



Report of the Adjudicator

Complaint number	#59240
Cited WASPA members	Upstream Systems South Africa (1463)
Notifiable WASPA members	N/a
Source of the complaint	WASPA Complaints Team
Complaint short description	Failure to provide records
Date complaint lodged	25 May 2023
Date of alleged breach	17-24 August 2023
Applicable version of the Code	17.5
Clauses of the Code cited	7.5
Related complaints considered	Complaints #27343, 48942
Fines imposed	A fine of R15,000 is imposed, suspended for six months, triggered by any other breach of clause 7.5.
Other sanctions	N/a
Is this report notable?	Not notable .
Summary of notability	

Complaint

1. A member of the public complained that they had been subscribed to a subscription service in May 2023 by the Member without their consent. The member of the public requested proof of the subscription and a refund.
2. The WASPA Complaints Team after the mediation process requested proof of subscription from the Member on 13 June 2023. After a brief response the WASPA Complaints Team followed up with another request on 28 July 2023.
3. On 17 August the WASPA Complaints Team requested complete logs for advertising, DOI, Billing, Welcome message, Reminder message (if any), and notification message of unsubscribe.
4. The Member advised that the member of the public was successfully subscribed to Glow services on 12 May 2023 and was unsubscribed to Glow service on 26 May 2023. It also advised that the member of the public was added to the DND List on 26 May 2023 for all VOD services. The Member also provided certain substantiating documents with logs of the communications with the member of the public.
5. In response to the logs provided by the Member on 17 August 2023, the WASPA Complaints Team requested information on marketing messages that had been sent to the member of the public.
6. The Member responded that users retain the ability to enable consent for receiving marketing messages by dialling *135*181# on the Vodacom network. This code allows users to choose to either opt-in or opt-out of marketing communications at any time. If a user has opted in, they will receive promotional messages. In the event that a user wishes to opt-out of third-party or promotional marketing, they can use the same code to do so. It further advised that users are automatically opted-out of any Upstream-related campaigns.
7. The WASPA Complaints Team responded with a request for proof where the complainant opted-in to receiving Upstream-related marketing messages.
8. The Member responded that this proof sits with Vodacom and that they cannot share this data because it is stored with Vodacom for users accessing the code * 135* 181#.
9. The WASPA Complaints Team provided a detailed account of some of the communications between the Member and the member of the public and requested proof where the complainant dialled the USSD *126*5# and proceeded through a DOI to received the service.

10. The Member responded that they cannot provide further information on this as the opt-in/opt-out consent is controlled by Vodacom themselves on the code * 135*181#. It invited the WASPA Complaints Team to request this information from Vodacom.
 11. The WASPA Complaints Team advised the Member that as Vodacom is not a member of WASPA, this information will not be requested from them by WASPA.
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Sections of the Code considered

12. The following sections of the WASPA Code of Conduct was considered:
 - 7.5. Members must provide WASPA with any customer records relating to any service which is the subject of a complaint, including, but not limited to:
 - (a) where that information is available, a record of the marketing link that the customer followed prior to joining a service;
 - (b) all communications sent by or to a customer in the process of joining a service;
 - (c) all required reminder messages sent to a customer;
 - (d) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
 - (e) any record of successful or unsuccessful service termination requests
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Decision

13. Although the complaint originated with a member of the public, the complaint ultimately resulted from the WASPA Complaints Team, namely that the member infringed section 7.5 of the Code of Conduct by failing to provide the Team with records relating to:
 - a. proof of subscription to the subscription service;
 - b. proof where the complainant opted-in to receiving Upstream-related marketing messages;
 - c. proof where the complainant dialled the USSD *126*5# and proceeded through a DOI to received the service.
14. From the correspondence it is clear that despite numerous requests for documents and proof, the Member failed to provide the proof of subscription and proof of consent to receive marketing messages.
15. The request for information on the use of a USSD code, the Member did not make any attempt to request the information from Vodacom, but merely deflected the request. It gave no indication that it had approached Vodacom or that Vodacom had refused to make such information available.
16. In Complaint #27343 an Appeal panel concluded in a similar situation:

It appears to not be in dispute that some of the information required from the member may need to be obtained from the relevant network operators or aggregators. However this does not detract from the appellant's responsibility to obtain this information and/or records in order to answer a request made in terms of section 7.5 or 24.24, as the case may be.

I agree with this conclusion.

17. I therefore find that there was an infringement of section 7.5 of the Code of Conduct by failing to provide the information requested by the WASPA Complaints Team as required by that section.

Sanctions

18. In determining a sanction it is noted that the Member has no previous complaints that have been upheld against it. Consideration was also given to previous complaints involving an infringement of section 7.5 of the Code, namely complaints #27343 and #48942.
19. A fine of R15,000 is imposed suspended for six months, triggered by any other breach of clause 7.5.

Matters referred back to WASPA

N/a
