

**WASPA appeals panel  
Complaint 6706**

**REPORT OF THE APPEALS PANEL**

**Date: 17 November 2010**

**Appellant and Service Provider: Venista**

**Appellant and Information Provider (IP):**

**Complaint Number: 6842**

**Applicable versions: 7.0 Code of Conduct and 2.3 Advertising Rules**

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**1. BACKGROUND TO THE APPEAL**

1.1 This appeal concerns a complaint lodged on 3 June 2009, by the WASPA Monitor following complaints received from consumers. The complaint was lodged against Venista.

1.2 The complaint relates mostly to support services, more particularly the availability of a support line.

1.3 The complaints, the findings of the Adjudicator, the 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 the following clauses of the Code:

*3.3.1. Members will not offer or promise services that they are unable to provide.*

3.3.2. *Services must not be unreasonably prolonged or delayed.*

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

4.1.7. *Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.*

4.1.8. *Customer support may not be provided via premium rated numbers, and may only be provided via standard-rate or VAS-rate numbers.*

4.1.9. *Members undertake to inform their wireless application service customers that they are bound by this Code of Conduct. Members also undertake to make these customers aware of the WASPA complaints procedure and the mechanism for making a complaint, should any customer wish to do so.*

4.1.10. *Members' web sites must include a link to the WASPA web site and/or this Code of Conduct.*

2.2 In this appeal, the panel will be guided also, by the general provisions and purpose of the Code:

2.2.1 1.2 The primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services.

2.2.2 4.1.2 Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

### **3. FINDINGS AND DECISIONS OF THE ADJUDICATOR**

3.1 The Adjudicator's findings and sanctions were summarised as follows:

1. In respect of the failure to maintain an effectively functioning support line and the resultant breach of section 4.1.7 of the Code, the member is directed to

pay to WASPA a fine of R20 000 within 10 days of the delivery of this adjudication report.

2. In respect of the failure to include a link to the WASPA website or Code of Conduct on its website and the resultant breach of section 4.1.10 of the Code, the member is directed to pay a fine of R20 000 within 10 days of the delivery of this adjudication report.

3. In respect of the misleading description of the support line as “*toll free*” without any qualification regarding the charges applicable to callers from mobile phones and the resultant breach of section 4.1.1 and 4.1.2 of the Code, the member is directed to pay a fine of R25 000 within 10 days of the delivery of this adjudication report.

4. The member is directed to insert into any relevant publication advertising any 00800- support line, including its website, a description of any charges that may apply in respect of callers to any such line from mobile phones and to advise WASPA of the proposed description of the charges that it intends to insert and to comply with any requirements of WASPA in this regard.

3.2 The Adjudicator’s reasoning will be referred to in more detail below.

#### 4. **GROUNDS OF APPEAL**

4.1 The grounds of appeal for complaint 6706 are quoted verbatim:

**4.1.1 Sanction 1. In respect of the failure to maintain an effectively functioning support line and the resultant breach of section 4.1.7 of the Code, the member is directed to pay to WASPA a fine of R20 000 within 10 days of the delivery of this adjudication report.**

##### Member’s Response:

WASPA Code of Conduct Section 4.1.7. states : Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).

Venista has, for the last 4 years, continually provided full and easily available customer support, via all contact mediums. Unfortunately, in June 2009 our customer support telephone line was disconnected by Telkom, in error, as a result of their negligence.

Venista took immediate and urgent action to rectify this error and in response, Telkom apologised and gave their assurance that the disruption of service would last no longer than that evening, and that the line would be reactivated by the following morning.

Despite this reassurance, Venista then took the added precaution of purchasing a second, reserve line, contracted to Venista directly to ensure complete control of all aspects of maintenance. Although, due to the vagaries of line acquisition in South Africa, this would not be an immediate solution, it would guarantee Venista would never be placed in this situation again.

