



## Report of the Adjudicator

<b>Complaint number</b>	#50284
<b>Cited WASPA members</b>	Akinga Vertical Service Provider (Pty) Ltd (Membership no.1944)
<b>Source of the complaint</b>	WASPA
<b>Complaint short description</b>	Illegal subscription
<b>Date complaint lodged</b>	2021-03-10
<b>Date of alleged breach</b>	2020-11-21
<b>Applicable version of the Code</b>	v16.12
<b>Clauses of the Code cited</b>	4.2, 5.4, 5.5, 5.7, 5.8, 5.9, 5.10, 7.5, 15.3, 15.8A, 15.9, 15.18, 15.19, 15.20, 15.25, 15.28, 15.29, 15.30, 24.24; 24.25
<b>Related complaints considered</b>	48942
<b>Fines imposed</b>	R25 000.00 fine imposed for contravention of clause 15.19, read with clause 15.20 of the WASPA Code of Conduct.
<b>Other sanctions</b>	n/a
<b>Is this report notable?</b>	n/a

## Initial complaint

1. An unsubscribe request was logged by a member of the public against the Member via the WASPA portal. The Member responded to the unsubscribe request by providing certain logs to the WASPA Secretariat.
  2. After reviewing the logs provided by the Member, the WASPA Complaints Department noted the following irregularities regarding the DOI, SMS and billing logs provided:
    - 2.1 There was no indication on the logs of the end date for the service FaithFirstTV. There was also no DOI token specified.
    - 2.2 The log stated that this particular service started on 2020/11/21, but daily billing for the service only started on 2020/12/02.
    - 2.3 No reminder messages were sent to the customer in respect of any of the subscription services.
    - 2.4 The welcome messages alleged to have been sent did not comply with the requirements of clause 15.18 of the WASPA Code of Conduct.
    - 2.5 The customer was billed 74 times for a subscription service that, according to the Member, had not been activated.
  3. The customer had also denied that they had ever opted-in to join each of the relevant subscription services and that the subscriptions were fraudulent.
  4. The customer also denied ever receiving any welcome messages from the Member and only became aware of the services when they received their statement of account from Telkom, which reflected the subscription charges.
  5. The complaint was initially referred to the WASPA emergency panel procedure but was subsequently de-escalated to the formal complaint procedure.
  6. The Complainant alleges that the Member is in breach of clauses 4.2, 5.4, 5.5, 5.7, 5.8, 5.9, 5.10, 7.5, 15.3, 15.8A, 15.9, 15.18, 15.19, 15.20, 15.25, 15.28, 15.29, 15.30, 24.24; 24.25 of the WASPA Code of Conduct.
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## Member's response

7. The Member responded to the formal complaint lodged against it as follows:
  - 7.1 In respect of the alleged breach of clause 4.2, the Member stated that it takes its professional conduct seriously and it ensures that it responds to queries received from the public, customers, service providers and WASPA efficiently and seeks to find a suitable remedy for all parties concerned.
  - 7.2 In respect of the alleged breach of clause 5.4, the Member stated that it has honest and fair dealings with customers. The Member advised that it was a service delivery platform which integrates directly with Telkom to deliver content partners' services on the TelkomPlus platform. Content partners are able to onboard their services on the TelkomPlus portal via the Member. It has required all content partners to become members of WASPA and to abide by the WASPA Code of Conduct. Although it acknowledged that it has full control and accountability for the service delivery platform, the Member stated that when it came to honest and fair dealings of content partners who are also members of WASPA, complaints should be directed to the content partner in terms of clause 3.3 of the WASPA Code.
  - 7.3 In respect of the alleged breach of clause 5.5, the Member stated that it was not aware of having disseminated information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission. The Member requested further clarification from the Complainant in this regard, which was not provided.
  - 7.4 In respect of the alleged breach of clauses 5.7 and 5.8, the Member stated that the full terms and conditions for the services were readily available on the TelkomPlus page (found at [telkomplus.co.za](http://telkomplus.co.za)).
  - 7.5 In respect of the alleged breach of clause 5.9, the Member denied that the terms and conditions of service contain clauses that contradict the requirements of the WASPA Code of Conduct. The Member requested further clarification from the Complainant in respect of which clauses in the terms and conditions of service are contradictory, which was not provided.
  - 7.6 In respect of the alleged breach of clause 5.10, the Member confirmed that it had provided WASPA with all the customer records which it had access to. It also stated that the reminder message was not sent as there was a technical error on its system, which had since been fixed.

