



Report of the Adjudicator

Complaint number	#54817
Cited WASPA members	LogicSMS (0130)
Notifiable WASPA members	n/a
Source of the complaint	Public
Complaint short description	Fraudulent activities by member's customer Dissemination of false information Copyright infringement by member's customer
Date complaint lodged	2021-09-09
Date of alleged breach	During or about September 2021
Applicable version of the Code	16.16
Clauses of the Code cited	5.4, 5.5, 5.6 and 7.6
Related complaints considered	None
Fines imposed	None
Other sanctions	n/a

Is this report notable?	Not notable
Summary of notability	n/a

1. Initial Complaint

1.1. This complaint was lodged by a member of the public on the 9th of September 2021, and the member was notified of the complaint by the WASPA Secretariat on the 13th of September 2021.

1.2. The complaint can be summarised as follows:

1.2.1. One of the member's customers uses a shared short code 47439 (R3); 48748 (R10) and 42646 (R30) which are allocated to the member and made available to its customers.

1.2.2. The complainant alleged that this customer of the member has copied the complainant's site design, layout, structure, mechanics and user experience. The complainant has initiated separate legal proceedings in this respect which are ongoing.

1.2.3. The complainant further alleged that the three websites operated by the member's customer are conducting fraudulent activities by using stock and/or copyrighted photos in the competitions it offers to the public.

1.2.4. The short codes used by the member's customer are all shared and the complainant alleged that this makes it impossible to "*conduct honest and fair competitions*". Nowhere on the customer's website does it state that shared short codes are used.

1.2.5. The complainant alleged that these actions by the member's customer constitutes fraud, inasmuch as there are legitimate paying participants taking part in the competitions the customer hosts among the fraudulent entries.

1.2.6. The complainant stated that the member has a corporate responsibility to manage its customers and to ensure that all its customers abide by the WASPA Code of Conduct.

1.2.7. The contact details listed on the member's customer's website are incomplete as it does not include a telephone number or email address as required by the Code.

1.3. The complainant cited the following clauses of the Code of Conduct - to quote:

5.4. Members must have honest and fair dealings with their customers.

i. We suspect fraudulent activity across all three of the current websites managed/owned by [redacted], with regards to participation activity and the use of stock and/or copyright protected

images are depicted as monthly prize winners across all the [redacted] competition pages. [ANNEXURE 1]

- ii. The short-codes used by [redacted] are all shared, thereby making it near impossible to “conduct honest and fair competitions”. It does not state that shared short-codes are used anywhere on its websites. [ANNEXURE 2]*

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.

- i. LogicSMS has a corporate responsibility to manage its clients and ensure that they all abide by the WASPA code of conduct.*

5.6 Each member must provide contact details on their main corporate web site, which must include the member’s registered company name, telephone number and email address.

- i. Contact details listed on [the customer’s website URL] are incomplete as it does not include a telephone number or email address.*

7.6. Members must notify WASPA if they become aware of any illegal conduct using its services, or any illegal content on its services and the steps that have been taken in response within a reasonable period of time.

- i. As a client of BulkSMS, who is a long standing WASPA member, the directors of Cutify Media & Marketing have a corporate responsibility to highlight the actions of LogicSMS and its client, [redacted]. This is not malicious defamation; as stated, legal proceedings with regards to copyright and intellectual property infringements are underway, separately.*
- ii. This is blatant fraud, insomuch as there are legitimate paying participants taking part among fraudulent entries each month, across all three competitions, managed by [redacted].*

2. Member’s Response

2.1. The member responded on the 17th of September as follows:

- 2.1.1. It requested that its customer correct its contact details on its website, however, the customer indicated that it has an online form to which it responds within 24 hours. The member asked WASPA whether this is sufficient to comply with the Code.
- 2.1.2. It does not have enough information to prove that any copyright has been infringed by its customer and since there is pending litigation, they would await the guidance of the courts. It has informed its customer that they are accused of copyright infringement and if this is proven through the litigation, the member we will immediately suspend the service.
- 2.1.3. The allegation that it does not monitor its customers or deal with its customers fairly is untrue. It has the necessary policies in place to deal with Premium Rate SMS (PRSMS) monitoring and its customers’ behaviour.

