



Report of the Adjudicator

Complaint number	#52819
Cited WASPA members	BN REV (1824)
Notifiable WASPA members	N/A
Source of the complaint	WASPA Compliance Department
Complaint short description	Failure to unsubscribe from service No Terms and Conditions
Date complaint lodged	2021-06-09
Date of alleged breach	13 April 2021
Applicable version of the Code	16.12
Clauses of the Code cited	8.2 read with 8.9 12.4 and 12.5 15.8(e) 15.26 and 15.31 5.1 and 5.2 5.7, 5.8 and 5.11 5.14 5.4, 5.5 and 15.27
Related complaints considered	#41010 Reasonable steps not taken to prevent fraudulent use of members networks and systems #49150 Misleading advertising. Dissemination of deceptive or false information. Failure to display pricing information clearly and prominently. #50284 Unsubscribe

Fines imposed	<ul style="list-style-type: none"> • The Member is fined a sum of R 8 000.00 for its breach of clause 15.27, and, if the breach is not yet remedied, it is ordered to remedy it within two weeks of receipt hereof. • The Member is fined a sum of R 10 000.00 for its breach of clause 5.7 • The Member is fined a sum of R 3 000.00 for its breach of clause 5.1 • The Member is fined a sum of R 3 000.00 for its breach of clause 5.14 • The Member is fined a sum of R 3 000.00 for its breach of clause 8.2
Other sanctions	<ul style="list-style-type: none"> • N/A
Is this report notable?	Not notable
Summary of notability	N/A

Initial complaint

This complaint was lodged by the WASPA Compliance Department after tests conducted by the complainant on the Member's system at various times on 13 and 14 April 2021 identified that the Member had breached various provisions of the Code of Conduct as set out more fully in the "Sections of the Code considered" below.

Member's response

The Member responded that it had "resolved most of the issues" as follows:

1. Price Point changed to reflect the correct format
2. Terms and conditions updated on all pages
3. Support number included
4. My Account page modified to reflect the terms and conditions

With regards to "Unsub request from SMS to Short Code", the Complainant stated that: "This is an operator related issue to our short code. We have sent an email to Cell C twice this week and awaiting a response. This is beyond our control at this stage."

A copy of an email from the Respondent to Cell C states:

"We have a small issue that we would like assistance on. While we conducted periodic testing at our end for our service, we noticed that we didn't receive the UNSUB request from the

user in our kannal. But also identified we are receiving requests for other MSISDN around the testing time. PFA the UNSUB SMS sent from the testing number 27840812819 and we didn't receive the request at our end."

It is significant that the Respondent does not dispute any aspect of the Complainant's comprehensively tabulated allegations against it.

Complainant's response

The Complainant chose not to submit any further information. Further, it did not indicate whether any of the alleged breaches of the Code, in particular those relating to an inoperative unsubscribe function, were still ongoing.

Sections of the Code considered

5. Customer relations

Service levels

- 5.1. *Members must not offer or promise or charge for services that they are unable to provide.*
- 5.2. *Services must not be unreasonably prolonged or delayed.*

Provision of information to customers

- 5.4. *Members must have honest and fair dealings with their customers.*
- 5.5. *Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission*

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:...*

Customer support

- 5.11. *Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to. (Example: support should not be limited to email if a significant number of customers do not have access to email).*
- 5.12. *Telephonic support must be provided via a South African telephone number and must function effectively. Customer support must be provided via standard rated numbers, and may not be provided via premium rated numbers. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support*

numbers must not forward to full voice mailboxes.

5.13. The option of speaking to a call centre consultant (or leaving a message for a call centre consultant) should be obvious to the caller and available during business hours.

5.14. Members must have a procedure allowing customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time. Privacy and confidentiality

Provision of information to customers

8. Advertising in general Definition of pricing information

8.2. For a subscription service, the “pricing information” consists of the word “subscription” and the cost to the customer and frequency of the billing for the service. The cost and frequency portion of the pricing information must follow the following format, with no abbreviations allowed: “RX/day”, “RX/week”, or “RX/month” (or RX.XX if the price includes cents). For services billed at an interval other than daily, weekly or monthly, the required format is “RX every [time period]”, with no abbreviations permitted when specifying the time period. Examples of pricing information: “Subscription R5/week”, “R1.50/day subscription”, “RX every three days”, “RX every two weeks”. In a case where the total amount is billed in smaller increments over the subscription period, the pricing must still reflect the full price and not the incremental amounts (“R30/month” and not “6 x R5 per month”).

read with 8.9 (Call to Action)

Display of minimum terms and conditions

12.4. For any web page advertising a service for which there is not a subsequent confirmation step containing a link to the terms and conditions, the minimum terms and conditions for the use of the service must be clearly displayed.