- 7.7 In respect of the alleged breach of clause 15.3, the Member confirmed that the records were made available to customers on request and have been provided in the logs submitted to WASPA.
- 7.8 In respect of the alleged breach of clause 15.8A, the Member stated that the customer was billed for the amount specified in the pricing information, which amount did not exceed such pricing information amount.
- 7.9 In respect of the alleged breach of clause 15.9, the Member stated that there was a double opt-in mechanism in place and the confirmation step requires an explicit response from a customer when subscribing to a service on TelkomPlus.
- 7.10 In respect of the alleged breach of clause 15.18, the welcome message had been rectified by the Member in terms of a Heads-Up Complaint from WASPA.
- 7.11 In respect of the alleged breach of clauses 15.19 and 15.20, the reminder message had been rectified by the Member in terms of a Heads-Up Complaint from WASPA.
- 7.12 In respect of the alleged breach of clauses 15.25, 15.28, 15.29 and 15.30, the Member stated that customers can unsubscribe or opt out of a content service by sending the STOP keyword (found in the welcome SMS) to 179; via USSD menu \*179#, or alternatively by calling the Telkom Customer Support on 180. This information is provided in the welcome SMS and the link provided on the service for the terms and conditions of service.
- 7.13 In respect of the alleged breach of clauses 24.24 and 24.25, the Member confirmed that it had provided the customer and WASPA with the regular logs as well as responded immediately to the irregularities raised by WASPA in respect of the logs.

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## Sections of the Code considered

8. Clauses 4.2, 5.4, 5.5, 5.7, 5.8, 5.9, 5.10, 7.5, 15.3, 15.8A, 15.9, 15.18, 15.19, 15.20, 15.25, 15.28, 15.29, 15.30, 24.24; 24.25 of the WASPA Code of Conduct were cited in the formal complaint and considered.

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## Decision

9. The Member has admitted that no reminder messages were sent to the customer in respect to any of the subscription services which are the subject of this complaint.
10. The Member's initial explanation for this was that it had experienced a technical error on its system. After being asked to provide further details, the Member then stated that the issue had been further investigated and it was found that the reminder messages had not been sent out due to a misconfiguration of its system caused by human error.
11. The Member correctly took full responsibility for the error and advised that the issue was resolved during January 2021. However, the Member also advised that the error in question had affected all of its subscriptions.
12. Regarding the alleged irregularities with its logs and billing regarding the customer's subscription to the FaithFirstTV service, the Member again initially advised in its response that this was due to another technical error on its system. However, when asked for further details the Member amended its response and explained that the customer's first attempt at activating this particular subscription had not worked, thus the reason for the logs indicating a DOI error and no end date for the subscription. It was only after another attempt was made on the following day (22 November 2020) that this service was activated.
13. The Member explained further that initial billing attempts failed and the first billing for this service only took place on 1 December 2020.
14. Despite the customer denying that they subscribed to this service (and each of the other services referred to in the complaint), the Member provided information indicating that all subscription requests had originated from and all welcome messages had been transmitted to the same MSISDN, and the Member provided further details of the type of handset, operating system, and browser used. This information was confirmed by the customer to be correct.
15. There may be another explanation for why the customer was unintentionally subscribed to these services, but based on the evidence provided for this complaint I cannot make any finding that the subscriptions were invalid and/or that the Member has acted unlawfully or in breach of any other provisions of the WASPA Code of Conduct in this regard.
16. The customer also alleged that they had never received any welcome messages in respect of any of the subscription services. However, the Member provided logs and further proof of transmission and delivery of the relevant welcome message required for each service.
17. Regarding the allegations of specific breaches of the WASPA Code of Conduct made against the Member, I am able to make the following findings:

