

Adjudicator's Report



Wireless Application Service Providers' Association

Complaint number	#30073
Cited WASPA members	Vodacom Service Provider (Pty) Ltd (0005)
Notifiable WASPA members	None
Source of the complaint	WASPA Media Monitor
Complaint short description	The member failed to take reasonable steps to ensure that its customers complied with the Code's requirements, specifically relating to notices about deductions from charitable donations.
Date complaint lodged	2016-04-12
Date of alleged breach	Unclear although likely in March 2016
Applicable version of the Code	14.3
Clauses of the Code cited	3.1, 3.5, 3.6, 3.7, 4.1, 4.2, 5.4, 5.5
Related complaints considered	Appeal report 27729

Fines imposed	<ol style="list-style-type: none"> 1. A fine of R50 000 for the member's breach of clauses 3.1, 3.5, 3.6, 3.7 and 4.1; and 2. A fine of R15 000 for the member's breach of clause 4.2.
Is this report notable?	Yes
Summary of notability	This complaint appears to be the culmination of continued efforts to persuade the member to ensure its customers are adequately informed about the Code's messaging requirements when it comes to charitable fundraising campaigns. Non-compliance casts the industry in a poor light and this issue deserves more attention.

Initial complaint

This complaint concerns the member's failure to ensure that its customer, The Children's Hospital Trust ("the Trust") (a charity), complied with clauses 19.3 and 19.4 of the Code. This complaint is not directed at the Trust but rather at the member. I have attached the Monitor's complaint as annexure "A". It is somewhat detailed and explains why this matter is important to the Monitor.

The core complaint is that the Trust asked the member which terms and conditions it was required to state in its marketing materials for its fundraising campaign. Rather than pointing out the requirements of, among others, clauses 19.3 and 19.4 of the Code, the member's representative advised the Trust as follows:

There are not any terms and conditions regarding the advertising of the number, you just need to mention the cost of the SMS being R20.

Upon being informed that the marketing campaign was in breach of the Code, the Trust was forced to request changes to the marketing copy at a cost of roughly R15 000 to the Trust.

The Monitor was copied on correspondence between the member and the Trust and came to the conclusion that fault lay directly with the member and not the Trust. The member was asked a specific question and failed to give the correct answer.

Member's response

Much of the correspondence was focused on addressing the Trust's shortfall caused by the incorrect advice given by the member's representative. The member's attention only turned to the present complaint, in a manner of speaking, later in the process.

The member has not directly addressed the Monitor's complaint. It does appear to have reached an agreement with the Trust to address the Trust's grievances and the correspondence before me indicates that a complaint lodged by the Trust regarding the member's misleading response to its question has been withdrawn and the matter resolved between them.

The Monitor has elected to proceed with the present complaint against the member. The member's response to the complaint is attached as annexure "B". The member has not disputed that it breached the various provisions of the Code that the Monitor highlighted in the complaint. Further, the member's advice that the representative who gave the incorrect feedback to the Trust has been reassigned is an implicit acknowledgment that the member failed to comply with the Code.

Sections of the Code considered

Version 14.3 of the Code applies to this complaint. The Monitor cited the following clauses:

Extent to which the Code applies to third party services

3.1. If a customer, supplier, affiliate or sub-contractor of a member provides or markets services covered by this Code of Conduct, those services are subject to the relevant provisions of this Code, as if the party providing or marketing them was a member.

...

Third parties who are not WASPA members

3.5. Members must ensure that any customer, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, is aware of the requirements of this Code of Conduct.

3.6. *Members must ensure that any customer, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, provides and markets those services in a manner consistent with the requirements of this Code of Conduct.*

3.7. *A member is liable for any breaches of this Code of Conduct resulting from services offered or marketed by a customer, supplier, affiliate or sub-contractor if that party is not also a member of WASPA. If the member can demonstrate that they have taken reasonable steps to ensure that that party provides and markets services in a manner consistent with the requirements of this Code of Conduct, this must be considered as a mitigating factor when determining the extent of the member's liability for any breaches.*

...

