WASPA members	SMS Portal (0139)
Notifiable WASPA members	
Source of the complaint	Public
Complaint short description	Spam and no response to request for details of where information was obtained
Date complaint lodged	2019/08/30
Applicable version of the Code	16.6
Clauses of the Code cited	16.13
Related complaints considered	N/A
Fines imposed	None
Other sanctions	Member to suspend OneDebt until they are sure they can comply with the WASPA Code.
Is this report notable?	Not Notable
Summary of notability	N/A

Initial complaint

The complainant complains of receiving an unsolicited message from OneDebt. After opting out he received another message from One Debt a few weeks later. He phoned OneDebt's contact center to unsubscribe from their marketing and also to ascertain from where they had obtained his number. Allegedly OneDebt refused to unsubscribe him nor would they provide him with details of from where they obtained his number. Furthermore, they would not provide him with proof of any opt-in for their marketing.

Member's response

The member responded at length setting out that amongst other factors:

1. It is an aggregator and many customers use its platform for sending bulk SMS's;
2. It is not responsible for the content, recipient list and ensuring the opt-in of such SMS's;
3. It has provisions in its terms and conditions with its customers that they will not spam people and that they comply with the provisions of the WASPA Code;
4. It immediately blacklisted the complainant's MSISDN and engaged with OneDebt to try and resolve the issues and to attempt to assist the complainant and is continuing to work with them to resolve the poor manner in which they responded to the complainant's request for information;
5. The second message being sent was as a result of a human error on OneDebt's part;
6. It has measures in place at a platform level to prevent spam and manage the opt out process; and
7. The complainant suffered no loss.

The member also said that section 16.13 was not part of the formal complaint and thus only section 16.14 could be properly adjudicated.

Sections of the Code considered

Sections 3.1, 3.2, 3.5, 3.6, 3.7 and 16.13.

Decision

I am not going to deal with section 16.14 as that was not a clause cited in the formal complaint and as such will only deal with 16.13, 16.14 not being properly before me.

It is clear that OneDebt failed to comply with the provisions of section 16.13 in that it did not provide the complainant with any information as to from where it had obtained his number.

As OneDebt is not a WASPA member and as the member quite correctly points out it is not responsible for content of the message, the recipient list or ensuring there is a valid opt-in in place I will be guided by the provisions of the WASPA Code relating to non-members using the

services/platforms of a WASPA member. Section 3 of the Code governs this. Sections 3.1 and 3.2 set out how the code applies to those services. 3.6-3.7 set out the member's responsibilities.

Extent to which the Code applies to third party services

3.1. If a customer, supplier, affiliate or sub-contractor of a member provides or markets services covered by this Code of Conduct, those services are subject to the relevant provisions of this Code, as if the party providing or marketing them was a member.

3.2. If a customer, supplier, affiliate or sub-contractor of a member is found to have breached this Code of Conduct, that member must abide by any order to suspend or terminate the services offered by that party.

Third parties who are not WASPA members

3.5. Members must ensure that any customer, supplier, affiliate or sub-contractor who is not a member of WASPA but is providing or marketing services covered by this Code of Conduct, is aware of the requirements of this Code of Conduct.

3.6. Members must ensure that any customer, supplier, affiliate or sub-contractor who is not a member of WASPA but is providing or marketing services covered by this Code of Conduct, provides and markets those services in a manner consistent with the requirements of this Code of Conduct.

3.7. A member is liable for any breaches of this Code of Conduct resulting from services offered or marketed by a customer, supplier, affiliate or sub-contractor if that party is not also a member of WASPA. If the member can demonstrate that they have taken reasonable steps to ensure that that party provides and markets services in a manner consistent with the requirements of this Code of Conduct, this must be considered as a mitigating factor when determining the extent of the member's liability for any breaches.

OneDebt breached section 16.13. The member is therefore in terms of 3.7 liable for such breach.

Sanctions

As provided for in 3.7 I have taken cognisance of the behavior of the member in responding to this matter as well as the steps they have taken to ensure their customers are aware of and comply with the WASPA Code and do not spam people as a mitigating factor in sanctioning the member. In addition, as the complainant suffered no monetary loss, I do not feel a monetary sanction is appropriate. However, I am going to refer to section 3.2 and order that the member suspends OneDebt until such time as they are satisfied that their systems are properly set up to comply with the WASPA Code of conduct and in particular to manage not sending spam, opt-out requests and better systems and improved customer service in responding to requests in terms of 16.13.