- 17.1 Despite the human error that caused reminder messages to not be sent for each of the services, which was admitted by the Member, there is no further evidence to suggest that the Member has acted in an unprofessional manner in its dealings with the customer and WASPA in this matter. The complaint in respect of clause 4.2 of the WASPA Code is accordingly dismissed.
- 17.2 The Member admitted its failure to send the required reminder messages and it has provided all information requested during the adjudication process. There is no evidence to suggest that the Member has acted dishonestly or unfairly in its dealings with the customer and the complaint in respect of clause 5.4 of the WASPA Code is accordingly dismissed.
- 17.3 There is also no evidence to support any allegations that the Member has knowingly disseminated information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission. The complaint in respect of clause 5.5 of the WASPA Code of Conduct is accordingly dismissed.
- 17.4 The Member has provided a link to a web page containing the terms and conditions relating to the services in question (see [telkomplus.co.za](http://telkomplus.co.za)). This link was included in the welcome messages sent to the customer. The Member is therefore not in breach of clause 5.8 of the WASPA Code of Conduct and the complaint in this regard is accordingly dismissed.
- 17.5 The Complainant has not clarified which clauses in the Member's terms and conditions were referred to in support of its allegation that such clauses contradict the requirements of the WASPA Code of Conduct. I am therefore not able to make any further finding with regard to the alleged breach of clause 5.9 of the WASPA Code of Conduct and the complaint is therefore dismissed in this regard.
- 17.6 The Complainant has not clarified which customer records relating to the Member's services have not been provided by the Member. The Member has stated that it has provided all records available to it and in the absence of any evidence to the contrary, the Member has complied with its obligations in terms of clause 7.5 of the WASPA Code of Conduct. The complaint is accordingly dismissed in this regard.
- 17.7 The Member has kept and provided logs as it is required to do in terms of clause 15.3. The complaint in this regard is accordingly dismissed.
- 17.8 There is no evidence to suggest that the customer was billed in advance for any of the subscription services, or that the customer was billed any amount which exceeded the amount specified in the pricing information provided for each

service by the Member. The complaint in respect of clause 15.8A is accordingly dismissed.

- 17.9 The Member has provided evidence that there was a double opt-in mechanism in place for each of the subscription services in question and that the confirmation step required an explicit response from the customer when subscribing to each service. I am satisfied that the Member has complied with the requirements of clause 15.9 of the WASPA Code of Conduct. The complaint is accordingly dismissed in this regard.
- 17.10 I have reviewed the wording of the welcome messages sent by the Member for each service. Although the wording for the instructions for terminating the service is incorrect, the message still does contain instructions for terminating the service. I am satisfied that each welcome message complies with the requirements of clause 15.18 of the WASPA Code of Conduct. The complaint in this regard is accordingly dismissed.
- 17.11 As stated above, the Member has admitted that the required reminder messages were not sent for the services in question. The Member is accordingly in breach of clause 15.19, read with clause 15.20, of the WASPA Code of Conduct and the complaint is upheld in this regard.
- 17.12 There is no evidence that the Member received a termination request from the initial complainant that was unclear. The provisions of clause 15.25 of the WASPA Code of Conduct are therefore not relevant to this complaint and the complaint in this regard is accordingly dismissed.
- 17.13 There is no evidence that the customer was not able to terminate the subscription to any of the relevant services by replying STOP to any SMS sent by the Member regarding each service. Similarly, there is no evidence that the customer was not able to terminate the subscription by using the words END, CANCEL, UNSUBSCRIBE or QUIT in place of STOP. I am satisfied that the Member has not contravened clause 15.28, 15.29 or 15.30 of the WASPA Code of Conduct and the complaint in this regard is dismissed.
- 17.14 There is no evidence to support a finding that the Member contravened clause 24.24 of the WASPA Code of Conduct and the complaint is dismissed in this regard.
- 17.15 There is no evidence to support a finding that the Member contravened clause 24.25 of the WASPA Code of Conduct and the complaint is dismissed in this regard.

18. To summarize, the Member is found to have breached clause 15.19, read with clause 15.20 of the WASPA Code of Conduct. The complaints in respect of each of the other alleged contraventions of the Code are dismissed.
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## Sanctions

19. In determining appropriate sanctions against the Member for its breach of the WASPA Code of Conduct, the following has been taken into consideration:
- 19.1 any previous successful complaints made against the Member in the past three years;
  - 19.2 any previous successful complaints of a similar nature;
  - 19.3 the nature and severity of the breach; and
  - 19.4 any efforts made by the Member to resolve the matter.
20. In determining appropriate sanctions, I must also take account of previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions.
21. A previous complaint of a similar nature has been upheld against the Member (see complaint #48942).
22. Furthermore, the failure to send reminder messages to customers who have joined subscription services is viewed in a serious light, particularly when the customer in question disputes that they intended to join the relevant services in the first place. This is the very reason why the monthly reminder messages are so important, so as to give a consumer an opportunity to stop a disputed subscription before they suffer any further financial loss. The Member also advised that the same error affected all of its subscription services for a period of time, thereby increasing the likelihood of widespread consumer harm.
23. Based on the a foregoing, the Member is fined a sum of R 25 000.00 for its breach of clause 15.19, read together with clause 15.20 of the WASPA Code of Conduct.
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