



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	#41369
Cited WASPA members	TechVault Pte Ltd (1610)
Notifiable WASPA members	Oxygen8 Communications SA (Pty) Ltd t/a Dynamic Mobile Billing (0068)
Source of the complaint	WASPA Secretariat
Complaint short description	Confirmation of subscription insufficient
Date complaint lodged	17 May 2019
Date of alleged breach	13 March 2019
Applicable version of the Code	16.3
Clauses of the Code cited	15.10 and 15.11
Related complaints considered	#41161 #41162 #41163
Fines imposed	None
Other sanctions	n/a
Is this report notable?	Not notable
Summary of notability	n/a

1. Complaint

1.1. To discuss the facts of this complaint, I first need to consider the Adjudicator's report in complaints 41161, 41162 and 41163.

Complaints 41161, 41162 and 41163

- 1.2. The Adjudicator considered whether a complainant's subscription to a service was in breach of clause 15.27 of the WASPA Code of Conduct.
- 1.3. In these complaints the complainant received a subscription confirmation message for a service that she never subscribed to nor received a subscription request for. She presumably played a game on her phone called "WOW" and merely received an SMS informing her that she has been subscribed to "STYLIX FREE" for one day and thereafter will be billed at R6 per day. A screenshot of the SMS is attached hereto as Annexure **A**.
- 1.4. After receiving the confirmation of subscription message, she attempted to unsubscribe but did not receive any confirmation of her unsubscribe request having been processed. The unsubscribe query was escalated because the member did not respond on the WASPA unsubscribe query system. Based hereon, the Adjudicator held that the unsubscribe request was not processed by the member and as such, the member is in breach of clause 15.27.
- 1.5. The Adjudicator referred the matter back to WASPA to consider further whether clauses 15.10 and 15.11 of the Code were also breached by the member. A copy of the Adjudicator's report #41161; 41162 and 41163 has been submitted to me and is attached hereto as Annexure **B** for ease of reference.

This complaint

- 1.6. The WASPA Secretariat proceeded to submit this complaint and cited the Adjudicator's report under complaints 41161, 41162 and 41163 as the complaint description. It is requested that I consider whether the member's conduct results in a breach of clauses 15.10 and 15.11 of the WASPA Code of Conduct based on the fact that the no request for subscription was received.
- 1.7. WASPA sent this complaint to the member and the aggregator (whom WASPA believes may be providing services to this member) on 23 May 2019.

- 1.8. On 10 June 2019 WASPA advised the member that this complaint was being assigned to adjudication without their response as they had failed to submit one.

2. Member's response

- 2.1. The member requested an extension to submit a response and WASPA granted an extension until 18 June 2019.
- 2.2. The member provided a response to the complaint on 11 June 2019. The member's formal response reads as follows:

"We have already blocked incorrect or fraudulent traffic from many publishers. Therefore, the same issue will not be repeated in the future".

3. Sections of the Code considered

- 3.1. As the conduct complained of took place in March 2019, version 16.3 of the WASPA Code of Conduct applies to this complaint.
- 3.2. The Secretariat alleges that the member has infringed clauses 15.10 and 15.11 of the Code of Conduct, which read as follows:

Subscriptions initiated via a web page

15.10. For all subscription services initiated via a web page, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of three ways:

(i) The customer's mobile carrier may implement the confirmation step.

(ii) The member can provide the customer with a "confirmation page".

(iii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message.

15.11. A confirmation page must contain the following information:

(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) a link to any applicable terms and conditions.

Additional information about the service may also be included, provided it follows the above information.

4. Decision

4.1. To deal with the relevant clauses in order:

Clause 15.10

4.2. It cannot be determined whether this subscription was initiated via a webpage. There is no record thereof provided by the one complainant who provided information (in complaint 41161). The complainant is resolved that she did not click on any advertisement or webpage to initiate the subscription.

4.3. There is further no record of any message sent to the complainant to request a subscription, merely the confirmation that she has been subscribed.

4.4. The complainant did not provide a record of any messages received before the subscription, nor did the member provide a log extract proving that the request for confirmation message was sent to the complainant and responded to by the complainant.

4.5. As a result of the above, it is impossible to ascertain whether the one complainant who provided information was subscribed to the service in question via a web page or some other method, and accordingly I cannot find that clause 15.10 applies to this matter.

4.6. Therefore, I find that there is not sufficient evidence to prove a breach of clause 15.10.

Clause 15.11

4.7. As there was no confirmation that subscription was made via a web page, I cannot find a breach of clause 15.11 either.

4.8. Based on the foregoing, both the complaint in respect of clause 15.10 and the complaint in respect of clause 15.11 of the WASPA Code of Conduct is dismissed.

