



Report of the Appeals Panel

Complaint number	#41161, 41162 & 41163
Cited WASPA members	TechVault Pte Ltd (1610)
Notifiable WASPA members	Oxygen8 Communications SA (Pty) Ltd t/a Dynamic Mobile Billing (0068)
Appeal lodged by	Member
Type of appeal	Written appeal
Scope of appeal	<input checked="" type="checkbox"/> Review of the adjudicator's decision <input checked="" type="checkbox"/> Review of the sanctions imposed by the adjudicator
Applicable version of the Code	16.3
Clauses considered by the panel	15.27
Related complaints considered	
Amended sanctions	None
Appeal fee	Appeal fee not to be refunded
Is this report notable?	Not notable
Summary of notability	

Initial complaint

In Case no 41161 a member of the public complained that she had started to play a word spelling game. The game had lots of advertisements and requests to buy games which the Complainant carefully declined each time. She was then automatically subscribed to Stylix, which would be free for one day and thereafter would be billed at R6 per day. The Member was asked by WASPA to unsubscribe the customer and to send an SMS confirming the unsubscribe. The Member was also requested to provide proof of subscription. The Member was also requested to contact the Complainant regarding a refund. There was no response to the request to unsubscribe.

In Case no 41162 the facts contained in the complaint is somewhat more terse. It involves a different Complainant. There is no copy of the actual complaint as in the previous case. WASPA notes that "The user who escalated this request has provided the following reason for escalation: 5.27. The processing of any service termination request must not be unreasonably delayed. Termination requests submitted to the member in an automated fashion (including via SMS, USSD or the WASPA API) must be honoured within 24 hours, and all other termination requests (including email requests) must be honoured within two working days (48 hours). WASPA requested the Member to unsubscribe the customer and to send a confirming SMS. There was no response to the request to unsubscribe. There is no indication that there was an automatic subscription in this case.

Case no 41163 is identical to Case no 41162 except that it involves a different Complainant.

WASPA notified the aggregator Member as a courtesy, indicating that the Complaint was not against the aggregator Member.

After the required 10 days had expired since the notification was sent to the Member, and no response had been received from the Member the three cases were sent for Adjudication where the Adjudicator dealt with the matter on a default basis.

Adjudicator's findings

The Adjudicator only considered the possible infringement of Clause 15.27 which stipulates:

15.27. The processing of any service termination request must not be unreasonably delayed. Termination requests submitted to the member in an automated fashion (including via SMS, USSD or the WASPA API) must be honored (sic) within 24 hours, and all other termination requests (including email requests) must be honored (sic) within two working days (48 hours).

It is uncertain why the complaint that there was an automated subscription which would involve an infringement of Clause 15.12 and 15.13 was not acted upon by WASPA as part of the complaint. The Adjudicator pointed this out and recommended that this complaint should be investigated by WASPA. The adjudication then only focused on the infringement of Clause 15.27.

The adjudicator found that the Member failed to respond in any way to the complaint or to WASPA. The adjudicator found the Member to be in breach of Clause 15.27 in all three matters.

The adjudicator indicated that the failure to comply with unsubscribe requests is a serious matter as it creates uncertainty and anxiety in the public. A fine of R10,000 was imposed in each of the three complaints.

Appeal submissions

In its appeal submission the Member claims that it did not receive the service and related request emails sent by WASPA and that it only became aware of these requests when it received the adjudicator's report.

The Member states that mobile terminations are not managed by them, but by their aggregator, Oxygen8. The member just, 'call there (sic) api and they will do the rest'. The member therefore claims to have no control over the process and cannot provide details on whether unsubscribe messages were delivered or not. It claims that it could have provided such details if asked earlier by obtaining it from Oxygen8.

The Member further submits that after investigation they found that there may be some problem with their mail server and that some mails may have been rejected by the mail server. It has attempted to fix this problem.

The Member further submits that due to business in South Africa not doing well, it is unable to afford the fines. It finally submits that if the fine is 'removed' it will ensure that this mistake will not be repeated again.

The Member also supplied a document titled: 'Oxygen8 HTTP Relay – Technical Specification'. There is no explanation by the Member of what the relevance of this document is and how it should aid these proceedings.

Deliberations and findings

Since the Member claims that it did not receive any of the complaint documents and service termination requests by WASPA before the adjudication and the adjudication went ahead on an

unopposed basis, we will deal with this appeal in a manner akin to an application for rescission of a default judgment in the courts.

The requirements for a rescission application to succeed is trite. In *De Bruyn & De Kock Inc and Another v Theunissen* (68433/2016) [2019] ZAGPPHC 467 (13 September 2019) sets out the requirements as follows: (a) the default must not be wilful; (b) there must be a reasonable explanation for the default; and (c) must show good cause for the rescission. Good cause in this context includes making out a case that there is a *bona fide* defence to the claim.

The Member has indicated that it did not receive any of the complaints or unsubscribe requests from WASPA due to possible email server problems. Surprisingly it did receive the adjudication and decided to act thereupon. For purposes of this appeal it is not necessary to determine the plausibility of this explanation and we will accept it at face value.

In offering a defence to the complaints of the infringement of Clause 15.27, the Member tries to shift the blame to its aggregator Oxygen8, claiming that it has no control over unsubscribe requests. However, despite investigation it offers no evidence of what actually transpired in any of these three cases. This is evidence it could easily have obtained from Oxygen8 if it was available or exculpatory. In any event, despite sub-contracting these functions to Oxygen8 it remains responsible for compliance with the WASPA Code of Conduct.

On the evidence before us, unsubscribe requests were sent to the Member who failed to act upon those requests within the prescribed times. The Member offers no *bona fide* defence against these infringements, simply referring to them as mistakes which it concedes happened in its appeal documents.

We accordingly find that there was a breach of Clause 15.27 in all three instances.

We agree with the adjudicator on the seriousness of the breaches. Having regard to similar cases, the fines imposed are on the conservative side taking the seriousness of the breaches into consideration. We confirm the sanctions imposed by the adjudicator.

The appeal is accordingly dismissed.,

Amendment of sanctions

The sanctions imposed by the adjudicator are confirmed.

Appeal fee

As the Member's appeal failed, the appeal fee is forfeited.