



ADJUDICATOR'S REPORT

Complaint reference number: 22294

WASPA member(s): PayPROFIT (0009)

Complainant: Public

Type of complaint: Commercial dispute - refund

Date complaint was lodged: 2013-11-01

Date of the alleged offence: April 2013

Relevant version of the Code: 12.1

Clauses considered: 3.1, 4.1.1, 4.1.2, 4.3

Relevant version of the Ad. Rules: Not applicable

Clauses considered: Not applicable

Related cases considered: None

Complaint

This complaint is, essentially, a commercial dispute between two companies. The complaint submission is annexed to this report. The complaint pertains to a query regarding certain charges which PayPROFIT levied against the complainant, African Tails.

The case file contains correspondence between the parties regarding the charges, African Tails' queries and related issues. It is not necessary to repeat the exchanges for the purposes of my report.

Sections of the Code considered

The following clauses were not cited in the complaint:

1.2. Objectives of the Code of Conduct

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. The Code aims to equip customers and consumers with a mechanism for addressing any concerns or complaints relating to services provided by WASPA members, and a framework for impartial, fair and consistent evaluation and response to any complaints made.

The Code of Conduct also sets standards for advertising mobile application services, and includes a framework for the provision of adult services, to ensure adequate protection of children from potentially harmful content.

...

1.4. Scope of the Code

Unless otherwise specified, this Code of Conduct applies to all wireless application services accessed by a customer in South Africa, transmitted by a wireless application service provider and carried by a South African network operator.

Where the Code addresses services provided by members, it applies only to wireless application services provided by a WASP, and not to other types of services that the member may provide.

The following clauses were cited in the complaint.

3.1. Professional and lawful conduct

33.1.1. 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.

...

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.

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.*

...

4.3. *Refunds*

4.3.1. *Any refunds provided by members to customers must be provided in a form acceptable to the customer. Refunds must be either in South African Rands or air-time useable on a South African mobile network.*

4.3.2. *Refunds must not cause the customer to incur any bank charges, or alternatively must compensate the customer for any bank charges incurred.*

4.3.3. *Refunds must not be unreasonably delayed.*

Sections of the Advertising Rules considered [if applicable]

Not applicable

Decision

As clause 1.2 states –

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. The Code aims to equip customers and consumers with a mechanism for addressing any concerns or complaints relating to services provided by WASPA members, and a framework for impartial, fair and consistent evaluation and response to any complaints made.

Although African Tails appears to be PayPROFIT's customer, the dispute between them is more appropriately resolved in a forum better suited for what appears to be a purely commercial dispute, such as a court or commercial arbitration forum. The dispute only peripherally concerns possible refunds of amounts charged by a WASPA member. The primary dispute is contractual and that is not within our scope as adjudicators to address. WASPA lacks the jurisdiction to adjudicate this complaint.

Accordingly I dismiss the complaint.

Sanctions

The complaint is dismissed on the basis that the underlying dispute has not been brought to the appropriate forum.

Subject: [WASPA.Archive] [formal] WASPA Code of Conduct complaint Ref: #22294
From: WASPA Complaints <complaints@waspa.org.za>
Date: Mon, 18 Nov 2013 11:42:12 +0200
To: "Gert van Tonder (PayPROFIT)" <support@payprofit.co.za>
CC: archive@waspa.org.za

Dear WASPA member,

The attached complaint has been lodged with WASPA against PayPROFIT (Pty) Ltd. This complaint is being processed according to the formal complaint procedure described in section 14.3 of the Code of Conduct.

Accordingly:

- You have five working days to respond to the complaint, and to provide the WASPA secretariat with any information you deem to be relevant to this complaint.
- After five working days have passed, this complaint, together with your response (if any) will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.
- You do not have an obligation to respond to this complaint. Should the WASPA secretariat not receive any response from you within this time period, it will be assumed that you do not wish to respond.
- Your response, and any other correspondence relating to this complaint, must be sent to complaints@waspa.org.za. Correspondence sent to any other address may not be deemed to constitute a formal response.
- The WASPA Secretariat will confirm receipt of your response.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to complaints@waspa.org.za.

Please confirm your receipt of this message.

