



## Report of the Adjudicator

Complaint number	#56927
Cited WASPA members	Joker Mobile
Notifiable WASPA members	n/a
Source of the complaint	Public
Complaint short description	Unlawful subscription
Date complaint lodged	2022-04-26
Date of alleged breach	2022-04-26
Applicable version of the Code	v17.1
Clauses of the Code cited	4.2, 5.4, 5.11, 5.12, 5.13, 5.14, 15.3, 15.9, 15.22, 15.25, 15.26, 15.27, 15.28, 15.29, 15.30, 15.31
Related complaints considered	41340
Fines imposed	R25 000 for breach of clauses 15.25, 15.27, 15.28, 15.29 and 15.30, 4.2 and 5.4 of the WASPA Code of Conduct
Other sanctions	n/a
Is this report	n/a

notable?	
Summary of notability	n/a

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## Initial complaint

1. The Complainant logged an unsubscribe request on the WASPA unsubscribe system in relation to a number of the Member's subscription services. The Complainant requested proof of subscription and a refund of all subscription charges levied to their account.
  2. The Member actioned the unsubscribe request and provided logs as proof of the initial subscription request for each of the services. The Member initially did not offer any refund.
  3. The Complainant denied that they knowingly subscribed to the Member's service and they alleged that the charges made against their account were unauthorised and should be refunded.
  4. The Complainant requested that the complaint be escalated to the formal adjudication process. The Complainant alleged that the Member was in breach of the following provisions of the WASPA Code of Conduct: clauses 4.2, 5.4, 5.11, 5.12, 5.13, 5.14, 15.3, 15.9, 15.22, 15.25, 15.26, 15.27, 15.28, 15.29, 15.30, and 15.31.
  5. In support of their complaint, the Complainant provided screenshots showing that they had sent numerous replies to reminder and renewal messages received from the Member. The replies were either "*STOP*", or "*STOP all*", or "*Stop all immediately, I've never subscribed*".
  6. On each occasion that a reply was sent by the Complainant, they received a message on the same day from the same number initially stating "*Request Failed*", but then a subsequent reply which stated "*You are not subscribed to any service*".
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## Member's response

7. The Member stated in its response to the formal complaint that in all the attempts made by the Complainant to unsubscribe from each of the Member's subscription services, they either used the wrong short code to send the keyword "*STOP*"; or they used the wrong keyword.

8. In the meantime, the Member had refunded all subscription charges to the Complainant and provided proof of payment as part of its response to the complaint.
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## Sections of the Code considered

9. Clauses 4.2, 5.4, 5.11, 5.12, 5.13, 5.14, 15.3, 15.9, 15.22, 15.25, 15.26, 15.27, 15.28, 15.29, 15.30, 15.31 of the WASPA Code of Conduct were cited in the formal complaint and considered.
  10. No other relevant clauses were assigned by WASPA.
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## Decision

11. The Complainant has stated that they did not knowingly subscribe to any of the Member's subscription services. However, the Member has provided logs with proof of the initial subscription request for each service which appear to have come from the Complainant's number. No further evidence was presented to refute the accuracy of the logs provided by the Member
12. It is apparent from the evidence provided that the Member sent monthly reminder messages for each of the services to which the Complainant had been subscribed.
13. The Complainant has provided numerous screenshots showing a) monthly reminder and renewal confirmation messages received from the Member in May, June and July 2021; b) replies sent by the Complainant to each of these messages stating either "STOP", or "STOP all", or "Stop all immediately, I've never subscribed"; and c) subsequent replies received from the same number, initially stating "Request Failed" but then subsequently stating "You are not subscribed to any service".
14. The Member in its response has alleged that the Complainant's unsubscribe requests were not actioned because they were sent to the wrong short code, or because the Complainant used the wrong keyword.
15. It appears from the screenshots provided that the Complainant did not send their unsubscribe requests to the short codes provided for this purpose by the Member.
16. There is also no evidence that the Complainant tried to contact the Member telephonically on the support number provided by the Member.

17. Instead, the Complainant replied to the various reminder and renewal messages received from the Member directly. Although this was not an option given by the Member, it is apparent that the Member received these termination requests from the Complainant. Although a response was initially sent that each of the requests had failed, there was a subsequent message sent to the Complainant confirming that they were not subscribed to any of the Member's services.
18. It was then reasonable for the Complainant to not take any further action.
19. However, it is evident that the Complainant remained subscribed to each of the Member's services and was charged accordingly up until the Complainant eventually lodged an unsubscribe request with WASPA.
20. With reference to the alleged breaches of the various clauses of the Code of Conduct cited by the Complainant, I can make the following findings:
  - 20.1 There is no evidence that the Member failed to provide telephonic support or that the support number provided by the Member was not functioning correctly. I therefore cannot make a finding in respect of the alleged breach of clause 5.12 of the Code of Conduct and the complaint is dismissed in this regard.
  - 20.2 There is no evidence that the Member failed to provide the Complainant with the option of speaking to a call center consultant or that the Member failed to make this available to the Complainant during business hours. I therefore cannot make a finding in respect of the alleged breach of clause 5.13 of the Code of Conduct and the complaint is dismissed in this regard.
  - 20.3 There is no evidence that the Member failed to have a procedure for allowing customers to lodge complaints regarding its services, or that the Member failed to acknowledge receipt of the Complainant's complaints expeditiously or at all, and failed to respond to their complaints within a reasonable period of time. I therefore cannot make a finding in respect of the alleged breach of clause 5.14 of the Code of Conduct and the complaint is dismissed in this regard.
  - 20.4 The Member did keep a record of the source of the service initiation request for each of the services and all subsequent interactions with the Complainant. The Member has made those records available. The Member is therefore not in breach of clause 15.3 of the Code of Conduct and the complaint is dismissed in this regard.
  - 20.5 There is no evidence in support of the allegation that the confirmation step for each of the Member's subscription services did not require an explicit response from the Complainant or that the relevant confirmation step for each service was performed in an automated manner in such a way that the process was hidden

from the Complainant. I therefore cannot make a finding that the Member is in breach of clause 15.9 of the Code of Conduct and the complaint in this regard is dismissed.