Employee awareness of the Code

4.1. *Members must ensure that any relevant employees are made aware of this Code of Conduct and any associated procedures.*

Professional conduct

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.*

...

Provision of information to customers

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

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

Decision

Clauses 3.1, 3.5, 3.6, 3.7 and 4.1

Based on the correspondence I was briefed with, I have no difficulty finding that the member breached these provisions of the Code. The member's representative was asked a specific question about terms and conditions in the context of the Trust's marketing campaign and the member's representative failed to give the Trust the correct information.

The Monitor pointed out in the complaint narrative that it has had repeated discussions with the member regarding marketing campaigns for fundraising campaigns. The member did not respond to this. It is reasonable to assume that the member is aware of the need for complete disclosure of deductions from donations by SMS. There certainly appears to have been sufficient attention in the media when this has not been done in the past.

Clause 4.2

This clause has been applied to various forms of misconduct. A recent appeal report regarding complaint 27729 gave guidance on how to interpret this clause and apply it:

Clause 4.2 deals with "Professional conduct". The adjudicator invoked the clause in connection with additional apparent breaches of the Code. The adjudicator made a finding that the member infringed clause 4.2 on the basis of findings that it infringed other provisions of the Code. The clause says:

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

We believe this finding was not correct because it stems from a misunderstanding of clause 4.2's focus.

Clause 4.2 speaks to the manner in which members are expected to deal with various stakeholders; namely public, customers, WASPA and other service providers. Where other provisions of the Code focus on aspects of members' services, clause 4.2 focuses on members' conduct specifically.

A finding that a member's service infringed a provision of the Code does not necessarily mean that the member infringed clause 4.2. To conflate the two would be to create situations where members are sanctioned twice for the same infractions: under the specific

clauses of the Code pertaining to the specific aspects of the service in question and under clause 4.2.

It is entirely conceivable that a member could conduct itself professionally and, yet, still operate a service that infringes the Code.

This begs the question what “professional” means? According to the Merriam-Webster dictionary, the word “professional” includes these definitions:

(1) characterized by or conforming to the technical or ethical standards of a profession

(2) exhibiting a courteous, conscientious, and generally businesslike manner in the workplace

We interpret clause 4.2 as saying that when members deal with members of the public, customers, WASPA and other service providers; they must conduct themselves ethically, courteously, conscientiously and in a “generally businesslike manner”.

Put another way, clause 4.2 focuses on the members’ behaviour, specifically, not on the members’ services.

Where members’ services breach the Code, they will have violated other, specific provisions of the Code and these infringements will be determined accordingly. In this particular matter, we find that the Appellants conducted themselves professionally even though their services infringed other aspects of the Code.

A finding of an infringement of clause 4.2 requires an adjudicator to establish the requisite degree of professionalism expected of WASPA members and to then demonstrate that the particular member fell short of that standard.

In this matter, the member has not responded fully to the complaint and appeared, at times, to have been somewhat dismissive of the complaint and, later in the process, to have adopted a somewhat belligerent tone with the Monitor.

Given the subject matter of the complaint, this is not what I regard as the requisite “professional manner” expected from the member’s dealings with WASPA. I therefore find the member in breach of clause 4.2.

Clauses 5.4 and 5.4

These clauses have been interpreted as focusing on whether a WASPA member has misled its customers. It contemplates a degree of intentional wrongdoing. Clause 5.4 speaks of “honest and fair dealings” and clause 5.5 contemplates whether a member “knowingly disseminate[s] information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission”.

These clauses imply deceptive behaviour, tantamount to a fraud, by a member and while the member’s representative certainly misled the Trust with incorrect information, I do not believe that the member’s representative acted fraudulently. She advised the Trust incorrectly because she was ignorant of the Code’s requirements. This ignorance is the underlying premise of this complaint.

I am therefore unable to find that the member breached clauses 5.4 and 5.5 of the Code.

