



Report of the Adjudicator

Complaint number	48941
Cited WASPA members	Akinga Vertical Service Provider (1944)
Notifiable WASPA members	N/A
Source of the complaint	Public
Complaint short description	Subscription and failure to send correct welcome and reminder messages.
Date complaint lodged	28 February 2021
Date of alleged breach	1 and 2 November 2021
Applicable version of the Code	16.10
Clauses of the Code cited	5.7-5.10; 7.5; 15.3; 15.8A; 15.9; 15.18-15.20; 15.25; 15.28-15.30; 24.24
Related complaints considered	N/A
Fines imposed	The Member breached sections 5.7; 5.10; 15.18; 15.19; 15.19A and 15.20 of the Code. These are serious breaches in that they relate to provisions giving consumers information about services being subscribed to including billing information. There was no place where the Complainant would have been able to ascertain that a R3/day service would run for the full calendar month and that only thereafter would an unsubscribe request be honored.

	<p>I fine the Member:</p> <ul style="list-style-type: none"> a) R 10 000.00 for a breach of 5.7; b) R 10 000.00 for a breach of 5.10; c) R 10 000.00 for a breach of 15.18; d) R 10 000.00 for a breach of 15.19; e) R 10 000.00 for a breach of 15.19A; and f) R 5 000.00 for a breach of 15.20
Other sanctions	<p>The Member must also suspend all of their services which are non-compliant until such time as they have satisfied themselves and WASPA that:</p> <ul style="list-style-type: none"> a) The relevant terms and conditions are available with the services as required; b) The welcome messages are compliant and state clearly that subscription is occurring, and the pricing information required; and c) The reminder messages are compliant, and a process is in place to ensure that these get sent.
Is this report notable?	Not notable
Summary of notability	N/A

Initial complaint

The Complainant complained of having been subscribed to various services without a double-opt in and being billed despite unsubscribing from the service. The Complainant also complained that the welcome message was incorrect and that there were no reminder messages sent.

Member's response

The Member responded by stating that as the Complainant had subscribed via the Telkom Plus portal, the double opt-in mechanism was contained therein. The Member advised further that the cancellation of the service was honored, but that as the Complainant had already

subscribed for the month, the opt out only kicked in the following month and that is why the Complainant was still charged R3 per day. The Complainant had however been offered and paid a full refund.

Complainant's response

The Complainant advised that they only received a portion of the full refund.

Member's further response

The Member advised that the reason for the Complainant not receiving the full refund amount was due to the fact that the refund is issued via Telkom and Telkom set off the refund against an amount owed to Telkom by the Complainant in terms of their account with the Complainant.

Sections of the Code considered

Terms and conditions

5.7. A web page containing the full terms and conditions of a service must be readily available to current and potential customers of that service.

5.8. The full terms and conditions for any service provided by a member must contain:

- (a) the registered company name of the WASPA member providing the service;
- (b) a customer support number;
- (c) unsubscribe instructions (for subscription services);
- (d) any handset compatibility requirements for the service;
- (e) an indication that network fees may apply;
- (f) an indication of how billing errors are handled;
- (g) a statement that the service must only be used with the permission of the bill-payer (for paid services);
- (h) a statement that the service must only be used with the permission of a parent or guardian (for children's services); and
- (i) the following statement: "[member name] is a member of WASPA and is bound by the WASPA Code of Conduct. Customers have the right to approach WASPA to lodge a complaint

in accordance with the WASPA complaints procedure. [member name] may be required to share information relating to a service or a customer with WASPA for the purpose of resolving a complaint. WASPA web site: www.waspa.org.za".

(j) a statement that the service must not be used:

(i) to intentionally engage in illegal conduct,

(ii) to knowingly create, store or disseminate any illegal content,

(iii) to knowingly infringe copyright,

(iv) to knowingly infringe any intellectual property rights, or

(v) to send spam or promote the sending of spam.

(k) a statement that the member has the right to suspend or terminate the services of any customer who does not comply with these terms and conditions or any other related contractual obligations, and

(l) a statement that the member has the right to take down any content (hosted as part of the service) that it considers illegal or for which it has received a take-down notice.

5.9. The terms and conditions for any service must not contain clauses that contradict the requirements of this Code of Conduct.

5.10 Whenever a customer is asked to consent to the terms and conditions of a service, it must not be assumed that the customer consents by default; a customer must take a specific action to confirm consent. (Example: A consent tick-box must be empty when presented to the customer, and the customer must click on the tick-box to indicate consent.)

Provision of information about services

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.