Warm regards,
WASPA Secretariat

--- A copy of the complaint follows below ---

Complaint #22294 (lodged via the WASPA website):

Full_Name: African Tails

Cellular: 0836422805

Alternate_Contact_Number: 0215107360

[Email:manager@africantails.co.za](mailto:manager@africantails.co.za)

PhysicalAddress: 56 Koeberg Road

Brooklyn
Cape Town
7405

PostalAddress: 56 Koeberg Road
Brooklyn
Cape Town

PostCode: 7405

Affiliations: I am not employed by, or otherwise associated with one of WASPA\'s member companies

Affiliation_Information:

WASPName: PayPROFIT (Pty) Ltd

OtherID:

Code_Breached: 3.1

4.1.1

4.1.2

4.3

Detailed_Description_Complaint: African Tails, a NPO, makes use of a PRMS line through PayProfit. In February this year we contacted Gert van Tonder at PayProfit to advise him that there were several invoices submitted for the period May 2011 May 2012, of which only 5 invoices were paid to us (Ive attached a recon fyi). Also included in the invoice were amounts from June 2012 January 2013. The total amount owing was R 71 422. 27.

May 2011 R 928.63

June 2011 R881.89

July 2011 R 1434.08

August 2011 R 3119.02

November 2011 R 4984.62

Dec 2011 R 2292.76

January 2012 R 3404.33

Feb 2012 R 4770.51

April 2012 R 3853.94

May 2012 R 5164.16

SUB-TOTAL = R 30 833.94

New invoices

June 2012 January 2013

Monthend SMS count Profit

201301	1308	6972.85
201212	299	1608.82
201211	1749	9420.57
201210	755	4092.32
201209	477	2568.2
201208	1104	6002.98
201207	1073	5814.52
201206	756	4058.07

SUB-TOTAL = R 40 538.33

GRAND TOTAL = R 71 422.27

There was a change over in management at African Tails in April 2013, and we started tying up some loose ends, of which PayProfit was one. We just requested that they supply us with proof of payment of the outstanding amounts reflected above. We did a reconciliation based on proof of payments we could trace, but there is an amount of R15,330 for which we just want confirmation of payment. You will see that we have been requesting this for the past few months. We sent another request on 30 October, and were absolutely shocked to see the reply below we got from \" The Payprofit Forensic Team \". A copy of the trail of e-mails, starting with the last on, is set out below:

[From:forensicteam@payprofit.co.za](mailto:forensicteam@payprofit.co.za) [<mailto:forensicteam@payprofit.co.za>]
Sent: 31 October 2013 10:25 AM
[To:yaelfialkov@gmail.com](mailto:yaelfialkov@gmail.com)
[Cc:contact@africantails.co.za;manager@africantails.co.za;gert@payprofit.co.za](mailto:contact@africantails.co.za)
Subject: Fwd: FW: Pay Profit Invoice 26

Good day,

You have appeared on the radar of the PayPROFIT forensic team.

Because of our interests and electronic system development in highly regulated industries such as telecom and banking, we investigate all indications of dishonesty and fraud no matter how insignificant since it is nearly always an indicator of much more significant dishonesty and fraud and is also nearly always a precursor to future problems that we can expect from the use of our premium rated SMS numbers by clients.

You have indicated that you have processed all the payments that you have received from PayPROFIT on your bankstatement and that there is a shortage of R15,330.

We will now process all payments done to you from our archives and you must note that for every event (payment) where you indicate that you have not received a payment where our team can show you such a payment you might be penalised with R1000 and after due consideration your contract with PayPROFIT might be suspended.

Please indicate whether you want to persist with this line before we start processing or

whether you want to reconsider and reprocess your information.

Regards,

Forensic Team
PayPROFIT.

----- Forwarded message -----

From: Gert van Tonder <gert@payprofit.co.za>

Date: Oct 31, 2013

Subject: FW: Pay Profit Invoice 26

[To:forensicteam@payprofit.co.za](mailto:forensicteam@payprofit.co.za)

Hi guys,

Please follow the email trail below and investigate the claims of this client.

Regards,

Gert.

From: Veronica Nel [<mailto:manager@africantails.co.za>]

Sent: 30 October 2013 11:13 AM

To: \'Gert van Tonder\'

Cc: \'Yael Fialkov\'; \'African Tails office\'

Subject: FW: Pay Profit Invoice 26

Hi Gert

Further to my mail below, and our subsequent discussion on 21 October, I have still not had any response with regards to the query below. According to our records there is still an amount of R15,330 owing, unless you can supply us with proof that this amount had in fact been paid. If not, could you please arrange for payment immediately.

