



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Strike Media
Information Provider (IP):	Not applicable
Service Type:	SPAM / Subscription related
Complainant:	IP (Mobijob)
Complaint Number:	11898
Code Version:	10.0
Advertising Rules Version:	N/A

Complaint

The Complaint relates to an ongoing dispute between the SP and IP and the IP alleges that the SP is not honouring its agreement. The IP made several allegations but did not specify any specific breach of the Code. It does however feel that WASPA should provide it with some recourse.

Service provider's response

The SP stated in its response that it cancelled the IP's services due to an instruction from WASPA and based on Strike Media's own terms and conditions.

Sections of the Code considered

1.4. Scope of the Code

Unless otherwise specified, this Code of Conduct applies to all wireless application services accessed by a customer in South Africa, transmitted by a wireless application service provider and carried by a South African network operator.

2.12. A **“customer”** is a user of a mobile cellular telecommunications service that has indicated a willingness to access or utilise a service provided by a wireless application service provider.

2.13. An “**information provider**” is any person on whose behalf a wireless application service provider may provide a service, and includes message originators.

3.1. Professional and lawful conduct

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

3.1.2. Members are committed to lawful conduct at all times.

3.9.1. Members must bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct.

3.9.2. Where any information provider that is not a WASPA member conducts any activity governed by the provisions of this Code, and makes use of the facilities of a WASPA member to do so, that member must ensure that the information provider is made fully aware of all relevant provisions of the Code and the member shall remain responsible and liable for any breach of the Code resulting from the actions or omissions of any such information provider.

3.9.3. A WASPA member shall, by obtaining the information provider's signature on the WASPA template agreement, be deemed to have taken all reasonable steps to ensure that the information provider is fully aware of the terms of the WASPA Code of Conduct and this shall be considered as a mitigating factor for the WASPA member when determining the extent of any possible liability for the breach of the provisions of the WASPA Code of Conduct as a result of any act or omission by the information provider.

3.9.4. The member may suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct.

3.9.5. The member must act in accordance with the WASPA complaints and appeal process and if appropriate, suspend or terminate the services of any information provider.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent response.

The Adjudicator is of the opinion that the Code applies to services rendered by SPs to customers on the one hand and information provided by IPs to customers on the other hand.

The Adjudicator is further of the opinion that the definition of “customer” in the Code does not include an Information Provider (IP). This can be inferred from the definition of an “IP”.

The relationship between SPs and IPs are governed by agreement, and is further influenced by section 3.9.1 which states that members must bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct.

The Code further stipulates that the member may suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct.

The Code then however states that a member must act in accordance with the WASPA complaints and appeal process and if appropriate, suspend or terminate the services of any information provider.

The Adjudicator reviewed adjudication 10279 and finds it appropriate to extract the following statement made by the Complainant in that matter:

“We view auto-subscription in a very serious light and we have suspended Mobijobs' (*the Complainant in this matter*) billing code with Integrat.”

The Adjudicator can therefore with certainty state that the SP in this matter is not the first in taking similar action of suspending the Complainant's services.

However, the SP in this matter, did, as the Complainant claims, responded on behalf of the Complainant and actually provided the following statement as pertaining to the Complainant's character in adjudication 10279:

“Paul (*the Complainant in this matter*) responds to emails and service requests timeously.”

The SP also offered a response in trying to mitigate the alleged breach by Mobijobs (*the Complainant in this matter*).

The Adjudicator in its ruling stated:

“Although the Adjudicator is not of the opinion that these malfunctions do not occur, he / she is not convinced that the SP should continue providing a service on behalf of the IP (*the Complainant in this matter*) when it is indeed aware of the malfunction, and where it has actually made the IP aware of the malfunction without any subsequent rectification thereof.”

When issuing sanctions, the Adjudicator ruled inter alia as follow:

1. The SP is required to suspend the IP's mentioned service until such time as the SP and IP complies with the orders set out below:

- 1.1. The SP may not initiate any new or existing billing transactions for the said service during such period of suspension; however it may process any unsubscription requests;
- 1.2. The IP shall send an sms notification, detailing such suspension, to all existing subscribers of the said service (the SP shall furnish the WASPA Secretariat with confirmation that it has notified the IP's subscribers);
- 1.3. The SP must ensure that the IP resolves its technical errors;
- 1.4. The IP must ensure that it conforms to all aspects of the Code; and
- 1.5. The SP must uphold section 3.9.1 of the Code.
- 1.6. The SP and IP are formally reprimanded for its various breaches of the Code."

It would therefore seem that the SP in this matter acted according to instructions from WASPA in the said case, although it was only required to suspend a specific service.

Although the suspension was made subject to certain unbinding conditions, the Adjudicator is not privilege to subsequent actions on behalf of both the SP and Complainant related to adjudication 10279 and is also not privilege to the content of the agreement between the SP and Complainant in this matter.

The Adjudicator is also of the opinion that the Code only provides guidelines as to the content of the agreement and not the actual enforcement thereof, a matter that is in the opinion of the Adjudicator subject to the law of contract and its interpretation by platforms outside the ambit of WASPA.

On these grounds, the Complaint is dismissed.

The Adjudicator does however want to draw both the SP and Complainant's attention to section 3.1.1 of the Code which states that members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

Allegations on both sides seem to be frivolous and contrary to the spirit of the Code.

Both parties are reminded of their duties in terms of professional conduct and reprimanded in terms of section 3.1.1.

A continuous breach could warrant suspension from WASPA.