



## Report of the Adjudicator

Complaint number	<b>#60061</b>
Cited WASPA members	<b>HYVEmobile (1518)</b>
Source of the complaint	<b>WASPA Compliance Department</b>
Complaint short description	<b>Non Compliance WASPA Code of Conduct</b>
Date complaint lodged	<b>2023-03-27</b>
Date of alleged breach	<b>8 March 2024</b>
Applicable version of the Code	<b>17.7</b>
Clauses of the Code cited	<b>5.4, 15.17, 15.26, 15.27</b>
Related complaints considered	<b>57571; 59698; 59699</b>
Fines imposed	<p><b>R 5000.00 for Breach of Clause 5.4 suspended on condition that the member does not infringe any clause of the Code of Conduct for a period of six months after the date of publication of this report.</b></p> <p><b>R10 000.00 For Breach of Clause 15.17</b></p> <p><b>R10 000.00 For Breach of Clause 15.26 and 15.27</b></p>
Other sanctions	<b>None</b>
Is this report notable?	<b>Not notable</b>
Summary of	<b>n/a</b>

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## Initial complaint

1. The Complainant submitted a complaint through the WASPA Code of Conduct Complaint procedure.
2. The Complainant alleged that on or about 2024-03-08 whilst monitoring, testing services and conducting compliance checks of test results, identified a service which does not comply with the requirements as set out in the WASPA Code of Conduct (Code).
3. The Complainant stated that he subscribed to a subscription service through a banner advertisement.
4. The wireless application service provider is the Member of WASPA, to whose subscription services the Complainant had subscribed (“the service”)
5. The Complainant submitted that the Respondent is in breach of the WASPA Code of Conduct with specific reference to the following:
  - 5.1 Delayed in the Welcome Message being transmitted,
  - 5.2 Unsubscribe functionality not being honored

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## Member’s response

6. Investigation of the complaint was done by the Respondent upon receipt of the formal complaint, by peer review, coding where after deployment and testing was conducted.
7. The Respondent noted that the source and outcome of this complaint was unknown to the Respondent prior to receipt of the formal complaint.
8. Outcome and conclusion of the Investigation by the Respondent:

- 8.1 Delayed in the Welcome Message being transmitted - the delay on the 8th Mar was the result of an error in logic within the SMS gateway, which essentially delayed 'priority 'SMSes, while putting them in the same queue with marketing SMSes.
  - 9.2 Unsubscribe functionality not being honored - There was a 'race condition' error in the processing of the STOP SMS ('stop finsa' to the short code 14788) which blocked it from taking effect on this occasion.
9. The Respondent confirmed that both subjected non compliances were remedied on 3 April 2024, and tested on 5 April 2024.

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### **Complainant's response**

In response to Member's response to each alleged non-compliance under subject heading as follows:

10. Welcome Message

The Complainant noted the Respondents acknowledgement that there was an error noted and remedial action taken upon receipt of the non-compliance.

11. Unsubscribe Functionality

The Complainant noted the Respondents acknowledgement and disclose that non-honoring of the unsubscribe function was caused by an error as stipulated in the Respondent's response to the complaint.

12. The Complainant further took note that the Respondent has taken remedial action after they were informed of this non-compliant aspect of their service, to ensure that this breach does not occur again in the future.

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### **Member's further response**

13. None submitted
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## Sections of the Code considered

14. Members Responsibility  
Clause 5.4 reads *Members must have honest and fair dealings with their customers.*
  
15. Welcome message  
Clause 15.17 reads *Once a customer has joined a subscription or notification service, an SMS message must immediately be sent to the customer confirming the initiation of the service. The message must be provided in one of two ways:*
  - (i) *The customer's mobile carrier may send the message.*
  - (ii) *The member can send the "welcome message". The customer must not be charged for the welcome message.*
  
16. Terminating a service
  - a) Clause 15.26 reads. *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.")*
  - b) Clause 15.27 reads *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).*
  
17. Sanctions  
Clause 24.43 reads *Sanctions that may be imposed on a member found to be in breach of the Code of Conduct include one or more of the following:*
  - (a) *a requirement for the member to remedy the breach (including ordering a refund);*
  - (b) *a formal reprimand;*
  - (c) *an appropriate fine on the member, to be collected by WASPA;*
  - (d) *suspension of the member from WASPA for a defined period;*
  - (e) *expulsion of the member from WASPA;*

- (f) *a requirement for the member to disclose the identity of any client found to be acting in breach of this Code of Conduct;*
- (g) *a requirement for the member to suspend or terminate the services of any client that provides a service in contravention of this Code of Conduct;*
- (h) *a requirement to withhold a specified amount or portion of money payable by the member to the client.*

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## Decision

- 18. The onus of proof was on the Complainant, as he was the one alleging in the matter and substantiation was adequately provided in support of his/her complaint.
- 19. It is noted the correct procedure was utilised to address the material breaches and that the complaint was lodged well within the time period provided for in the Code.
- 20. The Respondent acknowledged breach in the following instances:
  - 20.1 Welcome SMS being delayed by 2h 15m
  - 20.2 Unsubscribe request not honored as per the requirements of WASPA Code of Conduct.
- 21. The Respondent further noted they were unaware of the breach until receipt of the complaint from WASPA.
- 22. The Respondent actioned rectification of the non-compliance and noted the non-compliances has been rectified.
- 23. Complaint therefore upheld.
- 24. Therefore, the respondent sanctioned as follows.

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## Sanctions

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

- 25.1 any previous successful complaints made against the Member in the past three years;
  - 25.2 any previous successful complaints of a similar nature; the nature and severity of the breach
  - 25.3 any previous successful complaints of a similar nature; the nature and severity of the breach; and
  - 25.4 any efforts made by the Member to resolve the matter.
26. The Member's timeous response to the complaint is also viewed as a mitigating factor.
27. However, 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. While the member's technical shortcomings were not as a result of a deliberate ploy, the potential for harm to customers' despite the customer intentions by action in the prescribed manner, is viewed as serious.
28. In determining appropriate sanctions previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions have also been taken into account.
29. Based on the aforementioned, the following sanctions are imposed:
- 29.1 For Breach of Clause 5.4 a fine imposed of R 5 000.00 *suspended on condition that the member does not infringe any clause of the Code of Conduct for a period of six months after the date of publication of this report.*
  - 29.2 For Breach of Clause 15.17 a fine imposed of R10 000.00
  - 29.3 For Breach of Clause 15.26 and 15.27 a fine imposed of R10 000.00

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### **Matters referred back to WASPA**

30. None noted
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