- 20.6 I am satisfied that the instructions given by the Member for terminating the relevant subscription services were clear and easy to understand and were readily available to the Complainant. The Member is therefore not in breach of clause 15.22 of the Code of Conduct and the complaint in this regard is dismissed.
- 20.7 The Member has alleged that the service termination requests sent by the Complainant were either sent to the wrong short code or the wrong keyword was used. It is apparent from the screenshots provided by the Complainant that the opt out requests made by the Complainant were contained in replies sent directly to the number from which the reminder and renewal messages had been sent by the Member, and not in separate messages sent to the given short code for each service. However, it is also apparent from the screenshots provided that the Member received these opt out requests from the Complainant. If these termination requests received from the Complainant were unclear, then the Member was required to provide the Complainant with sufficient information to enable them to terminate the services. The Member failed to do so and instead sent a further message to the Complainant stating "*You are not subscribed to any service*". The Member is therefore in breach of clause 15.25 of the Code of Conduct and the complaint in this regard is upheld.
- 20.8 The screenshots provided show that each of the service termination requests received from the Complainant were met with an initial reply from the Member stating "Request Failed". The Member is therefore not in breach of clause 15.26 of the Code of Conduct and the complaint is dismissed in this regard.
- 20.9 However, subsequent to advising the Complainant that their service termination requests had failed, the Member sent the further message to the Complainant stating "*You are not subscribed to any service*". The Complainant appears to have then not taken any further steps. However, the Complainant remained subscribed to the relevant services and it was only when the Complainant lodged an unsubscribe request with WASPA that the services were terminated by the Member. The Member has therefore unreasonably delayed the processing of the Complainant's service termination requests and/or failed to honor such requests within the prescribed two working days. The Member is in breach of clause 15.27 of the Code of Conduct and the complaint is upheld in this regard.
- 20.10 The Member has not provided any evidence to suggest that it was not technically feasible for the Complainant to reply "STOP" to the relevant reminder

and renewal messages sent by the Member. The Complainant should therefore have been able to send unsubscribe requests directly in replies to the reminder and renewal messages received from the Member. This was not the case and the Member is therefore in breach of clause 15.28 of the Code of Conduct and the complaint is upheld in this regard.

- 20.11 It is also clear from the Complainant's termination requests that they were intended to pertain to all of the Member's services to which they had been subscribed. The Member failed to terminate all the relevant services upon receipt of the termination requests or failed to give the Complainant a clear choice of services to terminate if such requests were held by the Member not to be clear. The Member is therefore in breach of clause 15.29 of the Code of Conduct and the complaint is upheld in this regard.
- 20.12 The Member alleges that the Complainant used the wrong keyword in their termination request. However, it is self-evident from the screenshots provided that the Complainant either used the word "*STOP*" or "*STOP all*" in their termination requests. The Member failed to honor these unsubscribe requests and is therefore in breach of clause 15.30 of the Code of Conduct and the complaint is upheld in this regard.
- 20.13 After the Complainant's unsubscribe requests were received by the Member, they sent a message to the Complainant stating "You are not subscribed to any service". It is not clear whether these messages from the Member were sent in error or were intended to be the required confirmation message once each service had been terminated. I cannot make any further finding in respect of the alleged breach of clause 15.31 of the Code of Conduct and the complaint in this regard is dismissed.
- 20.14 Finally, although there is no evidence of dishonesty on the part of the Member, it is evident from the Member's numerous breaches of the Code of Conduct and the nature of those breaches that the Member has not acted fairly or professionally in its dealings with the Complainant. I therefore find that the Member is also in breach of clause 4.2 and 5.4 of the Code of Conduct and the complaint is upheld in regard to both these clauses.

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## Sanctions

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

- 21.1 any previous successful complaints made against the Member in the past three years;
  - 21.2 any previous successful complaints of a similar nature;
  - 21.3 the nature and severity of the breach; and
  - 21.4 any efforts made by the Member to resolve the matter.
22. 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.
  23. The Member has had one previous complaint upheld against it within the past three years (see complaint #41340).
  24. This complaint did not relate to any of the clauses of the Code of Conduct cited in this complaint.
  25. The nature of the numerous breaches of the Code of Conduct by the Member are of a serious nature. Customers must be able to opt out of subscriptions in the prescribed manner and the charges made to the Complainant's account after it was evident that the Complainant wanted to opt out of the services were substantial. These are treated as aggravating factors.
  26. I have taken into account that all subscription charges have been refunded to the Complainant as a mitigating factor.
  27. Based on the foregoing, the Member is fined the amount of R25 000.00 for its breach of clauses 15.25, 15.27, 15,28, 15,29 and 15.30, 4.2 and 5.4 of the WASPA Code of Conduct.
  28. No other sanctions are imposed.
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