



Report of the Appeals Panel

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| Complaint number | #56927 |
| Cited WASPA members | Joker Mobile |
| Notifiable WASPA members | Not notable |
| Appeal lodged by | Public |
| Type of appeal | Written appeal |
| Scope of appeal | <input type="checkbox"/> Review of the adjudicator's decision <input checked="" type="checkbox"/> Review of the sanctions imposed by the adjudicator |
| Applicable version of the Code | Version 17.1 |
| Clauses considered by the panel | 4.2, 5.4, 15.25, 15.27, 15.28,15.29 and 15.30 |
| Related complaints considered | Complaint #41340 |
| Amended sanctions | The fine imposed is reduced to R10,000 |
| Appeal fee | 60% of the appeal fee to be refunded |
| Is this report notable? | Not notable |
| Summary of notability | Not applicable |

Initial complaint

- 1..The Complainant's initial complaint was that he was being billed for subscription services that he never initiated. 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. The Complainant denied that he knowingly subscribed to the Member's service and alleged that the charges made against their account were unauthorised and should be refunded.
2. 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".
3. 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".
4. The Member finally 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.
5. 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.
6. Finally, the Member had refunded all subscription charges to the Complainant and provided proof of payment as part of its response to the complaint.

Adjudicator's findings

7. The Adjudicator in respect of the infringements of the Code of Conduct held that:
 - (a) There was no evidence that the Member failed to provide telephonic support or that the support number provided by the Member was not functioning correctly and could therefore not make a finding in respect of the alleged breach of clause 5.12 of the Code of Conduct and the complaint was dismissed in this regard.
 - (b) There was no evidence that the Member failed to provide the Complainant with the option of speaking to a call centre consultant or that the Member failed to make this available to the Complainant during business hours. A finding in respect of the alleged breach of clause 5.13 of the Code of Conduct could not be made and the complaint was dismissed in this regard.

(c) There was 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. No finding in respect of the alleged breach of clause 5.14 could be made of the Code of Conduct and the complaint was dismissed in this regard;

(d) 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 made those records available. The Member was therefore not in breach of clause 15.3 of the Code of Conduct and the complaint was dismissed in this regard.

(e) 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. A finding that the Member was in breach of clause 15.9 of the Code of Conduct could not be made and the complaint in this regard was dismissed.

(f) 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 was therefore not in breach of clause 15.22 of the Code of Conduct and the complaint in this regard was dismissed.

(g) 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 was therefore in breach of clause 15.25 of the Code of Conduct and the complaint in this regard was upheld.

(h) 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 was therefore not in breach of clause 15.26 of the Code of Conduct and the complaint was dismissed in this regard.

(i) 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 had therefore unreasonably delayed the processing of the Complainant's service termination requests or failed to honour such requests within the prescribed two working days. The Member was in breach of clause 15.27 of the Code of Conduct and the complaint was upheld in this regard.

(j) 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 was therefore in breach of clause 15.28 of the Code of Conduct and the complaint was upheld in this regard.

(k) 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 was therefore in breach of clause 15.29 of the Code of Conduct and the complaint is upheld in this regard.

(l) 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 honour these unsubscribe requests and was therefore in breach of clause 15.30 of the Code of Conduct and the complaint was upheld in this regard.

(m) 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. A further finding in respect of the alleged breach of clause 15.31 of the Code of Conduct could not be made and the complaint in this regard was dismissed.

(n) 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. The Member was accordingly also in breach of clause

4.2 and 5.4 of the Code of Conduct and the complaint was upheld in regard to both these clauses.

8. The Adjudicator in respect of the sanctions to be imposed held that

(a) A number of factors as set out in paragraph 21 need to be taken into account, including previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions and previous complaints against the Member.

(b) The Member has had one previous complaint upheld against it within the past three years (see complaint #41340). This complaint did not relate to any of the clauses of the Code of Conduct cited in this complaint.

(c) 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.

(d) The fact that all subscription charges have been refunded to the Complainant was taken as a mitigating factor.

(e) Based on the foregoing, the Member was 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.

Appeal submissions

9. The member made the following appeal submissions:

(a) According to the evidence provided by WASPA and the complainant, requests were made by the complainant in April, May and June 2021, wherein the complainant attempted to cancel their subscription by sending STOP to Joker Mobile's long code and as a result the complainant received system generated messages such as "Request Failed" or "You are not subscribed to any service".

(b) These messages were automatically triggered based on the system architecture this long code was primarily configured to deliver Outbound Messages to subscribers wherein information related to services unsubscription processes were communicated. The said long code was not configured to respond to any inbound

messages hence the user received the above messages such as "Request Failed" or "You are not subscribed to any service".

(d) During the month of June 2022, Joker Mobile processed 48933 unsubscription requests through the current system configuration. A breakdown of the unsubscription requests is provided below indicating that 88% of the users who submitted a request to their SMS short code or USSD menu were successfully deactivated.

(e) The appeal is based on the evidence provided that since the complaint's unsubscription requests in 2021, the Member's systems and logic had since been updated and effectively processing the unsubscribe services request through their long code and short code.

(f) Upon receipt of the complaint from WASPA the Member proceeded to cancel the subscriptions related to the complainant and made a refund to the complainant for all the subscription charges amounting to R 2,527.00.

10. The Member requested that the Appeals Panel reconsider the fine imposed in relation to complaint #56927 as it had remedied this issue regarding the routing of incoming messages prior to the complaint being issued.

Deliberations and findings

11. The appeal is an appeal against the sanctions imposed by the Adjudicator only and not against any of the findings on the infringements by the Member. We have reviewed the facts presented by the parties and confirm the factual findings by the Adjudicator as well as the findings on the various infringements of the Code of Conduct.

12. There was no appeal by the Complainant against the findings dismissing some of the alleged infringements.

13. We agree with the set of factors to be taken into account when considering the sanctions to be imposed.

14. We also agree with the Adjudicator that these breaches are of a serious nature. However, although there seems to be numerous breaches, these breaches all stem from the same factual situation, namely that the Member failed to adequately deal with the Complainant's opt-out requests in part due to an ineffective system operated by the Member. The Member also did not offer a satisfactory explanation on why it failed to terminate the services once they became aware of it.

15. In mitigation we take into account that the Member in the end did offer a full refund to the Complainant and did amend their systems to deal with these situations more efficiently. We also take into account that this was the first complaint of this nature against the Member.

Amendment of sanctions

17. In our view the infringements are of a serious nature as found by the Adjudicator, but the sanction imposed is too harsh in the light of the mitigating circumstances. The fine imposed is reduced to a fine of R10,000 to be paid to WASPA within 7 days of this Appeals Adjudication being notified to the Member.

Appeal fee

18. In view of the partial success of the appeal we find that 60% of the appeal fee be refunded to the Member.