

## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP):</b>	<b>TMobileSA</b>
<b>Information Provider (IP): (if applicable)</b>	<b>N/A</b>
<b>Service Type:</b>	<b>Subscription</b>
<b>Complainant:</b>	<b>Consumer / WASPA Secretariat</b>
<b>Complaint Number:</b>	<b>10511 &amp; 10927</b>
<b>Code version:</b>	<b>Code v 9.0 &amp; 10.0 and Ad Rules v 2.3</b>
<b>Date of Report:</b>	<b>30 November 2010</b>

1. Complaint number 10927 is related to and follows on from complaint number 10511, and consequently they will be dealt with together.
2. The conduct that gave rise to Complaint 10511 took place when version 9.0 of the WASPA Code of Conduct was current, while that pertaining to complaint 10927 took place when version 10.0 had already come into force.

### **Facts of Complaint 10511**

3. On or about the 3<sup>rd</sup> of September 2010, the Complainant, a member of the public, made an unsubscribe request in respect of a certain service that the Member was providing. This request was made via WASPA's online unsubscribe service located at [www.waspa.org.za](http://www.waspa.org.za).
4. According to the relevant WASPA log, the Complainant was unsubscribed by the Member on the 3<sup>rd</sup> of September, but on the 6<sup>th</sup>, the Complainant requested that the Member should furnish him with proof of his subscription to the service.
5. No response to this request was forthcoming, despite reminders sent by the WASPA Secretariat on the 6<sup>th</sup> and 8<sup>th</sup>; on the 13<sup>th</sup> the matter was escalated to a formal complaint.
6. The escalation seemingly got the Member's attention, and on the 15<sup>th</sup> it contacted the WASPA Secretariat with the news that the Complainant had accepted a refund. No proof of subscription was forthcoming however.
7. On the 25<sup>th</sup> of **October** the WASPA Secretariat again reminded the Member that the reason for the escalation of the matter to a formal complaint was that the requested proof of subscription had not been provided, and requested that this be provided urgently.
8. Finally, on the 26<sup>th</sup> of October 2010, the Member provided what it purported to be an extract from its log, a copy of which is attached as annexure "A".

9. The date given on this proof of subscription was the 28<sup>th</sup> of October 2010, while the log extract itself had been emailed to the WASPA Secretariat on the 26<sup>th</sup>. As a result of the purported date of subscription being two days in the future, the WASPA Secretariat suspected that the information provided was fraudulent, and raised complaint 10927 as a result.
10. The Adjudicator requested the WASPA Secretariat to ask the Complainant whether he had ever subscribed to a service offered by the Member or otherwise why the Member would consider him to be a client. His answer was as follows:

I have never been a client of T Mobile. I have also never requested any services from T mobile.

#### **11. Facts of Complaint 10927**

12. On the 26<sup>th</sup> of September 2010 the WASPA Secretariat lodged the following complaint against the Member, which was sent to the Member per email on the same day:

On 2010-10-26 TMobileSA supplied the WASPA Secretariat with the attached proof of subscription for a certain complainants number. Because the date on the captured screen shot provided is 2 days into the future, it clearly indicates that these logs are incorrect. The WASPA Secretariat is concerned that this could be fraudulent.

13. The allegedly fraudulent log was attached to the complaint and the Adjudicator can confirm that it was the same as the log referred to in complaint 10511.
14. The WASPA Secretariat requested that an emergency panel be convened to hear the matter as a matter of urgency in terms of section 14.7 of the WASPA Code of Conduct, but this was not acted upon.
15. The Member responded to the complaint on the 3<sup>rd</sup> of November as follows:

The date on the screen is the un-subscription date as requested by waspa

Our system takes 48 hours to respond to the un-subscription request.

We have done migration with MTN connectivity through the info- connect link from IS (Internet Solutions).

Our customer and partner table got mixed up amidst the database migration.

We apologise for this error and we have our technical team working on it

16. The WASPA Secretariat's response to the above was as follows:

Referring to the WASP's response advising that the date on the logs is the date requested by WASPA to unsubscribe.

If you refer back to complaint #10511 that related to this complaint, you will see the date on which unsubscribe was requested from the WASP was on 2010-09-03 / 2010-09-06 / 2010-09-08 and the formal complaint was logged

on 2010-09-14 - none of which is 48 hours prior to the logs supplied by the WASP.

### **Portion of the Code Considered**

17. As these two complaints fall across two versions of the WASPA Code of Conduct, the sections reproduced below include reference to the applicable code version.

