



**Wireless Application Service Providers' Association**

**Report of the Adjudicator**

|                                |   |
|--------------------------------|---|
| Complaint number               | 27644   |
| Cited WASPA members            | High Gable Limited (1486) (First Respondent) / Smartcall Technology Solutions (0090) (Second Respondent)  |
| Notifiable WASPA members       | N/A   |
| Source of the complaint        | Public  |
| Complaint short description    | Automatic subscription and providing complete information and not having accessible complaints process.   |
| Date complaint lodged          | 15 September 2015   |
| Date of alleged breach         | Not apparent  |
| Applicable version of the Code | 14  |
| Clauses of the Code cited      | 4.2, 5.4, 5.11, 5.14, 7.4, 7.5, 14.1, 15.3, 16.4, 16.13, 16.14 and 17.1.  |
| Related complaints considered  |   |
| Fines imposed                  | I sanction the First Respondent to a fine of R70 000 (seventy thousand rand). R50 000 (fifty thousand rand) thereof to be payable within 7 (seven) days of receipt of this report. R20 000 (twenty thousand) to be suspended pending the First Respondent complying with the order set out below. |

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| Other sanctions         | Furthermore, the First respondent must set out a complaints process on their website including a customer support telephone contact number available during business hours for South Africa and to provide proof of having done so to the WASPA Secretariat. |
| Is this report notable? | No   |
| Summary of notability   | No   |

## Initial complaint

Complaint 27644 is the formal complaint due to the WASPA member not responding to an unsubscribe request and not providing logs for proof of subscription.

- The formal complaint was sent to the First Respondent and another member incorrectly on 2015-09-18.
- The First Respondent responded on the 2015-09-18, acknowledging the complaint and requesting the complaint be converted to an informal complaint.
- The member contacted incorrectly responded on the 2015-09-25, advising that the legal and compliance officer is travelling and requested an extension.
- The WASPA secretariat emailed the First Respondent on the 2015-09-28, advising that complaint can not be down graded to an informal complaint.
- The First Respondent responded on the 2015-09-29, with preliminary response to formal complaint.
- The complainant responded to compliant notification on the 2015-10-02.
- The member contacted incorrectly replied on the 2015-10-06, advising that they had no interaction for the MSISDN involved in the complaint.
- The formal complaint was sent to the correct member, namely the Second Respondent on 2015-10-07.
- The Second Respondent responded on the 2015-10-09.
- The complainant replied on the 2015-10-09.
- The Second Respondent responded on the 2015-10-16.
- The WASPA secretariat emailed the First Respondent and Second Respondent advising that the complainant did not provide a response and that the complaint is been assigned to adjudication.

In the initial complaint the Complainant complained of having been subscribed to a service without his consent and that he wanted a full refund of all monies which had been debited by the First Respondent from his account.

## **Member's response**

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The First Respondent initially requested that this matter be resolved informally. However, they were advised by the WASPA Secretariat that this was not possible.

They then advised that they had only received notice of the complaint on the 18<sup>th</sup> of January. I think that this was a typo as the timeline doesn't make sense and in subsequent correspondence it is clear that this should have been 18 September and as such I am going to ignore the 18<sup>th</sup> of January date.

They then stated that:

"The number in question was unsubscribed on the 1st of September, this could have been confirmed via our call center or support email. We like to resolve this matter in customer's best interest and provide a full refund as we were not able to assist the client accordingly due to reasons above."

On request from the adjudicator, the First Respondent provided proof of the refund in full.

The Second Respondent referred the matter to the First Respondent who responded and as such I will not consider them further in this adjudication.

## **Complainant's response**

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The Complainant responded that they had never received a refund from Vodacom. I think that due to the fact that amount was deducted from his Vodacom account he expected the amount to be paid back by Vodacom, however it was refunded by the First Respondent. On receipt of the First Respondent's further responses, when the WASPA Secretariat asked the Complainant for a further response, no response was received from the Complainant.

## **Sections of the Code considered**

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

5.4. Members must have honest and fair dealings with their customers.

5.11. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to. (Example: support should not be limited to email if a significant number of customers do not have access to email).

5.14. Members must have a procedure allowing consumers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

7.4. Members must not refuse a reasonable request from WASPA for information about the services they operate, for the purpose of testing those services or for the purposes of resolving a complaint.

7.5. Members must provide WASPA with any customer records relating to any service which is the subject of a complaint, including, but not limited to:

- (a) all communications sent by or to a customer in the process of joining a service;
- (b) all required reminder messages sent to a 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 service termination requests.

14.1. For all ad hoc transactions the member must keep a record of the source of the transaction request, and provide that information to the customer, on request. Records must be kept for a period of at least three years after the date of the transaction.

15.3. For all subscription and notification services the member must keep a record of the source of the service initiation request, and all subsequent interactions with the customer. Those records must be made available to the customer, on request. Records must be kept for a period of at least three years after the customer terminates the service.