Sanctions

Flowing from my findings above, I impose the following sanctions on the member:

3. A fine of R50 000 for the member’s breach of clauses 3.1, 3.5, 3.6, 3.7 and 4.1; and
4. A fine of R15 000 for the member’s breach of clause 4.2.

These fines are payable on demand by the Secretariat.

The Monitor asked that I direct the member to refund the Trust the costs it incurred in its attempts to bring its marketing campaign into compliance with the Code. This issue appears to have been resolved between the Trust and the member directly so there is no need for me to consider this request.

Subject: [WASPA.complaints] WASPA Complaint #30073 - Code of Conduct (Media Monitor)
From: WASPA Website <monitor@waspa.org.za>
Date: 2016-04-12 02:09 PM
To: complaints@waspa.org.za

Your Information

Name

WASPA Media Monitor

Email

monitor@waspa.org.za

Identifying the WASPA member(s) involved

WASPA member name (1)

Vodacom (Pty) Ltd (Internal Wasp)

Information about the breach/complaint

Does the complaint involve a specific mobile number?

No, the complaint isn't specific to a particular mobile number.

Have you identified specific clauses in the WASPA Code of Conduct that you think may have been breached? If so, please list them below

3.1. If a customer, supplier, affiliate or sub-contractor of a member provides or markets services covered by this Code of Conduct, those services are subject to the relevant provisions of this Code, as if the party providing or marketing them was a member.

3.5. Members must ensure that any customer, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, is aware of the requirements of this Code of Conduct.

3.6. Members must ensure that any customer, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, provides and markets those services in a manner consistent with the requirements of this Code of Conduct.

3.7. A member is liable for any breaches of this Code of Conduct resulting from services offered or marketed by a customer, supplier, affiliate or sub-contractor if that party is not also a member of WASPA. If the member can demonstrate that they have taken reasonable steps to ensure that that party provides and markets services in a manner consistent with the requirements of this Code of Conduct, this must be considered as a mitigating factor when determining the extent of the member's liability for any breaches.

Employee awareness of the Code

4.1. Members must ensure that any relevant employees are made aware of this Code of Conduct and any associated procedures.

Professional conduct

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.

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

Please provide a detailed description of the complaint below. The more information you can provide WASPA with here, the more likely it is that we will be able to help you with your complaint

The purpose of this formal complaint is to highlight the mismanagement, of a Charity customer (The Red Cross Hospital), belonging to Vodacom Internal Wasp.

Since the inception of the WASPA COC, we have required all members to abide by the following clauses:

19.3. Advertising for charitable promotions must make it clear that network fees and administration fees will be deducted from amounts paid.

19.4. Advertising for charitable promotions must specify the identity of the beneficiary, and must make clear any restrictions or conditions attached to the contribution to be made to the beneficiary.

The copy line: "Network and Admin fees apply" is, and always has been, a requirement on ALL promotional mediums when raising funds for a charity. Not inserting this line on marketing material, implies that the FULL amount will be handed over to the Charity organisation.

We have seen bad press around this issue, more specifically on Carte Blanche (twice). It creates a very negative perception for our industry and we simply cannot afford this kind of negative press. Consumers are supposed to donate monies to a Charity with trust and confidence.

With this in mind, the media monitoring team have always been sensitive to Charity Organizations and very sensitive to how marketing problems are communicated to them, as we know that revising creative material is an expensive exercise. Going back into studio/production on a Television or Radio or Print advertisement, is a very costly job and should be avoided at all costs. We have therefore not lodged formal complaints against members promoting charity short codes, but have rather made use of informal processes within WASPA.

These informal emails, which handled problem areas informally, is no longer serving WASPA. We have repeatedly and consistently, over a period of years, advised Vodacom Internal WASP of the need to inform their Charity clients to insert the copy line "Network and Admin fees apply". At first the media monitoring team thought that this issue arising over and over again, was just bad luck for our Member. But upon investigation in our most recent non-compliance issue, it became very clear that Vodacom Internal WASP was NOT guiding Charity organizations in the marketing/fundraising of the Charity.