- 2.1.4. It takes the Code and advertising rules seriously and has to date not had any fines/judgements granted against it.
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3. Complainant's Response

- 3.1. The complainant responded on the 20th of September 2021 and indicated that it was not satisfied with the member's response but that would not address each comment made by the member as it believed it had clearly outlined the issue of fraud and had provided WASPA with enough evidence in this regard.
 - 3.2. The complainant provided the following further information:
 - 3.2.1. The member's customer clearly shows on their websites that it "*complies with the WASPA Code of Conduct*" (as evidenced by a screenshot) but this is not the case.
 - 3.2.2. While WASPA spends more time investigating this matter, the public continues being defrauded by the member's customer.
 - 3.2.3. Both PayFast and Zapper blacklisted the member's customer within days of receiving the complainant's fraud complaints. These payment methods are no longer available on member's customer's websites.
 - 3.2.4. Copyright, with regards to this complaint, is not being argued and the member has not been asked to intervene in this regard.
 - 3.2.5. Fraud and the general public being defrauded, knowingly it seems, by a WASPA member and its customers, is grave cause for concern.
 - 3.2.6. WASPA should follow the formal complaint procedure immediately.
 - 3.3. The compliant was escalated to a formal complaint on 21 September 2021.
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4. Member's Further Response

- 4.1. The member entered its response to the formal complaint on the 11th of October 2021, which response is summarised as follows:
 - 4.1.1. The member stated that it employs a team of media monitors, and in its many years of being WASPA member, this is its first formal complaint.

Clause 5.4
 - 4.1.2. The complainant alleges that use of stock photos by entrants to a voting competition is fraudulent. The member stated that its customer maintains that it's impossible to determine in real time whether a picture used by an entrant is not owned by the entrant. These are treated as valid entries. This is due to the fact that a stock photo does not automatically suggest a copyright infringement, and

therefore the customer is obliged to accept all images as a valid entry. Should a copyright holder assert ownership, the affected image would be immediately removed.

- 4.1.3. The complaint also alleges that the use of shared short codes makes it impossible to conduct honest and fair competitions. Shared short codes are used extensively across the industry and this is encouraged by the mobile networks due to the fact that there is a limited supply of short codes. A large part of the WASP industry provides shared short codes, and the member cannot find any part of the WASPA Code that forbids the use. It's unclear why the complainant alleges that shared short codes are not honest, but the member assumes that the complainant is referring to matching errors. The member stated that its systems perform very flexible matching in cases of misses, and the member is not 100% sure how a dedicated short code in itself will be immune to any matching problems as customers can run multiple campaigns on a dedicated short code. The nature of voting by SMS requires the sender to send a unique code, which would be susceptible to matching errors, whether dedicated or shared.

Clause 5.5

- 4.1.4. The member stated that it is unclear from the complaint why the complainant believes that the member is infringing this clause. The member requested further clarity on this.

Clause 5.6

- 4.1.5. The member stated that its customer operates a number of websites with a contact form and 24-hour responses. The member did request WASPA's feedback on whether this is sufficient as it believes this is more reliable than contact details on the website – all responses can be tracked and escalated. Irrespective, the member advised its customer to immediately rectify the problem and the customer has updated its contact details on its websites.

Clause 7.6

- 4.1.6. The member indicated that it actively monitors and engages with its customers. As the complainant stated that there is a separate legal process to determine the extent of any copyright infringement by the member's customer, the member wishes to allow for the legal process to address this.
 - 4.1.7. The member disputed that mobile networks are being used for fraudulent purposes and advised that it does implement any anti- fraud measures published by WASPA. Pricing and rules are clear on the websites mentioned in the complaint.
- 4.2. Furthermore, the member indicated that this complaint revolves around allegations of copyright infringement. The complainant mentioned that a separate legal process is dealing with this, and the member stated that it has been assured by its customer that no copyright infringement has taken place. As a result, the member requested that this complaints process be placed on hold until the outcome of the copyright issues is clear.

- 4.3. In addition, the member alleged that this complaints process with WASPA should have been logged first before any legal action taken and it raised concern with the fact that another WASPA member prefers the legal route before engaging with WASPA.
 - 4.4. The member further indicated that voting competitions and websites have been in existence long before 2014 and therefore it doesn't see how copyright of the mechanics can be violated. It also noted that no evidence regarding this has been provided by the complainant.
 - 4.5. Besides clause 5.6, which has been corrected by its customer, the member advised that it spends a considerable time training its customers and monitoring that they adhere to the WASPA Code. While reviewing its customer's websites, it couldn't find any obvious infringements of the WASPA Code nor any fraudulent activity or misconduct. However, the member indicated that its normal monitoring cannot find for copyright infringement (which it denied in any case) as it would be impossible to compare its customers' websites to all the websites that exist.
 - 4.6. Lastly, the member indicated that should this complaint be upheld, it would be impossible for WASPs to service all possible customers as this complaint queries the practical use of shared short codes. The WASPs are periodically reminded by the mobile networks that there is a shortage of short codes and shared short codes allow WASPs to make use of the limited short codes that are available. The member noted that the complainant also markets shared short codes with no restrictions.
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5. Complainant's Further Response