12.5. The minimum terms and conditions displayed on any web page must include at least the following information: (a) a customer support number, and (b) a link to a web page where the full terms and conditions for the service are available

Terminating a service

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 within 24 hours, and all other termination requests (including email requests) must be honored within two working days (48 hours).

15.26. If a member is unable to immediately act on a service termination request received from a customer, the customer must be informed. (Example: “This may take up to 24 hours to be processed.”)

Confirmation of termination of a service

15.31. Once a customer has terminated a service, a message confirming this must be sent to that customer. This message must specify the service the customer has terminated, and the customer must not be charged for this message

Decision

1. Although it is evident from the preceding sections that there is no real dispute of fact between the parties and, apart from the aspect of the complaint relating to the termination of service, the Member offered no defence or explanation, it still falls to me to make a finding as to which provisions of the Code have been breached.
 2. I will start with clause 15.27, the failure to process service termination requests. While the Member does not deny that this occurred, it seeks to shift the blame to Cell C. In this regard, I refer to and agree with the statement of the Adjudicator in Complaint #49150 that “[T]he Member must ensure that its suppliers and service providers comply with these requirements of the Code
 3. The sending of the email message referred to in the Member’s response section above falls short of taking reasonable steps to ensure compliance. I accordingly find the Member liable for breaching clause 15.27.
 4. As to Clauses 5.4 and 5.5, there is no evidence to suggest that the Member knowingly disseminated information that was false or deceptive, or that was likely to mislead by inaccuracy, ambiguity, exaggeration or omission. The complaint relating to the alleged breach of clauses 5.4 and 5.5 is therefore also dismissed.
 5. As to the remainder of the allegations, I am of the view that there is a degree of duplication/ splitting of the charges/ allegations so I accordingly find that the following clauses adequately cover the alleged wrongdoings:
 - i) 5.1. Members must not offer or promise or charge for services that they are unable to provide.
 - ii) 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.
 - iii) 5.14. Members must have a procedure allowing customers to lodge complaints regarding the services provided.
 - iv) 8.2. Non-provision of pricing information
 6. Accordingly, I find the Member also liable for breaching the clauses listed in subparagraph 5 above and dismiss the complaints in respect of all the other complaints listed in “Clauses of the Code cited” that I have not otherwise dealt with in this decision.
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Sanctions

In determining appropriate sanctions against the Member for its breach of the WASPA Code of Conduct, the following has been taken into consideration:

1. any previous successful complaints made against the Member in the past three years

(#41010 Reasonable steps not taken to prevent fraudulent use of members networks and systems R50000.00 Payment of R100 000 for contravention of clause 4.11(a), of which R50 000 payable immediately and R50 000 suspended for 6 months);

2. any previous successful complaints of a similar nature (none);

3 the nature and severity of the breach

In respect of all five of the breaches for which I have found the Member liable, the nature of the Member's breach of the WASPA Code of Conduct is viewed in a very serious light due to the potential harm to consumers.

Fundamental safeguards created in consumer protection legislation are the provision of adequate information upon which a consumer can make an informed decision and the right to cancel a service;

4. Mitigating factors:

Although the Member did not directly avail itself of the opportunity offered to it when the complaint was referred to it to provide mitigating circumstances, the following have been taken into consideration:

- i) The Member's timeous response to the complaint and it having remedied the defects complained of or attempted to do so (not disputed by the Complainant);
- ii) The fact that it was possible to cancel the service on the Cell C USSD self-help portal.

5. Precedent

In determining appropriate sanctions, previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions must also be taken into account.

Conclusion

Based on the foregoing, the following sanctions are imposed:

- a) The Member is fined a sum of R 8 000.00 for its breach of clause 15.27, and, if the breach is not yet remedied, it is ordered to remedy it within two weeks of receipt hereof.
- b) The Member is fined a sum of R 10 000.00 for its breach of clause 5.7
- c) The Member is fined a sum of R 3 000.00 for its breach of clause 5.1