Thank you

Regards

Veronica

From: Veronica Nel [<mailto:manager@africantails.co.za>]

Sent: 15 October 2013 12:17 PM

To: \'Gert van Tonder\'; \'Yael Fialkov\'

Cc: \'contact@africantails.co.za\'

Subject: RE: Pay Profit Invoice 26

Gert

Yes, as per all my previous e-mails, we did exactly that we recovered the confirmations of

payment (which I sent to you previously as well), and based on this it is in our opinion that there is an outstanding amount of R15,330 for which we can find no record of payment. So in essence, we need you to supply us with the proof that you paid it, or if it has not been paid, for you to settle this amount immediately.

I hope this makes sense.

Veronica

From: Gert van Tonder [<mailto:gert@payprofit.co.za>]
Sent: 15 October 2013 11:27 AM
To: \'Yael Fialkov\'; \'Veronica Nel\
Cc: \'Veronica Nel\';contact@africantails.co.za
Subject: RE: Pay Profit Invoice 26

Yael,

I am currently travelling and are unable to access my archives to process all the admin again.

I have already indicated that I will do it when I am stable in my office again.

The sending of proofs of payment to your organisation after payment is done is a gesture of courtesy and not a contractual requirement, so you should also be able to recover all the payments done to you from your bank statements. All payments to your organisation was done with the reference PAYPROFIT so it should be easy for you to tell me accurately what is outstanding and your current indication to me of what is outstanding is grossly inaccurate.

Regards,

Gert.
PayPROFIT.

From: Yael Fialkov [<mailto:yaelfialkov@gmail.com>]
Sent: 15 October 2013 09:58 AM
To: Veronica Nel
Cc: Veronica Nel; Gert van Tonder; <contact@africantails.co.za>
Subject: Re: Pay Profit Invoice 26

Morning Gert

This is quite urgent now as we have no records of your full payment coming in. However if you feel we are incorrect please advise today by sending the excess proof of payments. If Veronica does not receive all proof of payments by COB today we will assume the payment is definitely outstanding and expect outstanding payment by noon tomorrow.

Many thanks
Yael

On 15 Oct 2013, at 8:57 AM, \"Veronica Nel\" <manager@afriantails.co.za> wrote:
Hi Gert

Could you please reply to my queries below, specifically the mail of 4 October. We would like to settle this matter soonest.

Thank you

Regards

Veronica

From: Veronica Nel [<mailto:manager@afriantails.co.za>]
Sent: 10 October 2013 09:25 AM
To: \"Gert van Tonder\"
Cc: \"Yael Fialkov\"; \"contact@afriantails.co.za\"
Subject: RE: Pay Profit Invoice 26

Hi Gert

Could you supply feedback please?

Thanks

Veronica

From: Gert van Tonder [<mailto:gert@payprofit.co.za>]
Sent: 05 October 2013 06:58 AM
To: \"Veronica Nel\"
Cc: \"Yael Fialkov\"; contact@afriantails.co.za
Subject: RE: Pay Profit Invoice 26

Veronica,

No, it is not correct.

I will process my archives and let you know.

Regards,

Gert.
PayPROFIT.

From: Veronica Nel [<mailto:manager@afriantails.co.za>]
Sent: 04 October 2013 02:46 PM
To: \"Gert van Tonder\"
Cc: \"Yael Fialkov\"; contact@afriantails.co.za
Subject: RE: Pay Profit Invoice 26

Hi Gert

I have now reconciled all invoices to payments. Our records reflect that of the R 71 422.27 that was due to us as at 17 Feb 2013 (please refer to the attached invoice 19 dated 7 Feb) an amount of R27898.59 was paid on 18 February, and a further payment of R28,193 was made on 15 March. So it seems that there is an outstanding amount of R15,330 for Invoice 19.

Please confirm that this is correct and advise when you will be able to make payment.

Regards

Veronica

We find this response to a simple request very strange and unacceptable. We would appreciate it if you could look into this matter and advise what we need to do to remedy this situation. Based on the code of conduct set out by WASPA, it is our opinion that the way in which we have been treated by PayProfit, in particular Gert van Tonder, is completely unacceptable.

We hope that you can remedy this situation.

Regards

Veronica Nel
General Manager
African Tails

Tick_as_appropriate: Service provider has not resolved my complaint to my satisfaction

Declaration_Good_Faith: Information provided is true and correct and provided in good faith

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