- 5.1. The complainant submitted a further response on the 14th of October 2021 indicating the following:
 - 5.1.1. The member has failed to address and respond to the matter at hand – its customer has been running fraudulent competitions since it launched in June 2021. The complainant alleged that the member keeps circling back to allegations of copyright rather than addressing the actual complaint raised - that of suspected fraud.
 - 5.1.2. In September 2021 it gathered all data/evidence and shared it with the payment providers and suppliers associated with the member's customer's sites. PayFast and Zapper terminated its services with the member's customer in less than a week of undertaking their own investigations and blacklisted the customer.
 - 5.1.3. During June 2021 and August 2021, the member's customer offered a prize pool of R 20 000 per competition, of which it has three (3) competitions. This equates to R 60 000 per month or R 180 000 over the period. The complainant alleged that all winning entrants were fake as all winning participants were represented by stock photos.
 - 5.1.4. The complainant wanted the member to do a proper investigation into its customer. For example, obtaining a report highlighting SMS voting activity for each winning participant and noticing any anomalies, such as zero or low volume of SMS votes;

a limited spread of unique SMS voters; supporting bank evidence showing proof of payment to winners.

- 5.1.5. The complainant stated that the member cannot argue that a shared short code allows for the same margin of matching error success that a dedicated short code does, irrespective of having “*systems that perform very flexible matching in cases of misses*”. Therefore, the member’s customer cannot state on its websites that “*its competitions are honest and fair*” and that it “*complies with the WASPA Code of Conduct*”. Both statements are false and misleading to the public.
- 5.1.6. The complaint alleged that it has seen the member’s customer engaging in false and deceptive practices and further seen members of the public vote, spending money voting, via PRSMS and other payment methods, for their own child or pet running against fake entries. Fake entries would sprint past legitimate entries during the final days/hours of the competition, and this is clearly likely to mislead by inaccuracy or omission.
- 5.1.7. According to the complainant, when presented with overwhelming evidence of fraud, the member should not simply attempt to deflect on aspects of the complaint but should take decisive action against its customer.
- 5.1.8. Whilst the member responded to the issue of copyright in detail, the complainant noted that it made it clear that the copyright issue did not form the basis of the WASPA complaint. The complainant alleged that it is evident that the member wishes to tie a potential lengthy copyright legal battle, which has no bearing on the matter at hand, to this complaint to delay the WASPA complaints process.

6. Member’s Final Response

- 6.1. The member submitted its final response on the 22nd of October 2021 and indicated that:
 - 6.1.1. the complainant agrees that the copyright issue should be dealt with by the separate court process and does not form part of this complaint;
 - 6.1.2. it can never be 100% certain that there is no fraud being conducted, but it is certain that stock images, and the use of shared short codes does not prove that fraud is being conducted. Shared short codes are widely used throughout the industry and if there is a need to regulate the use of shared short codes, it should be raised as a Code of Conduct issue;
 - 6.1.3. its customer has provided it with documentary proof of payments made to the winners of the competitions and advised that although the spirit of the competition is that contestants use their own images, they are not prevented from using stock images;
 - 6.1.4. it has found the complaint lacking details, the complainant mentions other companies who have “blacklisted” its customer but have provided none of the reasons for the blacklisting. The reasons for the blacklisting would have helped it handle the complaint better;

- 6.1.5. the complainant does not have access to the SMS records of the member's customer and cannot prove that the winners have a low SMS vote count. Its customer provides multiple methods of "purchasing" votes with SMS being only one method of a large choice of options;
 - 6.1.6. as a service provider, it has to consider whether the complainant is merely a disgruntled competitor as it understands from its customer that it and the complainant had a previous business relationship;
 - 6.1.7. it has advised its customer that it must suspend all usage of the member's infrastructure until they register as an affiliate WASP; and
 - 6.1.8. it has been informed by its customer that there is ongoing litigation between its customer and the complaint that overlaps with this complaint. Therefore, it asks WASPA to consider clause 24.12 of the Code and allow the legal process that has been instituted to deal with this complaint.
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7. Sections of the Code considered

- 7.1. As the conduct complained of took place during September 2021, version 16.16 of the WASPA Code of Conduct applies to this complaint.
- 7.2. It is alleged that the member has infringed clauses 5.4, 5.5, 5.6 and 7.6 of the Code of Conduct. The clauses read as follows:
 - 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.*
 - 5.6. *Each member must provide contact details on their main corporate web site, which must include the member's registered company name, telephone number and email address.*
 - ...
 - 7.6. *Members must notify WASPA if they become aware of any illegal conduct using its services, or any illegal content on its services and the steps that have been taken in response within a reasonable period of time.*
- 7.3. I also quote clause 4.11 for the sake of completeness:

Fraud prevention

- 4.11. *Members must take reasonable steps to prevent their networks and systems from being used in a fraudulent manner, including:*
 - (a) *complying with WASPA's published best practices for fraud prevention; and*
 - (b) *...*

- (c) *reporting any fraudulent activity identified on their networks or systems to WASPA within a reasonable period of time.*
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8. Decision

- 8.1. Having reviewed the complaint, supporting communications offered by the complainant and the member's responses, I have reached the conclusions set out below.
- 8.2. Firstly, I considered whether the ongoing legal proceedings overlaps with this complaint and whether clause 24.12 of the Code is applicable. I do not believe the copyright infringement litigation and this complaint overlaps, especially when taking into account that both parties agreed that it will not form part hereof. For this reason, I have decided to deal with the complaint despite the complainant having instituted an action with a court.
- 8.3. Secondly, and in conjunction, I cannot make a ruling on whether the member's customer is infringing any copyright – not only has the complainant not provided sufficient evidence in this regard, but the parties have agreed that as there is ongoing legal proceedings dealing with this, it will not be dealt with in this complaint. However, I will note that should the outcome of these legal proceedings be that the customer is indeed engaging in copyright infringement, the member is advised to consider taking the necessary action under clause 7.6 of the Code should this be linked to the use of its services.
- 8.4. Thirdly, it is also noted that the member has corrected the alleged breach of clause 5.6 and the complainant has accepted such resolution – I will not deal with this further. However, I wish to state that clause 5.6 is only applicable to members of WASPA and not the member's customers who are not WASPA members. To answer the member's query as to whether an online contact form is sufficient to comply with the requirements of clause 5.6 of the Code, I do not believe it does. The clause is quite clear on what information is required.
- 8.5. Lastly, to then deal with the relevant clauses of the Code raised in this matter in order:

Clause 5.4

- 8.6. I cannot determine or rule on whether the competitions being run by the member's customer is fraudulent or illegal. I don't have necessary facts or evidence to make such a decision, nor do I believe it is within my or WASPA's jurisdiction to do.
- 8.7. That being said - as there is no proof that the member's customer is disseminating information that is false, deceptive or likely to mislead by inaccuracy, ambiguity, exaggeration or omission – I cannot hold that the member is knowingly disseminating this type of information. Should it be proven that the competitions are fraudulent or illegal, the member should take active steps to ensure its services are not used to enable this. But at this stage, there are only allegations.
- 8.8. The responses given by the member to allegations of fraudulent activity by its customer serve as a sufficient explanation for its conduct, or lack thereof.

- 8.9. Accordingly, I cannot find a breach of this clause. There is no evidence in the record to support the contention that the member does not have honest and fair dealings with its customers (or the public).

Clause 5.5

- 8.10. There is no suggestion in the record that the member was aware of the alleged activities of its customer. A member can only infringe this clause if it *knowingly* disseminates information that is false, deceptive etc. Accordingly, I cannot find an infringement of this clause.

Clause 7.6

- 8.11. From what I can discern from the information provided by the complainant, it did not any point provide information regarding its suspicions to the member directly before instituting this complaint. As such, the member only became aware of the allegations upon receipt of this complaint – at which stage WASPA is already aware. Furthermore, the member has indicated that it has all the necessary procedures and policies in place to monitor its customers' use of the member's services.
- 8.12. Either way, I cannot see how it would have been possible for the member's systems to pick up if the customer is running a fraudulent competition.
- 8.13. I do not believe that the member's services provided are connected to the pictures used on the customer's website or any alleged vote rigging by the customer.
- 8.14. As such, I cannot find that the member has breached clause 7.6. It has taken steps to request information from its customer and halted its services until the customer registers as an affiliate WASP. Should the complainant provide proof that the competitions are fraudulent and illegal and that the member's services are specifically linked to this, the member can take the necessary actions (as it should consider doing if the courts hold that there is a copyright infringement), but until such time all it can consider is allegations – that is not sufficient to force a member to take any action under clause 7.6.

Clause 4.11

- 8.15. The complainant mentions clause 4.11 in its initial complaint, but does not press the issue, choosing rather to cite the clauses I have already dealt with. If fraud was the central issue in this complaint, then the complainant should have cited *this* clause. In the circumstances, the Head of Complaints should have added this as a cited clause in the complaint. As the clause has not been cited, I cannot rule on it.
- 8.16. Be that as it may, and strictly as an aside, I do not believe that there was a breach of this clause either.

9. Sanctions

- 9.1. Not applicable

10. Matters referred back to WASPA

10.1. None
