



Wireless Application Service Providers' Association

Report of the Appeals Panel

Complaint number	#39145
Cited WASPA members	Sanvir Mobitech Ventures Private Limited (1841)
Notifiable WASPA members	Intarget Mobile Advertising (Pty) Ltd (0030)
Appeal lodged by	Sanvir Mobitech Ventures Private Limited (1841)
Type of appeal	Written appeal
Scope of appeal	This appeal is against the sanctions imposed by the adjudicator
Applicable version of the Code	Version 15.5
Clauses considered by the panel	14.11(a)
Related complaints considered	39135, 39136, 39137, 39138, 39139, 39141, 39142
Amended sanctions	None
Appeal fee	Appeal fee not to be refunded
Is this report notable?	Not notable
Summary of notability	Not applicable

Initial complaint

The facts are quite straightforward.

This complaint was lodged by the WASPA Compliance Department after a test was conducted on the Member's system during May 2018 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).

The complainant alleges that the Member's systems were therefore vulnerable and were not sufficiently secured to prevent potential fraudulent attacks or activity.

As such, the Member is alleged to be in breach of clause 4.11(a) of the WASPA Code of Conduct.

The Member responded that that it had analysed its systems and found a bug due to which the issue had happened. It stated further that it had rectified the problem and set an alarm to notify it in case the required checks do not function as required.

Adjudicator's findings

The Adjudicator after considering the complaint and the Member's response considered section 4.11(a) of the Code as the basis for the complaint:

4.11 Members must take reasonable steps to prevent their networks and systems from being used in a fraudulent manner, including:

(a) complying with WASPA's published best practices for fraud prevention;

The best practices referred to in clause 4.11(a) are contained in section 2.3 of the Fraud Detection and Mitigation Guidelines.

The Adjudicator held that:

(a) 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;

(b) 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;

(c) these measures include complying with WASPA's published best practices for fraud prevention, timeously blocking interactions with specific applications or sources as soon as reasonably possible, and timeously reporting any fraudulent activity identified on their networks or systems to WASPA.

(d) following due consultation with its members, WASPA introduced its Fraud Detection and Mitigation Best Practice Guidelines (the "Fraud Guidelines");

(e) 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);

(f) the Fraud Guidelines stipulate three different measures that must be adopted by members and that all three must be implemented together.

(g) in 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, in particular, the test results showed that the page immediately before Vodacom's network confirmation page did not contain the required CSP and X-Frame-Option headers, and served an HTTP 302 message instead of the required HTTP 200 message;

The adjudicator upheld the complaint, concluding 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 of Conduct.

In imposing a sanction the Adjudicator reasoned that:

(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) 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. However, the Adjudicator took due notice of the fact that this was the Member's first offence with regard to a breach of clause 4.11 and that there have also not been any other complaints lodged against the Member.

The Adjudicator imposed a fine of R100,000 of which R50,000 was payable immediately and a further R50,000 was suspended for 6 months.

Appeal submissions

In its appeal submission the Member states that the issue was detected in a system that was in the launch state and that during that period it had added certain new servers to handle the traffic. The concern rightly raised by WASPA was due to the new servers not being fully aligned with the regulations. When the test request was received from WASPA the test was routed through the new cluster and the filtering did not take place.

The Member also states that there was no deliberate fraud and that the system was in a launching phase in South Africa. In addition to the requirements the Member had added an additional check for each request which raises an alarm in the case of any miss in the check of the regulation.

The Member further states that when it received the concern, it was addressed immediately on the same day and monitored over the weekend to ensure proper execution. After proper monitoring and testing the Member responded to the concern raised by WASPA confirming that the issue had been resolved.

The Member further indicated that the live start of the commercial service was only on 1 June 2016.

In the light of these facts the Member requests that the fine imposed be reconsidered as the service has launched without much revenue being attracted.

Deliberations and findings

The appeal raised by the Member concerns only the reconsideration of the fine imposed and not the findings on the infringement of the Code of Conduct made by the Adjudicator.

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:

“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.

The panel is of the view that although the Member responded pro-actively to remedy the breach and mitigated the risks, this was still a serious breach of the Code. In addition, whilst we do take into account that the service was only launched after the testing phase, the member had failed to implement the best practices and would have launched with the non-compliant systems. There can therefore be no excuse for non-compliance with the Code. The Code does not provide for a staggered compliance process but rather that members are expected to be in compliance with the Code once they have become a WASPA member.

This case is quite similar to Case no 39138 in which the Adjudicator imposed an identical fine which was upheld on appeal. There are a number of other cases which we have considered where similar breaches took place and similar fines were imposed. See cases #39135, #39136, #39137, #39138, #39139, #39141, #39142. In the appeal of case #39138 the Appeal’s Panel remarks that 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.

In the light of the seriousness of the non-compliance with the Code of Conduct in these cases, we dismiss the appeal and uphold the Adjudicator's sanctions.

Appeal fee

The appeal has been unsuccessful and the panel orders that the appeal fee be forfeited.