The following morning, when it became apparent that the line had not been reconnected as promised, Venista contacted Telkom again and stressed the urgency of the situation. Telkom responded with a further apology and a promise that the line would be reconnected **within the hour**.

Frustratingly, they continued to make that same promise every hour for the remainder of that entire morning. By noon, despite Telkom's continuing reassurance that the line would be reconnected 'within the hour' Venista decided to implement the emergency measure of providing an international toll-free number for our customers, until the line was reconnected. The number was placed prominently on our website and included in every message sent out to our customers.

At 1pm that afternoon we received this complaint from WASPA (#6706).

As regards to the Adjudicator's comments; while it is true to say Venista knew about the problem before the WASPA complaint was received, it is not true to say we had not taken adequate steps to rectify the problem.

Since June 2009 to this day, Venista and its customers have enjoyed uninterrupted support service, once again, using the directly contracted helpline number.

At all times we have practiced due diligence regarding the provision of our customer support, and took immediate and urgent action to rectify and compensate for Telkom's negligence in this one instance.

We would also like to respectfully submit that Section 3.3.3 of the Code states:

A member is not liable for any failure to provide a service due to circumstances beyond that member's control.

Therefore we wish to appeal for a review of the adjudicator's decision that we have breached Section 4.1.7 of the Code, and the resulting fine.

**4.1.2 Sanction 2. In respect of the failure to include a link to the WASPA website or Code of Conduct on its website and the resultant breach of section 4.1.10 of the Code, the member is directed to pay a fine of R20 000 within 10 days of the delivery of this adjudication report.**

Member's Response:

The Adjudicator's decision that Venista had breached section 4.1.10 of the Code was entirely based upon the WASPA Monitor's observations and comments, which were:

***"I then decided to go onto the Venista website (www.venista.com) to see if there were any other customer care numbers I could call. I noticed that there is only one U.K customer care number and no South African customer call centre number what so ever. I also noticed that there is no link to Waspa anywhere on the website, which is another breach of the code of conduct section: 4.1.10."***

The site the WASPA Monitor was visiting and commenting upon ([www.venista.com](http://www.venista.com)) is our international corporate business website, **not** our commercial customer website for South Africa, therefore has no need or requirement to provide a link to WASPA or provide a South African customer care centre number.

On these grounds we appeal for a review of the decision and resulting fine regarding breaching Section 4.1.10 of the Code.

**4.1.3 Sanction 3. In respect of the misleading description of the support line as “toll free” without any qualification regarding the charges applicable to callers from mobile phones and the resultant breach of section 4.1.1 and 4.1.2 of the Code, the member is directed to pay a fine of R25 000 within 10 days of the delivery of this adjudication report.**

Member’s Response:

Code Section 4.1.1. : Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

“Pricing information for services” clearly refers to services a company offers at a price. As previously stated, we implemented our toll-free number as a means of contact for our customers to utilise, not as a commercial endeavour. On the contrary, making our toll-free number available to our customers resulted in Venista incurring and bearing the total or partial cost of every call made to us during the 48 hours it was necessary to employ it.

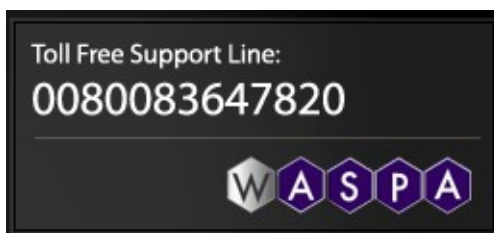
We therefore wish to appeal for a review of the decision that section 4.1.1 of the Code had been breached, and the resulting fine.

Code Section 4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

As can be seen from the screenshot of our site, which the Adjudicator kindly provided in her adjudication, when we provided this number as an emergency measure until Telkom could rectify their error, we clearly stated the fact that this was a Toll Free support line. It is universally accepted and understood that toll-free applies only to landlines, and that mobile operator rates may vary.

As the Adjudicator notes, there is no obligation on a member to provide “free” or “toll free” telephone numbers for support lines.

