



**Wireless Application Service Providers' Association**

## Report of the Adjudicator

Complaint number	#34556
Cited WASPA members	Data SMS South Africa (Pty) Limited (0151)
Notifiable WASPA members	n/a
Source of the complaint	Public
Complaint short description	Failure to provide adequate proof of subscription
Date complaint lodged	2017-06-29
Date of alleged breach	Same as above
Applicable version of the Code	v14.7
Clauses of the Code cited	24.24
Related complaints	34555, 34558

considered	
Fines imposed	R20 000 for contravention of clause 24.24 of the WASPA Code
Other sanctions	Member to provide proof of payment of full refund offered to complainant within 10 (ten) days of receiving notification of this report.
Is this report notable?	No
Summary of notability	n/a

---

## Complaint

1. This complainant had, prior to lodging this complaint, lodged an earlier complaint against the same member (see complaint #34555).
2. The complainant alleges that despite being successfully unsubscribed from the member's subscription service which was the subject of complaint #34555, another number belonging to the complainant was used to subscribe to another of the member's subscription services without the complainant's consent.
3. The complainant requested that the member provide details about the subscription, including logs for proof of subscription and that it reimburses all fees incurred relating to the subscription.

---

## Member's response

4. The member responded to the complaint by providing, via email, a screenshot of a log which it alleged was for the interactions with the relevant number since the subscription was activated on 29 May 2017 until it ended on 27 June 2017.

5. The member stated further that the subscription was validly activated following a “2 click flow” process.
  6. Despite asserting that the subscription was valid, the member offered a full refund to the complainant to avoid any further complaint.
  7. However, the complainant was not satisfied with the member’s response and requested that the complaint be referred to formal adjudication.
- 

### **Sections of the Code considered**

8. The complainant cited clause 24.24 of the WASPA Code of Conduct as the basis for their complaint.

9. Clause 24.24 reads as follows:

*Where a complaint involves any interaction with a customer, when requested to do so, a respondent must provide clear copies of all relevant logs of that interaction and all relevant marketing material.*

10. Clause 24.10 states that if the complainant has not identified all of the relevant clauses of the Code, WASPA may assign the relevant clauses based only on the content of the complaint. The complaint and subsequent response and adjudication will be limited to those clauses identified by either the complainant or WASPA at the start of the matter.
  11. No further clauses were assigned by WASPA.
-

## Decision

12. The complainant alleges that the member has contravened clause 24.24 of the WASPA Code.
  13. Clause 24.24 requires the member to provide *clear* copies of the logs of the member's interactions with the complainant in relation to the relevant subscription service, together with all relevant marketing material.
  14. The member has provided a screenshot of a log, which is anything but clear. From a cursory review of the log provided by the member, I cannot find any reference to the required welcome or reminder messages that the member is obliged to send to the customer after the subscription has been activated.
  15. The log also does not reflect any service initiation request or that the required double opt-in process was followed. Instead the first entry on the log states the following: "*Proceso completado con exito*", which does not answer the complainant's request for details of how the service was activated.
  16. The member simply states further in its response that the subscription was activated following a "*2 click flow*". This again is not sufficient to satisfy the requirements of clause 24.24.
  17. The member has also failed to provide copies of any marketing material which is relevant to the subscription service in question as required by clause 24.24.
  18. Based on the foregoing, I am not satisfied that the member has complied with the requirements of clause 24.24 of the WASPA Code and the complaint is accordingly upheld in this regard.
- 

## Sanctions

19. In considering the sanctions to be applied, I have taken cognisance of the previous complaint, i.e. 34555, involving the same complainant, which was upheld by me in another adjudication, and complaint 34558 involving another complainant but which is almost indistinguishable from the current complaint.
20. In both these other complaints, the member was found to have also failed to comply with clause 24.24 of the Code.
21. This must be viewed as an aggravating factor.
22. However, I have also taken into account that the member immediately offered a full refund to the complainant of all fees incurred by them in relation to the subscription in question. This must be viewed as a mitigating factor.
23. Based on the foregoing, the following sanctions are imposed against the member:
  - 23.1 The member is fined an amount of R20 000.00 for its contravention of clause 24.24, which is payable to WASPA within 10 (ten) days of the member being notified of this report; and
  - 23.2 The member is required to provide WASPA, within 10 (ten) days of the member being notified of this report, with proof that all fees incurred by the complainant have been refunded.