



Wireless Application Service Providers' Association

Report of the Appeals Panel

Complaint number	34555, 34556 and 34558
Cited WASPA members	Data SMS South Africa (Pty) Ltd (0151)
Notifiable WASPA members	N/A
Appeal lodged by	Data SMS South Africa (Pty) Ltd
Type of appeal	Panel
Scope of appeal	Review of the clauses and sanctions imposed by the adjudicator
Applicable version of the Code	14.7
Clauses considered by the panel	24.24
Related complaints considered	
Amended sanctions	The Member is ordered to pay a fine of R5000 for each complaint respectively on demand by the Secretariat of WASPA.
Appeal fee	50% refund of appeal fee.
Is this report notable?	No
Summary of notability	N/A

Initial complaint

Complaints 34555, 34556 and 34558 were all against the same Member, and all of them alleged a breach of clause 24.24 of the WASPA Code of Conduct. As all three complaints are substantially similar they are dealt with as a single appeal in the same vein as they were appealed by the Member. In each case there was a subscription service and a request for logs and proof of subscription.

Adjudicator's findings

Although the Member stated that they were only appealing the sanctions the Member raised their arguments to mitigate the sanctions. For this reason we will set out the appeal panel's findings also and the reasons for such findings.

In each complaint the Adjudicator stated:

"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.

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.

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.

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.

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."

As set out above the Adjudicator found the Member to be in breach of clause 24.24.

The Adjudicator fined the Member the amounts of R15,000, R20,000 and R15,000 for complaints 34555, 34556 and 34558 respectively, and the Member was required to pay a full refund to consumers.

Appeal submissions

In its appeal submission, the Member referenced clause 24.24 of the Code of Conduct that provides: “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.”

The Member argues that for there to be a breach of 24.24, not only must they have provided logs that were insufficiently clear but that also they must have neglected to provide clear copies or intended to provide unclear copies. They state further that the meaning of “clear” is highly dependable upon context and, in this context, a customer service representative of the Member could not have been expected to know what would constitute “clear” for the purposes of providing logs.

They set out further that had anyone other than the Adjudicator informed them that the logs were not sufficiently clear that they would have avoided a fine.

With regards to their appeal as to the sanctions their initial argument turns on the fact that due to all 3 complaints being lodged simultaneously they did not have time to remedy their behavior and processes.

They argue that the cumulative fine of R50 000.00 is excessive bearing in mind the loss suffered by the consumers, the fact that they offered a full refund, the alternative sanctions available for the Adjudicator to utilise and that they were not provided with reasons for the choice of sanction being a fine and the quantum of the fine. In addition, they raised the fact that this was the first complaint that had ever been upheld against them.

They requested that all three fines be overturned and that a formal reprimand be implemented as the appropriate sanction in all three complaints.

Deliberations and findings

The panel reviewed the complaint files, the Adjudicator’s report as well as the Members appeal. The Member focusses on the issue of the clarity of the logs and does not provide a response as to the remainder of 24.24 namely that the Member is required to provide: “clear copies of **all relevant logs of that interaction and all relevant marketing material**”. The panel does not agree with the Member’s arguments that their customer service representatives could not have been expected to understand what constituted a “clear” log and as such they should have been notified that the logs were not clear before the matter being handed to adjudication. In addition,

the panel agrees with the Adjudicator's finding that the Member failed to comply with the remainder of clause 24.24 in that they provided no copies of marketing material(s).

The panel is thus in agreement that there was a breach of clause 24.24 of the WASPA Code of Conduct.

With regards to sanctions, since this is a first offence and the breach is of clause 24.24 in isolation the panel has reduced the sanctions as set out in the sanctions section below.

However this does not conclude the matter. The panel concurs that as several potential breaches of the WASPA Code of Conduct were not raised in the formal complaint and consequently never considered in the above complaints. It is now trite that a WASPA appeal panel may not consider these potential breaches of the WASPA Code of Conduct (please refer to clause 24.32A of the WASPA Code of Conduct). The panel opts instead to provide a recommendation to WASPA as more fully set out below.

Additional Issues

The panel believes that several clauses of the code were potentially breached in the provision of the subscription services in question and by the conduct of the Member in dealing with the complaints that are the subject of this report. Accordingly, the panel recommends that WASPA considers instituting complaints against the Member for formal adjudication. The following potential breaches are raised in this regard together with an indication of the panel's cause for raising such potential breaches:

Section 4.2: Members must always conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

- Did the Member conduct itself in a professional manner in the response to the customer's complaint?

Section 7.5: Members must provide WASPA with any customer records relating to any service which is the subject of a complaint, including, but not limited to:

- (a) where that information is available, a record of the marketing link that the customer followed prior to joining a service;
- (b) all communications sent by or to a customer in the process of joining a service;
- (c) all required reminder messages sent to a customer;
- (d) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
- (e) any record of successful or unsuccessful service termination requests.

- Did the Member provide WASPA with adequate customer records on requested by WASPA?

Section 15.3: For all subscription and notification services the member must keep a record of the source of the service initiation request, and all subsequent interactions with the customer. Those records must be made available to the customer, on request. Records must be kept for a period of at least three years after the customer terminates the service.

- Did the Member make the records available to the the customer on request of the customer?

Section 15.12: For all subscription services initiated by the sending of an SMS, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of two ways:

- (i) The customer's mobile carrier may implement the confirmation step.
- (ii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message.

- Did the Member's service meet the requirements of of the two-step confirmation for subscription services?

Section 15.13: A confirmation message must contain only the following information, in this order: (a) the name of the service, (b) the pricing information, (c) a customer support number, (d) instructions for confirming the initiation of the subscription service, and (e) (optionally) additional information about the service.

- Was a confirmation message in accordance with section 15.13 provided to the customer?

Section 15.17: Once a customer has joined a subscription or notification service, an SMS message must immediately be sent to the customer confirming the initiation of the service. This message is referred to as the "welcome message". The customer must not be charged for the welcome message.

- Was a welcome message provided to the customer?

Section 15.18: The welcome message must be a single message and may not contain any line breaks or carriage returns. The welcome message must begin with the word "welcome" and then contain only the following additional information:

- (a) the name of the service,
- (b) the pricing information,
- (c) a customer support number,

- (d) instructions for terminating the service, and
- (e) (optionally) a link to a WAP landing page or a web page describing the service.

- Was a welcome message in accordance with section 15.18 provided to the customer?

Section 15.19: A reminder SMS message must be sent to a subscription or notification service customer within 30 days of the initiation of the service, and once per calendar month thereafter. This message is referred to as the “reminder message”. The customer must not be charged for any reminder message.

- Was a reminder message in accordance with section 15.19 sent to the customer?

Section 24.17: WASPA will forward the complaint to the member concerned. The member has five (5) working days to affect an appropriate remedy and inform WASPA thereof.

- In relation to the Member’s response to the complaint, did the Member effect an appropriate remedy and duly inform WASPA within five (5) working days?

Amendment of sanctions

For the reasons set out above, the sanctions are amended as follows: The Member is fined R5,000 for each complaint payable on demand by the Secretariat.

Appeal fee

The Member has been partly successful in the Appeal in that they have asked for and received a reduction in sanction. However, the panel feels that additional matters need to be referred to WASPA. In the circumstances, we order a refund of 50% of the Appeal fee.
