Wireless Application Service Provider Association

REPORT OF THE ADJUDICATOR

WASPA Member (SP)	iTouch
Information Provider (IP) (if any)	N/A
Service Type	Content download
Source of Complaints	Public
Complaint Number	#0108

Complaint

The Complaint was received by the WASPA secretariat on 8 January 2006. The detailed description of the complaint submitted was given as follows:

> "requested a gam [game] ffrom [from] aan [an] advertised service and did not receive anything [.] after my third call to their customer service line on 082 232 7600 I still have not received content requested [.] this game is priced @R10 and it has already cost me R40 with calls to customer service."

Note: [ ] indicate Adjudicator's insertions

The Complaint reveals two aspects:

- The unavailability of the service advertised
- Unsatisfactory customer service.

SP Response

The SP responded on 19 January in the following terms:

"1. we have record that the customer did in fact attempt to download the game in question.

2. Although he mentioned he contacted our call centre on 3 occasions, we do not have anything logged, nor, unfortunately, does he provide the name of a call centre consultant for us to quiz on the matter.

3. In any event, our call centre manager contacted Mr Van Vuuren immediately after I received this complaint, to investigate his concerns.

4. The call centre manager extended her apologies to the customer and promised that he would receive his content. The customer indicated that he was very satisfied that he was being attended to.

5. At this time, the customer has confirmed with the call centre manager that he had received the game that we sent him, but that he did not have enough airtime to download it (via wap).

6. The call centre manager will follow up with him tomorrow (Friday 20 Jan 06) to confirm that he has been able to download the game in good order.

Further investigation by the call centre manager as to why the customer might not have received the game the first time he called, turned out to be a technical problem with our manual sending application. The number it is linked to for sending content was inactive for some reason, and therefore although the call centre operator would have sent the content, he could not have known that a technical fault was preventing the customer from receiving it.

Thanks to Mr Van Vuurens complaint, we have now been made aware of a technical problem of this nature being a possibility, and this learning has been included in call centre operations.

In conclusion, I believe that the customer is now satisfied with the service that he has gotten, and that he has received his content. It is a pity he had to resort to reporting it to waspa to get this service, but in defense of our call centre, they probably had tried, in good faith, to send the content, but had no way of knowing that it wasn't getting through, or why (in this case)."

Sections of the Code considered

The following sections of Version 3.2 of the WASPA Code of Conduct were considered:

Section 3.1.1

"3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA."

Section 3.3

"3.3. Service levels

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.

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

Sections 4.1.1 & 4.1.5

"4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers."

"4.1.5. Members must have a complaints procedure allowing their customers 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."

Decision

It appears that the matter has been satisfactorily dealt with by the SP and is regarded as settled as between the SP and the Complainant.

The response provided by the SP as presented above is accepted. This implies acceptance of the statement that no call to the SP's call centre from the Complainant were logged over the relevant period.

In evaluating the SP's conduct against the standards set by the Code there are, to my mind, two crisp questions to be met, viz.:

1. Did the unavailability of the advertised content as requested by the Complainant constitute a breach of the Code?
2. Did the SP's customer service meet the Code's requirements?

As regards the first enquiry and after due regard to section 3.3 of the Code I find no breach. While the reasons for the SP's failure to provide the service were not beyond its control (as contemplated in section 3.3.3) its inability to provide the service was of a temporary and technical nature which does not, I believe, fall within the intended scope of section 3.3.1. In amplification of the aforegoing: it does not appear from the information before me that the SP either intentionally or negligently offered a service which it could not deliver and it is my view that intentional or negligent conduct is required to trigger a potential breach of section 3.3.1.

Furthermore there is nothing, in the form of companion complaints or otherwise, to indicate that a significant number of users were affected.

Turning to the second enquiry I can again find no breach of the Code. Section 3.1 of the Code raises an objective standard of "behaving in a professional manner". This standard is given some content when read together with section 4.1.1 and 4.1.5 and with particular regard to honesty, fairness and effective communication and complaints resolution. Having accepted the SP's version I can find little to indicate that it did not deal with the Complainant in a professional manner.

Notwithstanding the above and the SP's statement that it is unfortunate that the Complainant resorted to WASPA, it remains an interesting question for consideration by the SP as to how the matter would have been resolved were it not for the Complaint having been made to WASPA. It appears, rather, that WASPA's involvement facilitated the efficient resolution of the matter.

The Complaint is dismissed.