



**Wireless Application Service Providers' Association**

## Report of the Appeals Panel

Complaint number	39138
Cited WASPA members	Globocom Infotech Pvt Ltd (1816)
Notifiable WASPA members	Intarget Mobile Advertising (Pty) Ltd (0030)
Appeal lodged by	Globocom Infotech Pvt Ltd (1816)
Type of appeal	Panel
Scope of appeal	Review of the sanctions imposed by the adjudicator.
Applicable version of the Code	15.5
Sections considered by the panel	4.11(a), 24.33 and 24.34
Related complaints considered	39135, 39139, 39141 and 39142
Amended sanctions	None
Appeal fee	No refund
Is this report notable?	No
Summary of notability	No

## Initial complaint

This complaint related to a failure of the Member to implement one or more of the measures set out in section 2.3 of the WASPA Fraud Detection and Mitigation Best Practice Guidelines (version 2.1) and accordingly comply with the requirements of clause 4.11(a) of the WASPA Code of Conduct.

The Formal Complaint was lodged by the WASPA Compliance Department after a test was conducted on the Member's system and it was identified that the Member had failed or omitted to implement one or more of the measures set out in section 2.3 of the WASPA Fraud Detection and Mitigation Best Practice Guidelines (version 2.1).

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## Adjudicator's findings

The Adjudicator found as follows:

1. The incidence of fraudulent attacks and activities on the networks and systems of mobile service providers in South Africa and worldwide has become a major concern, not only for WASPA members but for all stakeholders in the industry.
2. In response to these threats and in line with its mandate to ensure that consumers can use mobile services with confidence, WASPA amended its Code of Conduct by introducing a positive obligation on its members to take reasonable steps to prevent their networks and systems from being used in a fraudulent manner.
3. These measures include:
  - a. complying with WASPA's published best practices for fraud prevention;
  - b. timeously blocking interactions with specific applications or sources as soon as reasonably possible; and
  - c. timeously reporting any fraudulent activity identified on their networks or systems to WASPA.
4. Section 2.3 of the Fraud Guidelines sets out certain standards and measures to be implemented by members to prevent or mitigate against user interface redress attacks (including "clickjacking" and SOP bypassing).
5. The Fraud Guidelines stipulate that three different measures are to be adopted by members, namely:
  - a. the Content Security Policy (CSP) standard created by the Worldwide Web Consortium;
  - b. the X-Frame-Options Response Header directive; and
  - c. Legacy Browser Exploit Protection.
6. The Fraud Guidelines expressly state that all three of these measures must be implemented together. If they are not implemented together, the member's system will still be vulnerable to attack.
7. In this complaint, the test conducted by the Compliance Department identified that the Member had not implemented the required measures set out in section 2.3 of the Fraud Guidelines.

8. That the Member did not comply with WASPA's published best practices for fraud prevention and has contravened clause 4.11(a) of the WASPA Code.
9. In sanctioning the Member, the Adjudicator considered the following:
  - a. Effective fraud prevention and mitigation is clearly in the best interests of all stakeholders in the industry. Clickjacking poses particular concerns for members and consumers alike in the context of subscription services, where consumers continue to be subscribed to such services without their knowledge or express assent.
  - b. The measures required to be taken in terms of the published best practice guidelines are relatively easy to script and inexpensive to implement.
  - c. The failure of a member to comply with WASPA's published best practices must, therefore, be viewed in a serious light, and an appropriate sanction must take into account the threat that fraud poses to the industry as a whole.
  - d. The Member did not, in their response to the complaint, provide any mitigating factors to be considered.
  - e. This is the Member's first offence with regard to a breach of clause 4.11 and there have also not been any other complaints lodged against the Member.
10. The Adjudicator fined the Member an amount of R100 000.00, of which R50 000.00 is payable immediately and a further R50 000.00 is suspended for 6 (six) months. Should the Member's systems be tested again and found to be non-compliant within this period, the suspended fine will become payable immediately on demand.

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## Appeal submissions

The Member appealed the severity of the Adjudicator's sanctions.

The Member requested that the sanctions be looked at again in the light of the following circumstances:

1. The Member was pro-active in their response and in mitigating any risks;
2. The Member is new to WASPA;
3. The Member does not have a physical presence in South Africa;
4. The Member had no consumer complaints;
5. The Member has not had any complaints against it before.

In respect of the severity of sanctions for the breach of 4.11(a) the Member viewed these as unduly harsh.

The Member accordingly requested that the sanctions be amended.

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## Deliberations and findings

The panel reviewed the complaint files, the Adjudicator's report as well as the Member's appeal. We will not address the merits of the matter as it is common cause that there was a breach of 4.11(a). We will focus our efforts on the issue of sanction and the severity thereof.

The Code of Conduct mandates that an Adjudicator must do as follows when sanctioning a Member (our highlights):

"24.33. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the clauses of the Code identified in the complaint. Each case will be considered and decided on its own merits. **When making adjudications and determining sanctions, previous precedent should be taken into account. Precedent set by appeals panels should carry more weight than that set by adjudicators.**

"24.34. If the adjudicator determines that there has been a breach of the Code, then the adjudicator must determine appropriate sanctions. **In determining any appropriate sanctions, the adjudicator must take into consideration:**

- (a) any previous successful complaints made against the respondent in the past three years;**
- (b) any previous successful complaints of a similar nature;**
- (c) the nature and severity of the breach;**
- (d) the loss suffered by the complainant;**
- (e) any efforts made by the respondent to resolve the matter; and**
- (f) any other factors that the adjudicator considers material."**

In sanctioning the Member, the Adjudicator considered the following:

1. Effective fraud prevention and mitigation is clearly in the best interests of all stakeholders in the industry. Clickjacking poses particular concerns for members and consumers alike in the context of subscription services, where consumers continue to be subscribed to such services without their knowledge or express assent.
2. The measures required to be taken in terms of the published best practice guidelines are relatively easy to script and inexpensive to implement.
3. The failure of a member to comply with WASPA's published best practices must, therefore, be viewed in a serious light, and an appropriate sanction must take into account the threat that fraud poses to the industry as a whole.
4. The Member did not, in their response to the complaint, provide any mitigating factors to be considered.
5. This is the Member's first offence with regard to a breach of clause 4.11 and there have also not been any other complaints lodged against the Member.

In addition, the Adjudicator's sanctions are in line with current precedent for breaches of the same nature, and in fact are on the lower end of the scale.

The panel is of the view that although the Member responded pro-actively to remedy the breach and mitigate the risks, this was still a serious breach of the Code. In addition, whilst we do not dispute the fact that the Member is both a new WASPA Member and new to the South African market with no physical presence here, that can be no excuse for non-compliance with the Code. The Code does not provide for a staggered compliance process but rather that you are expected to be in compliance with the Code once you become a WASPA member. In addition, WASPA's membership is made up of several entities which are not physically present in South Africa and this cannot be viewed as a mitigating factor in determining sanctions for breaches of the Code.

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### **Amendment of decision and sanctions**

For the reasons set out above, the sanctions are not amended. The appeal is dismissed.

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### **Appeal fee**

The Member has not been successful in the appeal and the panel orders no refund of the appeal fee.

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