In fact it became clear that there was no attention to detail exercised, that the leniency the Media Monitor was showing Vodacom Internal WASP was being taken for granted and that Vodacom staff simply did not know the WASPA COC. It also became clear that they were not learning from their mistakes (as pointed out by the media monitor).

We now have an issue with Red Cross Hospital. I will attach in a separate email, the correspondence from Red Cross to Vodacom Internal WASP, where they ask Vodacom if there are any T&C's that should be included in their marketing elements. Please note the campaign was being advertised on Television, Radio and Print. It is the largest campaign Red Cross Hospital has ever run.

Vodacom Internal WASP replied, in writing, to the Red Cross Hospital advising no T&C's are required. And i quote ex email: "There are not any terms and conditions regarding the advertising of the number, you just need to mention the cost of the SMS being R20."

When I contacted them to ask for all these mediums to be revised, the Red Cross Hospital was devastated that all their pro bono advertising elements had to be revised. The production houses had already produced everything for free, and were not happy to make revisions for free again. Therefore, the Red Cross Hospital has to find R15 000 to make revisions.

When I contacted Vodacom Internal WASP again asking how they were going to fix this issue with Red Cross, I was advised that the staff member handling this account, was moved to another division as she lacked attention to detail.

We thank Vodacom Internal WASP for this potential fix, however it does not help Red Cross Hospital. They still have to fit a R15 000 bill.

We would like to ask the adjudicator to consider a reimbursement from Vodacom Internal Wasp to Red Cross Hospital for R15 000. We are able to request final numbers/invoices from Red Cross as proof.

In our view, Red Cross Hospital showed every effort to ensure their marketing was right. (Email attached). In our final opinion, Red Cross Hospital should not be penalised for incompetent staff members at Vodacom Internal WASP. It is also our view that simply moving a staff member from one department to another does not solve the huge financial implication that Red Cross Hospital is sitting with. The thought of taking money from the Charity funds, that are intended for their ICU, to pay for advertising revisions, is simply preposterous.

Just to reiterate:

1. This Code clause has never changed since inception of the WASPA COC - it has ALWAYS been a requirement and if a member is running Charity Short Codes, there is no acceptable reason for consistently making the same mistake.
2. Vodacom Internal WASP has been repeatedly requested by the Media Monitor to revise artwork for their Charity clients
3. Vodacom Internal WASP, following several request from the Media Monitoring team, still did not rectify these issues with future Charity marketing i.e. learning from their mistakes.

We look forward to the adjudicators decision.

Please note: I have not included the Print, radio or Television commercial as I did not feel it is relevant. However, should the adjudicator need to see them, please advise and I will provide.

Does your complaint involve a specific print, radio or television advert? If so, please provide more information about where and when you saw or heard the advertisement

no

Additional information

If you would you like to suggest that the Head of Complaints consider a specific process for handling this complaint, please indicate below:

Formal process

Good faith declaration

- I hereby declare that the information provided in this complaint is to my knowledge true and correct, and that I am submitting this complaint in good faith.
-

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This list is intended for the use of WASPA members only. All communication is confidential and may not be distributed.

complaints mailing list

complaints@waspa.org.za

<http://lists.waspa.org.za/mailman/listinfo/complaints>

Subject: Re: [WASPA.complaints] Complaint #30073 proceeding to adjudication without a further submission from the complainant

From: "Gomane-Mabuza, Sonia, Vodacom South Africa" <[REDACTED]>

Date: 2016-05-10 10:07 AM

To: Lorraine Hartzler <complaints@waspa.org.za>, "Loubser, Mary-Anne, Vodacom South Africa" <[REDACTED]@vodacom.co.za>, "Maluleka, Tracy, Vodacom South Africa" <[REDACTED]@vcontractor.co.za>, " Ntshangase, Phindile, Vodacom South Africa" <[REDACTED]@vcontractor.co.za>

Dear WASPA Secretariat

Vodacom acknowledges receipt of the complaint #30073 brought by the Media Monitor following request from the Head of Communications at the Children's Hospital Trust ("the Complaint") and refers to the telephonic discussions held on Friday, 6 May 2016 with regards to the WASPA complaints processes and procedures.