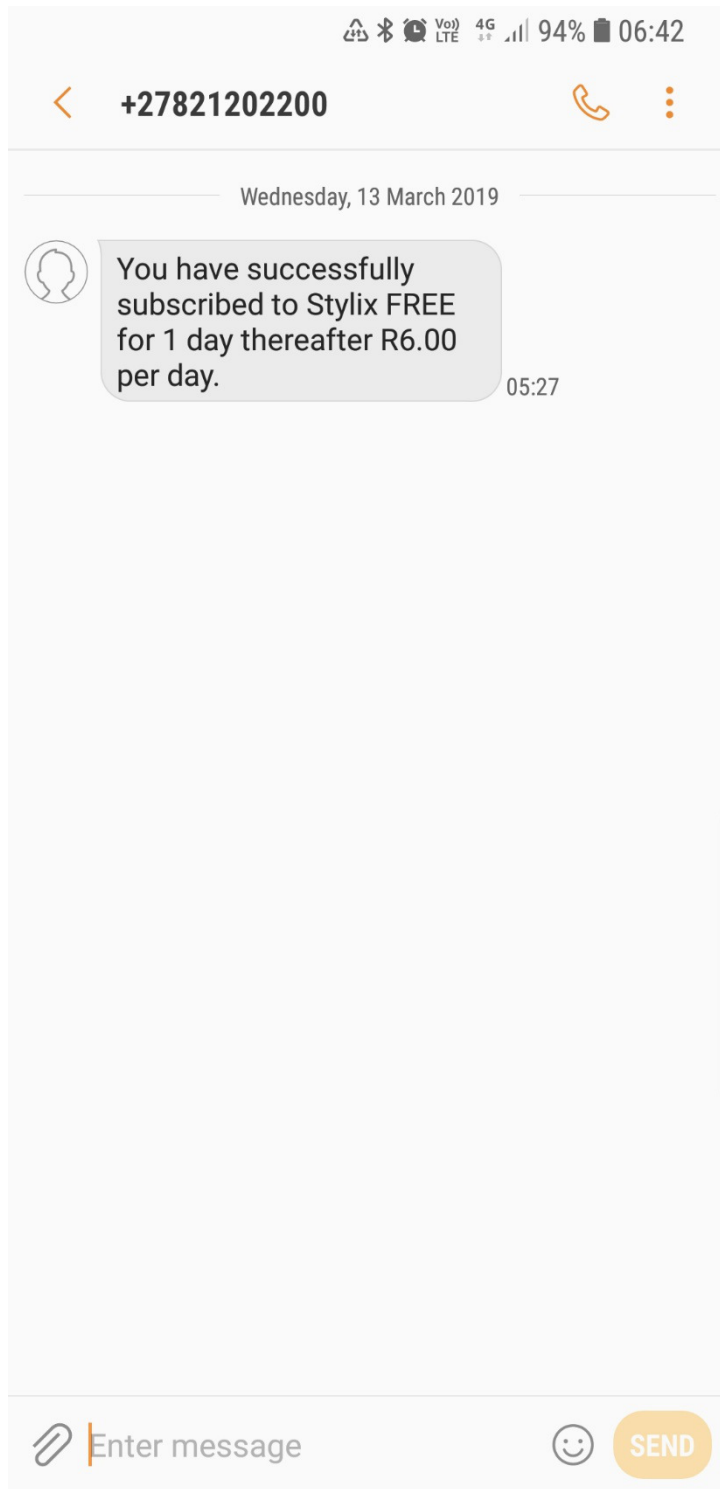
5. Sanctions

5.1. As both complaints have been dismissed, there are no sanctions imposed on the member under this complaint.

6. Matters referred back to WASPA

6.1. None

Annexure A



Annexure B



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	41161, 41162 and 41163
Cited WASPA members	Techvault Pte Ltd
Notifiable WASPA members	Oxygen8 Communications SA (Pty) Ltd t/a Dynamic Mobile Billing
Source of the complaint	Public
Complaint short description	Automatic subscription and no unsubscribe action.
Date complaint lodged	2019/04/02
2019/04/02	2019/04/02
Applicable version of the Code	16.3
Clauses of the Code cited	15.27
Related complaints considered	N/A
Fines imposed	R10 000 for 41161, R10 000 for 41162 and R10 000 for 41163 payable immediately on publication of this report.
Other sanctions	N/A
Is this report notable?	Not Notable
Summary of	N/A

notability	
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Initial complaint

The complainant complains of receiving a subscription confirmation message for a service to which she never subscribed. In addition, on attempting to unsubscribe, no confirmation of her unsubscribe request having been processed was received. In addition, no proof of subscription request or refund were received.

Member's response

The member failed to respond.

Sections of the Code considered

Section 15.27.

Decision

Section 15.27 requires that: "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)."

The member in this matter failed to respond in any way to the complainant or to WASPA. As the unsubscribe request was not processed I find the member to be in breach of this clause in respect of all three cases to which this report refers.

Sanctions

The behaviour of the member is serious. Failure to conform with unsubscribe requests creates uncertainty and anxiety in the public in that they can never be certain that they have effectively unsubscribed from services which they a) either never subscribed to, or b) have decided they no longer wish to be subscribed to, especially when such services carry a daily subscription fee. For this reason I sanction the member as follows: R10 000 for 41161, R10 000 for 41162 and R10 000 for 41163 payable immediately on publication of this report.

Matters referred back to WASPA

In addition I refer the matter back to WASPA to consider whether the following clauses were breached: 15.10 and 15.11.