



## REPORT OF THE ADJUDICATOR

**WASPA Member (SP):** iTouch  
**Service Type:** Content  
**Source of Complaints:** Consumer  
**Complaint Number:** 0158

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### Complaint

A complaint was received from a member of the public that two games had failed to download to his mobile phone after he had replied to advertisements for the games. The games in question were "Extreme Boxing" and "2004 Record Breaker". The complainant alleged that this had happened to him before and that he was not satisfied with having to phone customer service and complain. He alleged that a game that is supposed to cost R10 ended up costing between R40 and R60 and that there was very little chance of being reimbursed for these wasted costs.

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### SP Response

The SP responded that it had investigated the complaint and discovered that there had been a technical problem with the game "2004 Record Breaker" but not with "Extreme Boxing". The SP stated that any problem with "Extreme Boxing" experienced by the consumer must have been due to an issue beyond the control of the SP.

Insofar as the problem with "2004 Record Breaker" was concerned, the technical problem existed with the supplier who had rectified the problem and the SP had been able to supply the consumer with the game on the same day that he had contacted them. The SP also responded that the fact that errors are billed is a function of how short codes work and was not unique to the SP nor was it intended to "rip people off". The SP also stated that the customer's frustration was understandable but that call centres were designed for the very purpose of providing customers with a point of contact with the company.

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### Decision

Although the complaint does not mention any specific sections of the WASPA Code of Conduct that the complainant alleges were breached, it is clear from the nature of the complaint that sections 3.1; 3.3; 4.1.1 and 4.1.5 of the Code are relevant to this adjudication. These sections read as follows:

"3.1 Professional and lawful conduct

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.

3.1.2 Members are committed to lawful conduct at all times.

### 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.

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."

I have noted the SP's explanation that the fault with the "2004 Record Breaker" game stemmed from the SP's supplier. It does not appear to be the case that the SP was knowingly or negligently offering or promising services that it was unable to provide. I have also noted that the SP took steps to notify the supplier immediately of the complaint and that, once the error was rectified by the supplier, the content was made available to the complainant on the same day as he contacted the SP. I therefore do not find the SP to have breached sections 3.1 or 3.3 of the Code.

I am satisfied that the SP took immediate steps to deliver the purchased content to the consumer as soon as it had been made aware of the download error and I do not find the SP to have breached section 4.1.5 of the Code.

The SP's comments regarding the purpose of customer call centers has been noted, however there must be some appreciation by the SP that the cost of being forced to contact a call center in respect of a micro-transaction is potentially more than the cost of the transaction itself, and that, in the case of the WASP industry, this impacts significantly on the value of the call center service itself from a customer perspective. Furthermore, the fact that errors are billed for automatically does not mean that errors should not be reversed where the SP is the cause of the error. It is also relevant to note that the complainant makes it clear that this is not the first time that he has experienced this type of problem with the SP (an allegation which is not disputed). In such circumstances, I would consider it unfair with respect to this complainant if he were not re-imbursed in an appropriate amount. Members are required in terms of the Code to be committed to "fair dealings with their customers".

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## Sanctions

Section 13.4.1(d) of the Code provides that, in appropriate circumstances, a member may be directed to pay reasonable compensation to a customer. I believe R20 to be a reasonable amount for the SP to compensate the consumer and direct the SP to make such payment to the complainant within 7 days of notification of this adjudication.