We do not intend to deal with each and every allegation made by the Media Monitor and will therefore only focus on the issues relating to the Complaint in questions. Our failure to do so should not be seen as an admission thereof. Vodacom reserves the right to respond to broad unrelated allegations to this Complaint at the right forum and time.

For your background, we wish to confirm that Vodacom appointed Apprentice Valley to provide the management of the Vodacom Internal Wasp function since December 2014 ("the Service"). The service forming part of this complaint is part of the Services that Apprentice Valley ("the Service Provider") provides on behalf of Vodacom. Contrary to the views stated by the Media Monitor, Vodacom or its Service provider have no intention not to comply with the WASPA Code of Conduct and are committed to adhering to the WASPA Code of Conduct. We wish to place on record that contrary to what has been stated in the Complaint, we have been advised by our Service Provider that the staff member that was handling the Children's Hospital Trust account is no longer employed by our Service Provider and has not been moved to another division.

The Media Monitor requested, in the submission of the complaint, that the adjudicator consider a reimbursement from Vodacom Internal Wasp to Red Cross Hospital for R15 000. We wish to advise that since the receipt of the complaint, Vodacom did request invoices as proof of the amount in question and has offered and paid Red Cross Hospital the amount of R15 000 as a goodwill gesture. The Red Cross Hospital has since advised the media Monitor of this factor and confirmed its intention to withdraw the complaint.

We have been advised by the WASPA secretariat that this complaint cannot now be withdrawn but based on the correspondence that we received as part of the complaint that showed that the Red Cross Hospital had requested the Media Monitor to lodge the complaint on their behalf, we did not wish to delay any further in reimbursing the Red Cross Hospital as a gesture of goodwill.

We once again wish to confirm that Vodacom and its Service Providers are committed to complying with the Waspa Code of Conduct. We are placing measures in place to ensure that the WASPA Code of Conduct is adhered to in all Internal Wasp services.

We look forward to hearing from you on the way forward in this matter.

Regards

Sonia Gomane-Mabuza
Executive Head: Legal Affairs
Vodacom (Pty) Ltd

Landline: +27 11 [REDACTED]
Mobile: +27 82 [REDACTED]
Email: [REDACTED] [vodacom.co.za](mailto:[REDACTED]@vodacom.co.za)
Address: 082 Vodacom Boulevard, Midrand 1685
www.vodacom.co.za

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-----Original Message-----

From: WASPA Complaints (Lorraine Hartzler) [<mailto:complaints@waspa.org.za>]

Sent: 06 May 2016 01:17 PM

To: Gomane-Mabuza, Sonia, Vodacom South Africa; Loubser, Mary-Anne, Vodacom South Africa; Maluleka, Tracy, Vodacom South Africa; Ntshangase, Phindile, Vodacom South Africa

Subject: Complaint #30073 proceeding to adjudication without a further submission from the complainant

Dear WASPA member,

You have previously provided WASPA with a response to formal complaint #30073. As required by clause 24.27 of the WASPA Code of Conduct, your response was provided to the complainant and he or she given an opportunity to provide a further submission in reply.

The complainant has either chosen not to provide WASPA with a further submission, or missed the deadline to provide additional information.

WASPA will now assign the case file for this complaint to an independent adjudicator for review. On the basis of the evidence presented, the adjudicator must determine if a breach of the WASPA Code of Conduct has occurred, and if so, will determine appropriate sanctions.

It is possible that the adjudicator will request additional information from either you, or the complainant, or both.

Once this process has been completed, the adjudicator will provide a report to the WASPA Secretariat. We will provide you with access to this report once we receive it.

Should you have any questions regarding the formal complaints procedure, or the WASPA Code of Conduct, please contact the complaints team using the complaints@waspa.org.za address.