Providing a toll free number either negates completely, or significantly reduces the cost of a call for the customer, as the recipient (Venista) incurs the full or partial (if made from a mobile phone) cost of **all** calls. Therefore the caller always bears **less** cost than calling a standard-rate line.



Toll Free is a true, exact and accurate description, and there was absolutely no intention to deceive or mislead.

Therefore we wish to appeal for a review of the adjudicator’s decision that we have breached Section 4.1.2 of the Code, and the resulting fine.

## 5. FINDINGS OF APPEAL PANEL

### 5.1 Version of the Code

5.1.1 The complaint was made on 3 June 2009. Version 7.0 of the Code, in use from 25 March 2009 to 17 June 2009, applies.

### 5.2 Finding

5.2.1 The Appeals Panel will consider the appeal in the order set out by the Appellant.

**Appeal of Section 4.1.7 finding**

5.2.2 The first ground of appeal is the finding that there was not an effectively functioning support line, and that Section 4.1.7 was therefore breached.

5.2.3 The Appellant explained that the failure of the line was due to a fault with Telkom, and it explained the steps that it took to resolve this issue. It drew attention to Section 3.3.3 of the Code which states that a member is not liable for any failure to provide a service due to circumstances beyond that member's control.

5.2.4 Section 4.1.7 reads, "Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes."

5.2.5 It seems that what happened was this: Sybase 365 manages the Appellant's telephone line. Sybase 365 changed its postal address. Telkom failed to note this change, and did not send the telephone bill to the correct address. When the bill was unpaid, it disconnected the line.

5.2.6 We agree with the Adjudicator that it is clear that on 2 June 2009 the telephonic support line was not functioning. There was therefore a prima facie breach of Section 4.1.7.

5.2.7 We also agree with the adjudicator that the reasonableness of the explanation of Telkom's delays must be taken into account.



- 5.2.8 We take cognisance of Section 3.3.3, and accept that the delay by Telkom was *to some extent* beyond the member's control. We note that the member's role was further complicated by the involvement of a third party who managed the member's telephone line.
- 5.2.9 The adjudicator felt that the member could have taken more steps to mitigate the damage involved in the lost support line, such as placing a notice on its website. We note that by 3 June 2009, the member had put an emergency "toll free" line in place, and put that information on its website. While we agree that it would have been useful if the member had immediately noted the support line failure on the website, we can understand the oversight in view of the steps that it was trying to take to alleviate the problem.
- 5.2.10 The fact of the matter is that the failure of the support line would not have been "fixed" by a message on the website, merely mitigated. The prima facie breach of Section 4.1.7 would similarly not have been fixed, but merely mitigated.
- 5.2.11 No explanation is given as to why Sybase 365 did not pick up that an expected bill for a line that it manages had not arrived, and follow up on this prior to disconnection. This would surely fall within their responsibilities managing the Telkom line.
- 5.2.12 It would therefore appear that the situation that the Appellant found itself in was due partly to a failure by Telkom, and possibly partly to some level of carelessness by Sybase 365 in managing its change of address.
- 5.2.13 When an entity chooses to act through an agent, as the Appellant did with Sybase 365 in this case, they become responsible for the action of the agent. We are therefore not satisfied that this is a situation to which Section 3.3.3 applies. The Appellant's agent could have better managed the situation to

avoid the disconnection, and as such this was not a situation of “circumstances beyond [the] member’s control” in the sense of Section 3.3.3.

5.2.14 **We therefore agree with the adjudicator that there was a breach of section 4.1.7 of the Code.**

5.2.15 However, as noted above, we are sympathetic to the fact that the Appellant was not directly responsible for the breach, and as soon as it became aware of same took active steps to address the issue.