Record keeping

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.

General requirements

15.8A A customer may not be billed in advance for a subscription service if this exceeds the amount specified in the pricing information. For the avoidance of doubt, this restriction does not prevent a member from billing historical charges for a subscription service that have not yet been paid by the customer.

15.9 The confirmation step for any subscription service must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.

Welcome message

15.18. The “welcome message” must be a single message and may not contain any line breaks or carriage returns. The welcome message must contain only the following additional information:

- (a) (optionally) the word “welcome” at the beginning,
- (b) confirmation that the customer has subscribed to a service,
- (c) the name of the service,
- (d) the pricing information,
- (e) a customer support number,
- (f) instructions for terminating the service, and
- (g) (optionally) a link to a WAP landing page or a web page describing the service.

Reminder messages

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 at least once per calendar month thereafter. The message must be provided in one of two ways:

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

15.19A. For subscription or notification services for which the successful billing in one calendar month reaches R500, an additional "reminder message" must be sent to the customer at the point the billing reaches this threshold. The customer must not be charged for this reminder message.

15.20. The "reminder message" must be a single message for each service the customer is subscribed to, and must not contain any line breaks or carriage returns. The reminder message must contain only the following additional information:

- (a) (optionally) the word "reminder" at the beginning,
- (b) the name of the service,
- (c) the pricing information,
- (d) an indication that the customer has already reached the threshold (if this is an additional reminder message),
- (e) a customer support number,
- (f) instructions for terminating the service, and
- (g) (optionally) a link to a WAP landing page or a web page describing the service.

Terminating a service

15.25. If a service termination request received from a customer is unclear, the customer making the request must be provided with sufficient information to be able to terminate any services provided by that member to that customer.

Terminating a service via SMS

15.28. If technically feasible, a recipient must be able to terminate a subscription or notification service by replying 'STOP' to any SMS sent to the customer regarding that service, including the welcome message and any reminder messages.

15.29. If a 'STOP' reply could pertain to multiple services, either all services must be terminated upon receipt of the termination request, or the customer must be given a clear choice of services to terminate.

15.30. If the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the member must honor the unsubscribe request as if the word 'STOP' had been used.

Formal complaint procedure

24.24. Where a complaint involves any interaction with a consumer, when requested to do so, a respondent must provide clear copies of all relevant logs of that interaction and all relevant marketing material.

Decision

Terms and conditions

5.7. A web page containing the full terms and conditions of a service must be readily available to current and potential customers of that service.

- I find a breach of this clause as the pages where you subscribed for the games as referenced in the welcome messages either had a link that took you to a blank page or had no service link at all.

5.8. The full terms and conditions for any service provided by a member must contain:

- (a) the registered company name of the WASPA member providing the service;
- (b) a customer support number;
- (c) unsubscribe instructions (for subscription services);
- (d) any handset compatibility requirements for the service;
- (e) an indication that network fees may apply;
- (f) an indication of how billing errors are handled;

(g) a statement that the service must only be used with the permission of the bill-payer (for paid services);

(h) a statement that the service must only be used with the permission of a parent or guardian (for children's services); and

(i) the following statement: "[member name] is a member of WASPA and is bound by the WASPA Code of Conduct. Customers have the right to approach WASPA to lodge a complaint in accordance with the WASPA complaints procedure. [member name] may be required to share information relating to a service or a customer with WASPA for the purpose of resolving a complaint. WASPA web site: www.waspa.org.za".

(j) a statement that the service must not be used:

(i) to intentionally engage in illegal conduct,

(ii) to knowingly create, store or disseminate any illegal content,

(iii) to knowingly infringe copyright,

(iv) to knowingly infringe any intellectual property rights, or

(v) to send spam or promote the sending of spam.

(k) a statement that the member has the right to suspend or terminate the services of any customer who does not comply with these terms and conditions or any other related contractual obligations, and

(l) a statement that the member has the right to take down any content (hosted as part of the service) that it considers illegal or for which it has received a take-down notice.

- I find no breach of this clause as the Telkom Plus portal contains this information.

5.9. The terms and conditions for any service must not contain clauses that contradict the requirements of this Code of Conduct.

- I find no specific breach as there were no terms and conditions for the specific services.

5.10 Whenever a customer is asked to consent to the terms and conditions of a service, it must not be assumed that the customer consents by default; a customer must take a specific action to confirm consent. (Example: A consent tick-box must be empty when presented to the customer, and the customer must click on the tick-box to indicate consent.)