Yours sincerely,
WASPA Secretariat

----- Forwarded Message -----

Subject: [WASPA.Archive] Confirmation of receipt of response to formal complaint #30073

Date: Fri, 6 May 2016 09:43:08 +0200

From: WASPA Complaints (Lorraine Hartzler) <complaints@waspa.org.za>

Reply-To: complaints@waspa.org.za

Organization: WASPA

To: [REDACTED] [vcontractor.co.za](mailto:[REDACTED]@vcontractor.co.za)

Dear WASPA member,

This message serves as confirmation that WASPA has received your response to formal complaint #30073.

Although you have received the below information, the Media Monitor remains the

complainant of this complaint, as is the only party that can withdraw this complaint.

Your submission will now be passed on to the complainant in this matter, who has five working days to provide a reply. Once (and if) the complainant replies, you will again be given a further opportunity to respond to the complainant's reply.

Should you have any questions regarding the formal complaints procedure, or the WASPA Code of Conduct, please contact the complaints team using the complaints@waspa.org.za address.

Yours sincerely,
WASPA Secretariat

On 2016-05-05 4:35 PM, Maluleka, Tracy, Vodacom South Africa wrote:

HI

I did not send as attachment at this point due to challenges to open that side. See mail trail below.

Kind Regards

[[cid:image001.png@01D067BB.3EB307D0](#)]

Tracy Maluleka
Vodacom Internal WASP
Enterprise Digital Solutions
Call: 011 [REDACTED]
Email:
[REDACTED][@vcontractor.co.za](mailto:[REDACTED]@vcontractor.co.za)<[mailto:\[REDACTED\]@vodacomessaging.co.za](mailto:[REDACTED]@vodacomessaging.co.za)>
www.vodacomessaging.co.za<<http://www.vodacomessaging.co.za/>>

Best Network for Smartphones

From: Roxy Mitchell
<[\[REDACTED\]@chtrust.org.za](mailto:[REDACTED]@chtrust.org.za)>
Date: Friday 29 April 2016 at 2:43 PM
To: "monitor (monitor@waspa.org.za<<mailto:monitor@waspa.org.za>>)"
<monitor@waspa.org.za<<mailto:monitor@waspa.org.za>>>
Cc: Tracy Maluleka
<[\[REDACTED\]@vcontractor.co.za](mailto:[REDACTED]@vcontractor.co.za)<[mailto:\[REDACTED\]@vcontractor.co.za](mailto:[REDACTED]@vcontractor.co.za)>>
Subject: Withdrawal of WASPA complaint

Dear Ilonka

I hereby confirm that the Children's Hospital Trust have signed a final settlement with the VSP contractor and hereby withdraw the official WASPA complaint.

Thank you

Roxy Mitchell

Head of Communications
The Children's Hospital Trust

[[cid:image009.png@01D1A225.77DD8170](#)]<<https://instagram.com/childrenshospitaltrust>>
[[cid:image010.png@01D1A225.77DD8170](#)]<<http://www.linkedin.com/company/1807856>>Help us build a bigger & better ICU Donate today<<http://childrenshospitaltrust.org.za>>

[/donate/>](#)

Telephone no. 021 [REDACTED] •

Email: [REDACTED] <[mailto:\[REDACTED\]@chtrust.org.za](mailto:[REDACTED]@chtrust.org.za)> •

[<cid:image001.gif@01CF2955.65FD45D0>] <<http://www.facebook.com/childrenshospitaltrust?ref=ts>>

[<cid:image005.gif@01CF2955.65FD45D0>] <<https://twitter.com/chtrust1>>

[EmailLogoNew]

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Children's Hospital

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archive mailing list

archive@waspa.org.za

<http://lists.waspa.org.za/mailman/listinfo/archive>

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complaints mailing list

complaints@waspa.org.za

<http://lists.waspa.org.za/mailman/listinfo/complaints>

— Attachments: —

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