

WASPA appeals panel
Complaint 14669

REPORT OF THE APPEALS PANEL

Date: 8 May 2012

Service Provider: Integrat

Appellant and Information Provider (IP): mobiJOBS

Complaint Number: 14669

Applicable versions: 11

1. BACKGROUND TO THE APPEAL

1.1 This appeal concerns an unsubscribe request lodged on 23 March 2011 and upgraded to a formal complaint on 6 September 2011.

1.2 The SP was not found to have breached the Code in the initial adjudication, and is no longer affiliated with the IP. The IP alone is appealing the decision.

1.3 The complaints, the findings of the Adjudicator, the IP's response to and appeal against the complaint, are fully recorded in the case files provided to this appeals panel, and as these are, or will be, publicly available on the WASPA website, they will not be repeated in full in this appeal panel's report.

2. CLAUSES OF THE CODE CONSIDERED

2.1 The complaint relates to alleged breaches of Section 11.9.14 which states:

If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that

request within two working days (48 hours) of that request being passed on by WASPA.

2.2 The complaint relates to a specific unsubscribe request, but it appears that the SP also has a number of other outstanding unsubscribe requests.

3. FINDINGS AND DECISIONS OF THE ADJUDICATOR

3.1 Finding of the Adjudicator

The Adjudicator stated:

I find the IP to be in breach of the sections of Code as set out above due to their failure to respond to the Code as follows:

1. In re 3.1.1 – I feel that their failure to address the WASPA Secretariat's requests to be unprofessional.
2. In re 11.9.14 – they failed to action the unsubscribe request lodged with WASPA at all.

It also worth noting that at the time of prepping this case for formal complaint, the IP had 1336 unsubscribe requests outstanding.

3.2 Sanctions

The following sanctions were given:

The SP is not in breach and thus not sanctioned.

The IP is fined R25 000.

R10 000 of which is payable with 14 (fourteen) days of this adjudication being made available to it.

R15 000 of that is suspended pending response by the IP (in line with the Code of Conduct's requirements) within 1 month to all outstanding unsubscribe requests.

4. GROUNDS OF APPEAL

4.1 Grounds of appeal for complaint 14669

4.1.1 The SP's grounds for appeal are recorded (that is copied exactly as submitted, errors included) and paragraphed as follow:

I have been charged and found guilty for not responding to complaints sent out by WASPA, however I had responded by email to the WASPA secretariat at the time and on time, I indicated this to WASPA however that seems to have not been considered when making the judgment, here are the facts extracted from my email communicate with WASPA as the emails also chronologically date this conversation.

- 1) I first received a request to unsubscribe over a thousand msisdns from my service.
- 2) 10.07.2011 22:23 : I responded with an email informing WASPA I had not found msisdns in my own database but only 2 msisdns. I was informed sometimes the MNO assigned complaints to the wrong IPs. I then thought that this point this ended.
- 3) Fri, 26 Aug 2011 11:31:31: I got an email from WASPA informing me that I have a large number of unsubscribe requests.
- 4) Sat, 27 Aug 2011 02:54:47: I responded to WASPA via email indicating (2) above. The case then went for adjudication and was found guilty and expected to pay a fine and unsubscribe these msisdns yet I have no msisdns to unsubscribe as a corrective measure.

The problem in my analysis is:

- 1) Its not my unprepossessing of the unsubscribe requests on the WASPA system but I had thought by responding as pointed out in (2) above this matter was resolved, not knowing that WASPA needed me to login and actually reflect me not finding these MSISDNs on my DB on the WASPA system, I was not aware there was a further action I had to perform to resolve the matter as I had thought merely informing WASPA via Lorraine was enough, this is basically a misunderstanding and miscommunication error, this type of a situation is rare.

2) I propose to then update the WASPA system for each msisdn not found on my DB, more than a thousand of them, a tremendously exhaustive task and I hope the MNO will not assign msidns to the wrong IPs as I have been led to believe this is the case here.

5. FINDINGS OF APPEAL PANEL

5.1 Version of the Code

5.1.1 The complaint was made on 6 September 2011. Version 11 of the Code applies.

5.2 Finding

5.2.1 The appeal is somewhat confusing. The appellant refers to communication dated 10 July and 26 and 27 August 2011. However, the adjudication in fact relates to a complaint lodged on 6 September 2011. The relevance of the August communication is therefore peripheral at best.

5.2.2 The complaint of 6 September 2011 was specific and related to ONE number.

5.2.3 The appellant came back the same way, quoting the email of 27 August. It failed to address the specific concern, and in the quoted section promised to “run a script” to check all the outstanding numbers.

5.2.4 The secretariat reverted to the appellant, still on 6 September, explaining that the response was insufficient.

5.2.5 Still on that day, the appellant undertook to “update WASPA systems”.

5.2.6 To this, the secretariat responded with thanks, but asked for a response on **this** specific formal complaint.

5.2.7 On 14 September 2011 the Secretariat advised the appellant that in the absence of a response and the promised report, it would now rule.

5.2.8 The adjudication was against the appellant and the appellant appealed, once again promising to update the system, and complaining what an “exhaustive” (sic) task this is.

5.2.9 The appellant made no reference to the status of the specific number that this formal complaint relates to.

5.2.10 While this panel is sympathetic to the fact that updating the over 1000 unsubscribe requests is exhausting, it points out the following:

At immediate issue is ONE formal complaint on which the appellant is strangely unforthcoming, despite repeated opportunities to comment;
It is not WASPAs fault that the appellant has failed to investigate each unsubscribe request as it is lodged, making the task more onerous now;
It is part of the SPs duties as a WASP to abide by the Code. Doing so may be onerous but ensures an ethical environment for the industry.

5.2.11 The appeal is therefore overturned, and the adjudicator's decision stands. The SP is in breach of Clause 11.9.14.

5.2.12 The Panel has decided to give the SP one final benefit of the doubt in relation to sanctions.

5.2.13 The sanctions are therefore amended as follows:

5.2.14 The entire R25 000 is suspended.

5.2.15 The SP is to provide a report on the number which is the subject of this complaint within 24 hours of receipt of this ruling, failing which it will be fined R15 000 immediately. The Panel leaves it to the discretion of the Secretariat to determine whether the response hereto is satisfactory.

5.2.16 The SP is to provide a full report on all outstanding unsubscribe requests within 5 working days from receipt of this ruling, failing which it will be fined the further R10 000. Again, the Panel leaves it to the discretion of the Secretariat to determine whether the response hereto is satisfactory.

5.2.17 The Panel notes that the suspended fines are in fact fairly lenient in relation to the breadth of the non-compliance. The SP is warned that should it come before this Panel on an unsubscribe issue again, the Panel will be less

lenient, and will not be guided by the lenience of the original adjudicator in this respect.

5.2.18 The cost of appeal is non-refundable.