18. The following sections of the WASPA Code of Conduct are relevant to these complaints:

3.1.2. Members are committed to lawful conduct at all times. (version 10.0)

11.9.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:

(a) proof that the customer has opted in to a service or services;

(b) proof that all required reminder messages have been sent to that customer;

(c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and

(d) any record of successful or unsuccessful unsubscribe requests. (version 9.0)

14.3.11. Where a complaint involves any interaction with a customer, when requested to do so, a member must, within five working days, provide clear copies of all relevant logs of that interaction. (version 9.0)

14.3.13. Providing incorrect or fraudulent information in response to a complaint, or in response to any other request to provide information is itself a breach of this Code. (version 10.0)

14.4.1. An adjudicator finding prima facie evidence that any member may have breached clause 3.1.2 of the Code of Conduct must request that WASPA refer the breach to the relevant statutory or regulatory authority, unless that authority has already made a ruling on that particular case. If the relevant authority has already made a ruling on that particular case, then the adjudicator may find a breach of clause 3.1.2. (version 10.0)

### **Decision**

19. Section 14.3.11 of the Code of Conduct requires WASPA members to provide logs to WASPA within five working days of request. In this case the request for proof of subscription was made on the 6<sup>th</sup> of September 2010, and the information was provided only on the 26<sup>th</sup> of October, despite reminders. The Member took far longer than five working days to honour this request as required in the Code, and consequently has breached section 14.3.11.

20. Turning now to the conduct complained of in complaint 10927, the Adjudicator has read the Member's explanation for the date that appears in the log provided to the WASPA Secretariat on the 26<sup>th</sup> of October 2010.
21. The Member's version is that this date was the date of the unsubscribe request, and that as these requests take 48 hours to be processed by the relevant systems, a date two days ahead was given. This explanation does not fit the facts. Firstly, the information requested was proof of subscription, not the date on which the complainant in complaint 10511 was unsubscribed to from the service. Any date provided would surely thus relate to subscription, not termination of subscription. Secondly, even if this **was** the information that was requested, the date given is not two days in advance of the actual unsubscribe date – this was the 3<sup>rd</sup> of September 2010. The WASPA Secretariat is too lenient in raising the possibility that the unsubscribe date could be the 6<sup>th</sup> or 8<sup>th</sup> of September – these are the dates on which requests for the subscription record was made – according to WASPA's log, the Member had already unsubscribed the Complainant on the 3<sup>rd</sup> of September.
22. The information provided by the Member was clearly incorrect. The question now arises whether the record was intentionally made up to aide an instance of subscription without consent, or did the Member make an honest mistake? The Adjudicator took the following factors into consideration:
- 22.1. The Adjudicator notes that in complaint numbers 10549 and 10822 the Member admits to subscribing a large number of consumers to certain subscription services without their consent. The exact technical reason for this is unclear, and the matters are under adjudication concurrently with these complaints. Nonetheless, the conduct complained of in complaints 10549 and 10822 took place in late August and early September 2010, at the same time as the conduct complained of in complaint 10511.
- 22.2. The Complainant in complaint 10511 states that he was never subscribed to the service that the log reflects, in fact has never requested services from the Member. This indicates that the log entry was contrived, and was not an existing record containing erroneous data, or that an incorrect field was queried in generating the log.
- 22.3. The Member's explanation for the date in the log being two days in the future does not ring true, as set out above. The Adjudicator finds this factor to be most persuasive for the contention that the date was made up.
23. Consequently, the Adjudicator finds that Member has infringed section 14.3.13 of the WASPA Code of Conduct in that it provided fraudulent information in response to a complaint.

### **Sanction**

24. In view of the Member's relatively clean record with the WASPA, the Adjudicator imposes the following sanctions in respect of the Member's infringement of section 5.1.7 of the Code of Conduct:

- 24.1. the Member is given a formal reprimand
  - 24.2. the Member is fined the amount of R 2 000.
25. Section 14.3.13 deals with the provision of incorrect or fraudulent information, but the consequences of providing merely incorrect information is far less serious than providing fraudulent information. In the former case, it is not necessary for the Member to have the intention to mislead when providing such information: errors do occasionally occur in any data set, and can occur for any of a host of reasons. In the case of fraudulent information, however, it is necessary to have the intention to mislead.
26. The administration of the WASP industry, and certainly the functioning of the adjudication process, depends heavily on the correctness of logs provided by Members. Errors contained in such logs severely disrupt these processes; fraudulent manipulation of records, and creation of records where none existed before so as to cover up the Member's misdeeds, is beyond the pale.
27. While the Member has a good record in respect of complaints, this cannot stand as a significant mitigating factor when matched against the seriousness of the infringement. If the Member had a history of such conduct, the Adjudicator would have recommended its expulsion from WASPA. In the circumstances however, the following sanction is imposed on the Member for its infringement of section 14.3.13:
- 27.1. The Member is suspended from membership of WASPA for a period of 30 days, commencing on the date of notification of this report; and
  - 27.2. The network operators are to block the Member's access to all services for the period of the suspension, as contemplated in section 14.4.3.
28. The Adjudicator has found *prima facie* evidence of fraud on the part of the Member, and consequently must request that the WASPA Secretariat refer the matter to the South Africa Police Service for investigation as contemplated in section 14.4.1.

-----oooOooo-----

## Annexure A