- I find a breach of this clause as there were no terms and conditions for the services just the Telkom Plus Portal club terms.

Provision of information about services

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.

- I find no breach of this section as WASPA was provided with this information as part of the formal process of adjudication.

Record keeping

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.

- I find no breach of this section.

General requirements

15.8A A customer may not be billed in advance for a subscription service if this exceeds the amount specified in the pricing information. For the avoidance of doubt, this restriction does not prevent a member from billing historical charges for a subscription service that have not yet been paid by the customer.

- I find no breach of this section as the Complainant was billed daily for the service and not in advance.

15.9 The confirmation step for any subscription service must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.

- I find no breach of this clause as the service subscribed to was done so via the Telkom Plus portal which has the double opt in built into it.

Welcome message

15.18. The “welcome message” must be a single message and may not contain any line breaks or carriage returns. The welcome message must contain only the following additional information:

- (a) (optionally) the word “welcome” at the beginning,
- (b) confirmation that the customer has subscribed to a service,
- (c) the name of the service,
- (d) the pricing information,
- (e) a customer support number,
- (f) instructions for terminating the service, and
- (g) (optionally) a link to a WAP landing page or a web page describing the service.

- I find a breach of this clause. The welcome message did not have the necessary confirmation of subscription and it also failed to state that the subscription was monthly billed daily and only terminable at the end of the month irrespective of the date of opting out of the service.

Reminder messages

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 at least once per calendar month thereafter. The message must be provided in one of two ways:

- (i) The customer’s mobile carrier may send the message.
- (ii) The member can send the “reminder message”. The customer must not be charged for the reminder message.

- I find a breach of this clause as no reminder message was sent.

15.19A. For subscription or notification services for which the successful billing in one calendar month reaches R500, an additional “reminder message” must be sent to the customer at the point the billing reaches this threshold. The customer must not be charged for this reminder message.

- The Complainant’s billing exceeded R500, and no additional reminder message was sent. Accordingly, I also find a breach of this clause.

15.20. The “reminder message” must be a single message for each service the customer is subscribed to, and must not contain any line breaks or carriage returns. The reminder message must contain only the following additional information:

- (a) (optionally) the word “reminder” at the beginning,
- (b) the name of the service,
- (c) the pricing information,
- (d) an indication that the customer has already reached the threshold (if this is an additional reminder message),
- (e) a customer support number,
- (f) instructions for terminating the service, and
- (g) (optionally) a link to a WAP landing page or a web page describing the service.

Terminating a service

- I find a breach of this clause as no reminder message was sent.

15.25. If a service termination request received from a customer is unclear, the customer making the request must be provided with sufficient information to be able to terminate any services provided by that member to that customer.

- I find no breach of this clause.

Terminating a service via SMS

15.28. If technically feasible, a recipient must be able to terminate a subscription or notification service by replying ‘STOP’ to any SMS sent to the customer regarding that service, including the welcome message and any reminder messages.

- I find no breach of this clause.

15.29. If a 'STOP' reply could pertain to multiple services, either all services must be terminated upon receipt of the termination request, or the customer must be given a clear choice of services to terminate.

- I find no breach of this clause.

15.30. If the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the member must honor the unsubscribe request as if the word 'STOP' had been used.

- I find no breach of this clause.

Formal complaint procedure

24.24. Where a complaint involves any interaction with a consumer, when requested to do so, a respondent must provide clear copies of all relevant logs of that interaction and all relevant marketing material.

- I find no breach of this clause.

Sanctions

The Member breached sections 5.7; 5.10; 15.18; 15.19; 15.19A and 15.20 of the Code. These are serious breaches in that they relate to provisions giving consumers information about services being subscribed to including billing information. There was no place where the Complainant would have been able to ascertain that a R3/day service would run for the full calendar month and that only thereafter would an unsubscribe request be honored.

I fine the Member:

- g) R 10 000.00 for a breach of 5.7;
- h) R 10 000.00 for a breach of 5.10;
- i) R 10 000.00 for a breach of 15.18;
- j) R 10 000.00 for a breach of 15.19;
- k) R 10 000.00 for a breach of 15.19A; and
- l) R 5 000.00 for a breach of 15.20

The Member must also suspend all of their services which are non-compliant until such time as they have satisfied themselves and WASPA that:

- d) The relevant terms and conditions are available with the services as required;
- e) The welcome messages are compliant and state clearly that subscription is occurring, and the pricing information required; and
- f) The reminder messages are compliant, and a process is in place to ensure that these get sent.

Matters referred back to WASPA

Not applicable.