5.2.16 **Given this, we find that the sanction of R20 000,00 is harsh. We therefore overturn the sanction. We note, however, that the Appellant needs to ensure that Sybase 365 put better checks and balances in place. A future incident such as this one will not be regarded as sympathetically. To ensure that this is done, we are suspending the fine of R20 000 for six months. The fine will be triggered by a breach of section 4.1.7.**

#### **Appeal of Section 4.1.10 finding**

5.2.17 The issue in this section is the failure of the Appellant to include a link to the WASPA website on its website.

5.2.18 The Appellant submitted that the website that the Monitor accessed was in fact an international website and there was therefore no need to put a link to WASPA on that website.

5.2.19 What is interesting is that the Appellant do not in their appeal documents provide the correct website address.

5.2.20 The Appeals Panel has confirmed that the website [www.venista.co.za](http://www.venista.co.za) does now exist, and that there is a WASPA link on that website now. It is impossible to ascertain if this website existed at the time of the complaint.

5.2.21 We have read through all the communication in this matter and note that at no time did the Appellant refer WASPA to this site.

5.2.22 Given that it would appear that the toll free number was published on the “.com” website, we have reasonable grounds to believe that the “.co.za” website did not exist at the time of the complaint, or was not regarded by the Appellant as the first port of call for a consumer.

5.2.23 It is interesting to note that even now, the “.co.za” website does not contain product related information, and only contact details for complaints. It would therefore appear that even if the “.co.za” site existed at the time, in its current form, which we find unlikely, then it would not have been the most natural first port of call for a Venista consumer. We note that the relevant section of the Code does not refer to South African websites, but to “members’ websites”.

5.2.24 The Appellant markets its product to South Africa. It is therefore the responsibility of the Appellant to ensure that the South African consumer is properly serviced.

5.2.25 We are therefore satisfied that at the time of the complaint, there was no WASPA link on the website that the consumer would most likely access. **We therefore dismiss the appeal in this regard, and uphold the sanction of R20 000,00.**

#### **Appeal of Section 4.1.1 and 4.1.1 finding**

5.2.26 This aspect of the appeal relates to the use of the words “toll free” in relation to the emergency number that the Appellant set up.

5.2.27 It would appear to be common cause that the number was toll free from a landline, but incurred charges when accessed from a cell phone.

- 5.2.28 The question is whether the Appellant should have provided greater clarity that the line was not toll free from a cell phone, and whether this failure resulted in a breach of sections 4.1.1 and 4.1.2.
- 5.2.29 It is noted that it does not appear from the initial correspondence that the Appellant was given an opportunity to comment on sections 4.1.1 and 4.1.2. The original adjudication is therefore flawed in this respect. This having been said, the Appeal has now given the Appellant an opportunity to comment on those sections and on the issue of the toll free number.
- 5.2.30 It is accepted that there was no duty on the Appellant to set up a toll free number, and in doing so they were acting in good faith and attempting to address the problem with their landline.
- 5.2.31 The Appellant submits that it is “universally accepted and understood that toll-free applies only to landlines”. The Appellant submitted nothing to support this contention, and the Appeals Panel rejects it. In rejecting it, we note that the Appellant should take into account that the education levels of a cell phone user in South Africa vary greatly, and that the assumptions that can perhaps be made in a market such as Germany can not be made in South Africa.
- 5.2.32 **We find that the failure to include a disclaimer that the “toll free” only applies to landlines was indeed misleading and ambiguous, and in breach of Clause 4.1.2. However, we are satisfied that the Appellant was acting in good faith in trying to address a problem. We therefore suspend the sanction of R20 000,00 for six months. The sanction will be triggered by any breach of Clause 4.2.1 by the Appellant in the next six months.**

**In summary:**

**5.2.33 The appeal in terms of section 4.1.7 is dismissed. The sanction of R20 000,00 is suspended for 6 months.**

**5.2.34 The appeal in terms of section 4.1.10 is dismissed, and the sanction of R20 000,00 remains.**

**5.2.35 The appeal in terms of sections 4.1.1 and 4.1.2 is dismissed, but the sanction of R20 000,00 is suspended for six months.**

5.2.36 The cost of appeal is non-refundable.