16.4. Any member authorising, directing or conducting any direct marketing must implement appropriate procedures to facilitate the receipt of a demand from a person who has been approached for the purposes of direct marketing to desist from initiating any further communication (an "**opt-out request**").

16.13. Upon request of the recipient of a direct marketing message, the member must, within a reasonable period of time, identify the source from which the recipient's contact details were obtained. The member must also provide proof that the recipient has given consent to receive that message, or alternatively provide proof that the recipient has provided his or her contact details in the context of the sale of a product or service the same as that being marketed.

16.14. Once a recipient has opted out, a message confirming the opt-out must be sent to that recipient. This confirmation message must specify the marketing from which the customer has been opted out, and the customer must not be charged for this message.

17.1. With the exceptions noted below, all subscription services, notification services, contact and/or dating services and other bulk SMS services (such as free newsletters) must have a functional opt-out procedure, including the option to reply 'STOP' to SMS messages.

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## Decision

This decision is only against the First Respondent.

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

- Although I don't like the fact that there are aspects of the service that don't comply with the Code I don't find this clause to have been breached.

5.4. Members must have honest and fair dealings with their customers.

- This clause has been breached. No proof of subscription was provided and automatic subscription is neither honest nor fair.

5.11. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to. (Example: support should not be limited to email if a significant number of customers do not have access to email).

- I myself looked to find any support contact details. I found only an email and a form to be filled in on the webpage which requires the provision of more information about yourself. There is no contact number and for this reason I find a breach of this clause.

5.14. Members must have a procedure allowing consumers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

- There are no terms and conditions of service on the website setting out a complaints procedure. Nor is there a complaints contact email or number and for this reason I find a breach of this clause.

7.4. Members must not refuse a reasonable request from WASPA for information about the services they operate, for the purpose of testing those services or for the purposes of resolving a complaint.

- I agree with the case put forward by the First Respondent and find no breach.

7.5. Members must provide WASPA with any customer records relating to any service which is the subject of a complaint, including, but not limited to:

- (a) all communications sent by or to a customer in the process of joining a service;
- (b) all required reminder messages sent to a 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 service termination requests.

- None of this information was provided and as such I find a breach of this clause.

14.1. For all ad hoc transactions the member must keep a record of the source of the transaction request, and provide that information to the customer, on request. Records must be kept for a period of at least three years after the date of the transaction.

- No proof of subscription or confirmation of unsubscription was provided to the Complainant when requested. I find a breach of this clause.

15.3. For all subscription and notification services the member must keep a record of the source of the service initiation request, and all subsequent interactions with the customer. Those records must be made available to the customer, on request. Records must be kept for a period of at least three years after the customer terminates the service.

- No proof of subscription or confirmation of unsubscription was provided to the Complainant when requested. I find a breach of this clause.

16.4. Any member authorising, directing or conducting any direct marketing must implement appropriate procedures to facilitate the receipt of a demand from a person who has been approached for the purposes of direct marketing to desist from initiating any further communication (an "**opt-out request**").

- I did not see any copy of the messages in question and as such can not rule on this clause.

16.13. Upon request of the recipient of a direct marketing message, the member must, within a reasonable period of time, identify the source from which the recipient's contact details were obtained. The member must also provide proof that the recipient has given consent to receive that message, or alternatively provide proof that the recipient has provided his or her contact details in the context of the sale of a product or service the same as that being marketed.

- The Complainant never requested this information and as such I find no breach.

16.14. Once a recipient has opted out, a message confirming the opt-out must be sent to that recipient. This confirmation message must specify the marketing from which the customer has been opted out, and the customer must not be charged for this message.

- The complaint seems to turn more on unsubscribe than opt-out per se and as such I find no breach as I have already found a breach in respect of the failure to provide unsubscribe confirmation to the Complainant.

17.1. With the exceptions noted below, all subscription services, notification services, contact and/or dating services and other bulk SMS services (such as free newsletters) must have a functional opt-out procedure, including the option to reply 'STOP' to SMS messages.

- The complaint seems to turn more on unsubscribe than opt-out per se and as such I find no breach as I have already found a breach in respect of the failure to provide unsubscribe confirmation to the Complainant.

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## **Sanctions**

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I sanction the First Respondent to a fine of R70 000 (seventy thousand rand). R50 000 (fifty thousand rand) thereof to be payable within 7 (seven) days of receipt of this report. R20 000 (twenty thousand) to be suspended pending the First Respondent complying with the order set out below.

Furthermore, the First respondent must set out a complaints process on their website including a customer support telephone contact number available during business hours for South Africa and to provide proof of having done so to the WASPA Secretariat.

## **Matters referred back to WASPA**

I refer to matter back to WASPA to deal with the following clauses:

5.7, 5.8, 5.12, 15.12, 15.13, 15.17, 15.18, 15, 19, 15.20 and 15.21.

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