



Report of the Adjudicator

Complaint number	#42598
Cited WASPA members	Coretalk SA (1548)
Notifiable WASPA members	<i>N/A</i>
Source of the complaint	<i>WASPA Compliance Department</i>
Complaint short description	<i>Unsolicited Marketing</i>
Date complaint lodged	<i>2020-03-04</i>
Date of alleged breach	<i>N/A</i>
Applicable version of the Code	<i>16.9</i>
Clauses of the Code cited	<i>3.5., 3.6., 3.7., 16.15., 16.8 (a,b,c)</i>
Fines imposed	<i>R 10 000-00 for breach of secs 3.5 and 3.6, suspended for 6 months R 20 000-00 for breach of sect 6.15, suspended for 6 months</i>
Other sanctions	<i>Formal reprimand for breach of sect 6.8</i>
Is this report notable?	Not notable
Summary of notability	<i>N/A</i>

Complaint

The Complainant attached screenshots of messages received, allegedly for one of the Member's clients' direct marketing campaigns, with aspects of the campaign alleged by the Complainant, to be non-compliant with the requirements of the WASPA Code of Conduct.

In summary, the Complainant referenced the following, in addition to sections 3.5, 3.6 and 3.7 of the Code:

- Clear instructions for opting out not included in the body of the message (Clause 16.15)
- Messages were sent outside the permissible hours for direct marketing (Clause 16.8)

Upon receiving the Member's response, the Complainant indicated it had no intention to further respond.

Member's response

The Member's response is copied here verbatim:

"We can confirm that the recipient had selected "opt-in" to receive marketing campaign smses from the specific retailer.

Coretalk had disclosed to all clients that we experienced technical issues on our backend with bugs that corrupted the coding in the course of last week.

The specific campaign was submitted in the backend which was queued in the outbox to be sent. The issues experienced were duplication of communication sent and due to debugging the platform, it resulted in the platform releasing that specific campaign outside the marketing window frame.

We have resolved all technical issues on our platform and are confident that we would not experience these issues in the future. We do confirm that the message did not contain any opt-out instructions whereas it should be due (sic) to the nature of the campaign.

This will be communicated with a warning to the campaign owner and we will monitor any campaigns sent going forward.

*In the interim Coretalk have added the recipient's mobile number (** * ** *) to the blacklist/Opt-out database and he/she will no longer receive any marketing communication that are routed through Coretalk SA.*

From the Coretalk Team we humbly apologise for the inconvenience caused and would like to confirm that we will do everything necessary to ensure that this will not happen again in the future.”

Sections of the Code considered

The following sections of the Code were considered:

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.

16.8. Unless a consumer has expressly or implicitly requested or agreed otherwise, a member may not engage in any direct marketing directed to a consumer on:

- (a) Sundays, public holidays contemplated in the Public Holidays Act, 1994;
- (b) Saturdays before 09:00 and after 13:00; and
- (c) all other days between the hours of 20:00 and 08:00 the following day.

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.

Decision

After having reviewed the Complaint and the Member's response, the Adjudicator is of the opinion, on the basis of the evidence presented, that the Complainant's subsequent indication of not wishing to respond to the Member's response, is an indication of the Complainant's implied acceptance of the Member's version of events.

The Adjudicator therefore acts on the basis that the Member's client did obtain the necessary consent / so-called "opt-in" from the Complainant in this matter to receive its direct marketing messages from the Member's client.

The Member, acknowledged irregular sending from its system, but indicated that the untimely sending of these multiple messages, which times were shown on the screenshots provided by the Complainant to be outside the parameters of the Code's section 16.8, was due to the debugging of its platform in response to technical issues, since alleged to be resolved.

By its own the submission, the Member is in breach of section 16.8.

However, without providing any reasoning, the Member acknowledged that the messages sent by its client did not provide any opt-out mechanism as required by section 16.15 of the Code, therefore acknowledging a breach of section 16.15 by the client.

The Member did not elaborate or provide any indication of its conformity to sections 3.5 and 3.6 of the Code, apart from its undertaking of sending a warning to and conducting future monitoring of the campaign owner. It is further unclear whether the campaign owner is the Member's client or its own staff member.

The Adjudicator therefore, under the assumption that the campaign owner is the Member's client, is of the opinion that the Member, according to section 3.7, is directly liable for the client's breach of section 16.15, and that the Member, by failing to adhere to sections 3.5 and 3.6, is unable to claim any mitigating factor made available to it under section 3.7 of the Code.

The Complaint is upheld.

Sanction

In determining any appropriate sanctions, the Adjudicator has taken the following considerations:

- any previous successful complaints made against the Member in the past three years;
- any previous successful complaints of a similar nature;
- the nature and severity of the breach;
- the loss suffered by the Complainant;
- any efforts made by the Member to resolve the matter; and
- any other factors that the Adjudicator considers material.

For its breach of:

- sections 3.5 and 3.6, the Member is fined R 10 000-00, suspended for 6 months;
- section 16.8, the Member is formally reprimanded; and for its client's breach of
- section 16.5, the Member is fined R 20 000-00, suspended for 6 months.