

WASPA appeals panel
Complaint 8173

REPORT OF THE APPEALS PANEL

Date: 17 January 2011

Service Provider: RMCS

Appellant and Service Provider (SP): RMCS

Complaint Number: 8173

Applicable versions: 8.0

1. BACKGROUND TO THE APPEAL

1.1 This appeal concerns a complaint lodged on 17 November 2009 for an unsubscribed request against RMCS, a Service Provider (SP).

1.2 The SP is a member of WASPA and based in South Africa.

1.3 The complaint relates to the alleged failure by the SP to fulfil the unsubscribe request.

1.4 The complaints, the findings of the Adjudicator, the SP'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 following clauses of the Code were considered:

- 2.1.1** 11.5.12. 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.

3. FINDINGS AND DECISIONS OF THE ADJUDICATOR (Please note that this extract is a verbatim copy of the Adjudicator's Report)

- 3.1** The SP has breached section 11.5.12 of the WASPA Code of Conduct. The complaint is accordingly upheld.

3.2 Sanctions Imposed

- 3.2.1** There have been no previous complaints lodged against the SP.

- 3.2.2** The SP's non-response to both this complaint and the original unsubscribe request is viewed in a serious light. The following sanctions are given:

- 3.2.2.1** The SP is fined R 100 000.00.

- 3.2.2.2** The SP is ordered to provide proof of subscription in respect of the complainant's number.

- 3.2.3** Should it fail to do so, the SP is then ordered to refund all amounts charged to the complainant's account.

4. GROUNDS OF APPEAL (Please note that this extract is a verbatim copy of the Appeal lodged by the Appellant, numbered by the panel for ease of reference)

- 4.1** Grounds of appeal for complaint 8173.

- 4.1.1** The SP lodged its appeal in two reports:

4.1.2 We are in receipt of your Adjudicator's Report and hereby wish to confirm that we did in fact respond via the WASPA website within the prescribed deadline. Furthermore we confirmed that the client had been unsubscribed.

4.1.3 Per the findings it is noted that:

4.1.3.1 this is a first time offense;

4.1.3.2 RMCS is not a WASP merely a service providers.

4.1.4 On this basis we appeal the findings.

4.1.5 We would like to confirm:

4.1.5.1 The RMCS complaint received was answered within the prescribed time period, however as a first time offender we did not know the correct procedures in responding and therefore we responded to the complaint on the WASPA site and did not respond to the email received;

4.1.5.2 The customer was contacted and the complaint resolved timiously; no further billings occurred on the clients account;

4.1.5.3 We have informed all staff that should such an offense occur again to respond directly to the mail.

4.1.5.4 You will appreciate that as a first time offender (with a track record of over 5 years) it seems ridiculous to receive any form of penalty for an oversight such as this?

4.1.6 WASPA can substantiate that all the above.

5. FINDINGS OF APPEAL PANEL

5.1 Version of the Code

5.1.1 This matter is governed by the WASPA Code of Conduct Version 8.0 due to the fact that the alleged infringements occurred between 2009-10-13 and 2010-03-31.

5.2 The Panel has reviewed the decision and subsequent sanctions levied against the Appellant in this matter.

5.3 The Panel is of the opinion that there was no malice on behalf of the Appellant and that its failure to respond to the unsubscribe request which subsequently resulted in a breach of section 11.5.12 of the Code was a mere oversight and procedural mistake.

5.4 The Panel has also taken into consideration that this has been a first time offence.

5.5 It has to be noted however that absence of knowledge pertaining to the workings of the Code should not be held as a valid excuse for wrongdoing and subsequent breaches of the Code.

5.6 It is however the Panel's contention that the harm and potential harm was at a minimum and the Panel has also taken into consideration that the customer was contacted immediately.

5.7 The finding of the Appeals Panel is:

5.7.1 The sanction of R 100 000, 00 as referenced to in paragraph 3.2.2.1 is overturned and reduced to a formal reprimand.

5.7.2 The other sanctions are upheld.

5.7.3 The cost of appeal is non-refundable.