



**Wireless Application Service Providers' Association**

## Report of the Adjudicator

Complaint number	#28769
Cited WASPA members	Interband Enterprises LLC (1315) Smartcall Technology Solutions (0090)
Notifiable WASPA members	n/a
Source of the complaint	Public
Complaint short description	Subscription service
Date complaint lodged	2015-12-28
Date of alleged breach	Unknown
Applicable version of the Code	v 14.1
Clauses of the Code cited	4.2, 5.4, 5.15, 5.16, 15.3
Related complaints considered	n/a
Fines imposed	n/a
Other sanctions	n/a
Is this report notable?	Not notable

Summary of notability	n/a
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### **Initial complaint**

1. The complainant alleges that he received a SMS from the member stating that he requested to be subscribed to a daily subscription service at a cost of R7 a day.
  2. The complainant denies that he made any such request.
  3. The complainant argues that because the SMS required him to "confirm" the request, the member should then have a record of his opt-in. The member had failed to provide that record.
  4. The complainant also stated in his complaint that he had instructed all his service providers that his cellphone number may never be shared with any third parties. He alleges that this implies that the member procured his number through dubious means.
  5. The complainant insisted that the member remove his number from their database, and that it provides the source from which it obtained his number.
  6. The complainant also insisted that the member be severely sanctioned for attempted fraud.
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### **Member's response**

7. The member alleges that on 27 December 2015 and at 08:46:18, the complainant (or someone in control of his mobile handset) clicked on a web banner advert promoting the member's subscription service.
8. The member provided a copy of the content provider's system logs that captured the interaction between the handset and the banner advert. The member has highlighted certain entries for ease of reference.
9. The member alleges further that the complainant was then re-directed from the banner advert to the landing page for the relevant subscription service.

10. The landing page identified the subscription service, and provided the cost and frequency of the billing, and instructions on how to opt-out from the service. It also included a link to review the relevant terms and conditions relating to the service and the customer support email address and telephone number.
11. The member alleges that the complainant entered his MSISDN in the space provided on the landing page (“Enter Your Mobile”) and clicked on the green “SUBSCRIBE” call-to-action button on the landing page.
12. The member again provided copies of the content provider’s system logs that captured the interaction between the complainant’s handset and the landing page.
13. The system then initiated a request which was sent to the complainant’s mobile network operator to confirm the first opt-in request submitted on the landing page to join the subscription service at R7/day.
14. The complainant’s mobile network operator then sent a confirmation SMS to the complainant’s MSISDN, which requested the complainant to ‘accept/confirm’ or ‘decline/reject’ the first opt-in request to join the subscription service at R7/day.
15. On 27 December 2015 and at 09:46:41, the complainant selected the ‘decline/reject’ option and the process was completed.
16. The mobile network operator’s system informed the aggregator that the double opt-in (DOI) request had been declined and therefore the subscription service was not initiated.
17. The member provided copies of the aggregator’s system logs to confirm that the DOI request was declined.
18. The SMS referred to in the complainant’s complaint was the DOI confirmation SMS that was sent by his mobile network operator in response to the first opt-in request submitted on the landing page.
19. The member argued that the mobile network operator is the originator of this SMS and is in full control of the sending thereof as well as actioning the response as submitted by the recipient of the SMS.
20. The DOI confirmation SMS was triggered by the complainant’s actions when he clicked on the call-to-action button on the landing page, which serves as the first opt-in request.
21. The member argued that the logs provided confirm the interaction that took place between the complainant’s MSISDN and the banner advert and relevant landing page.

22. The complainant declined to join the service and therefore the service was not initiated and the complainant was not billed.
  23. The member states that the DOI confirmation SMS was not an unsolicited direct marketing or commercial message, but was sent by the mobile network operator as part of the double opt-in confirmation procedure set out in the WASPA Code of Conduct and in accordance with industry procedures.
  24. The member therefore denied that the complainant's MSISDN was "procured through dubious means" as alleged.
  25. The member confirmed that the complainants MSISDN has been blocked on its systems and will not be able to interact with any of the member's services going forward.
  26. The member argued that because it was the complainant himself who entered his MSISDN on the landing page, it is not required to identify any third party source.
  27. The member denies that it has breached any of the clauses cited, i.e. clauses 4.2, 5.4, 5.15, 5.16, and 15.3.
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## Sections of the Code considered

28. The following sections of the Code were considered:
  - 28.1 *Professional conduct* – clause 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;
  - 28.2 *Provision of information to customers* - clause 5.4. Members must have honest and fair dealings with their customers;
  - 28.3 *Privacy and confidentiality* – clause 5.15. Members must respect the constitutional right of consumers to personal privacy and privacy of communications;
  - 28.4 Clause 5.16. Members must respect the confidentiality of customers' personal information and will not sell or distribute such information to any other party without the explicit consent of the customer, except where required to do so by law.

28.5 *Record keeping* – 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.

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## **Decision**

29. The complainant did not provide any further response to the member's submissions in response to the original complaint.
30. There is nothing before me which indicates that the member's submissions and the supporting logs provided are not accurate and truthful.
31. I am therefore satisfied that the member has not breached any of the provisions of the WASPA Code of Conduct and this complaint is accordingly dismissed.
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