

WASPA appeals panel
Complaint 22466 and 22635

REPORT OF THE APPEALS PANEL

Date of report:

WASPA Member: US Cellcom

Complaint Number: 22466/22635

Applicable versions: 12.4

Preliminary issues

1. This appeal, can be dealt with as one matter for the purposes of this decision.
2. All references to the Code are to version 12.4, the version that was binding on the parties at the time of the complaints.

Matters 16559 and 16659

Background

3. These two matters both involved complaints by the WASPA Secretariat and a member of the Public in relation to subscription services. The essence of both complaints was that the material in question creates an impression that the consumer has won a competition when in fact they are subscribing to a service as well as that of auto subscription.
4. The following clauses were cited in both matters collectively even if not in each individually: 5.1.1; 5.1.12; 5.1.3; 5.2 and 5.3.1; 6.2.10; 6.2.11; 6.3.3; 9.1.7; 11.1.1; 11.6.1; 11.2.2 and 11.2.2 and 11.2.3; and 11.2.5.

5. The adjudicator in these matters found with respect to the abovementioned clauses as follows:

The following clauses were breached:

- 5.1.12 (Time of messages)
- 5.1.3 (“STOP”)
- 5.2 and 5.3.1 (Spam)
- 6.2.10 (“Rand”)
- 9.1.7 (“Winner”)
- 11.1.1 (Subscription services)
- 11.2 (Subscription ancillary to reward)
- 11.2.1, 11.2.2 and 11.2.3 (Auto subscription)
- 11.2.5 (Confirmation message)

The following clauses were not breached:

- 5.1.1. (Message identifier)
- 6.3.3 (Unauthorised calls)
- 11.6.1 (Reminder messages)

Appeal

6. The WASP lodged an appeal against these rulings in an application to court which was not successful and then again to WASPA via the appeals panel mechanism in a letter, the date of which is not apparent.
7. This letter was vague and didn’t appear to address the merits of each case and their respective findings but rather sought to appeal on the basis of a series of generalised statements on the WASP itself and their process in general as well as the notion of great prejudice to be suffered by the public at large by the services being suspended. No argument was produced to directly refute the findings of the adjudicator based on the merits of the particular cases in question and the appeal seemed to turn on the concept of the fines and prejudice suffered by the WASP (and the public at large) being excessively prejudicial.

Deliberations and finding

8. There was little cogent argument presented as to the particular findings but rather to the sanctions imposed.
9. Where argument was presented this dealt with the issue of auto-subscription and whether advising someone that they were a winner induced them to enter a competition.
10. The first issue relating to auto-subscription presented little reason, and in fact no, reason or persuasion for me to overturn the adjudicator's ruling based on the fact that the WASP utilised general examples of their processes and did not address the merits of the actual cases before us.
11. The findings in respect of clauses 11.2.1, 11.2.2 and 11.2.3 are not overturned.
- 12. As the remainder of the clauses were not addressed specifically and remain unchallenged, the finding must stand in respect of the remainder of the clauses upon which the adjudications were based.**
- 13. The appeal fees in respect of these matters are not to be refunded to the Appellant.**

Sanctions

14. The issue that the Appellant raised in relation to the sanctions forming part of this appeal was the question of whether the sanctions were too broad and excessive.
15. The sanctions in question are:
 - 1.15.1 In respect of the breaches of 5.1.12, 6.2.11, 11.2.1 and 11.2.5, a fine of R125 000,00 for immediate payment, and a further fine of R250 000 suspended for 12 months.

1.15.2 Sanctions In relation to the clauses that were breached specifically set out according to harm the adjudicator felt the consumer suffered:

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| 1.15.2.1 | 5.1.3 ("STOP") – A fine of R25 000 |
| 1.15.2.2 | 5.2 and 5.3.1 (Spam) – A fine of R100 000 |
| 1.15.2.3 | 6.2.10 ("Rand") – A fine of R5000 |
| 1.15.2.4 | 9.1.7 ("Winner") – A fine of R10 000 |
| 1.15.2.5 | 11.1.1 (Subscription services) – A fine of R200 000 |
| 1.15.2.6 | 11.2 (Subscription ancillary to reward) – A fine of R50000 |

1.15.3 The suspension of the service of the MOB voucher service including a halt any new subscriptions to the service which will be lifted on payment of the fine, or on filing of appeal papers.

16. Clause 14.4.2 of the Code deals with the adjudicator's powers in respect of sanctions:

14.4.2. For all other clauses of the Code, possible sanctions that may be imposed on a member found to be in breach of the Code of Conduct are one or more of the following:

- (a) a requirement for the member to remedy the breach;*
- (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 information provider 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 information provider 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 information provider.*

17. The Panel disagreed with this argument that the sanctions are excessive and seeks to clarify the fact that it was only the MOB voucher service in question that was suspended and not all services of the WASP.

Appeal fees

18. The appeal fees in respect of matters 22466 and 22635 are not refunded. The Panel cannot see the rationale for appealing a decision when the merits of the particular cases were not addressed and no compelling argument presented for why the fines should not be paid and the suspension lifted.