

# REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP):</b>	<b>Sybase 365</b>
<b>Information Provider (IP): (if applicable)</b>	<b>AMV Holding Limited</b>
<b>Service Type:</b>	<b>Service Levels</b>
<b>Complainant:</b>	<b>WASPA Monitor</b>
<b>Complaint Number:</b>	<b>3098</b>
<b>Code version:</b>	<b>Code v5.7 and Ad Rules v1.6</b>

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## Complaint

1. On the 7<sup>th</sup> of January 2008 the WASPA Monitor, a person employed by WASPA to monitor compliance with the Code of Conduct, lodged the following complaint via the WASPA Website at URL [www.waspa.org.za](http://www.waspa.org.za):

Affiliations: I am employed by, or otherwise associated with one of WASPA's member companies

Affiliation\_Information:

Name\_WASP: Unknown

OtherID: Blingmob 31434 (Micawber 447 ex SMSCode site)

Code\_Breached: 4.1.5. and 4.1.7

Detailed\_Description\_Complaint: Over a 2 week period, I have tried contacting this service provider's customer care line on 011-4610317. Most times, the phone would just ring, until the call is automatically terminated. Some times, it re-routed me to a message mailbox. I have left several messages on their answering machine and have had to response from them. The message service also did not mention any sort of "holiday closure" in their automated message.

The service levels of this customer care line is not meeting the required standards.

Tick\_as\_appropriate: Service provider has not resolved my complaint to my satisfaction

### **SP's Response**

2. The WASPA Secretariat established that the Service Provider in this case was Sybase 365 and forwarded the complaint to that member. The SP responded on the 18<sup>th</sup> of January, the summary of its response being:
  - 2.1. The SP did not supply the advertised service, which was in fact provided by AMV Holding Limited ("the IP"), which has an "SMS Services Agreement" with the SP in terms of which the SP makes shortcode(s) available to the IP. The IP in turn agrees to abide by the WASPA Code of Conduct (as required by clause 3.9.1 thereof) and agrees to become a member of WASPA (I note that the IP is indeed listed as a WASPA affiliate member on the website at URL [www.waspa.org.za](http://www.waspa.org.za).)
  - 2.2. As the IP is an affiliate member of WASPA, the proper party against whom the complaint should have been lodged is the IP.
3. The SP also advised in the same correspondence that it had liaised with the IP (which apparently trades as "Blingmob UK") which provided feedback. To quote the correspondence:
  - 3.1. "Dealing with paragraph 4.1.7 first and as is detailed in the complaint, the customer care line is 011 4610317. This number is administered by the information provider which, as detailed above, is a member of WASPA. The number concerned ordinarily puts the caller through to a live operator during business hours or a voicemail system out of business hours or where there are insufficient operators to answer all calls.
  - 3.2. "Turning to paragraph 4.15, where a voicemail is left the information provider has a target response time of 24 hours and has informed us that over the Christmas period it responded to 96% of complaints within 48 hours. Without having the details of the WASPA Monitor (name and telephone number) the information provider is unable to provide a detailed response as to how the WASPA Monitor's calls were dealt with or why the calls may have "automatically terminated".
  - 3.3. "As such, we would be grateful if WASPA would ask the WASPA Monitor if he/she could provide his/her contact details so that a more detailed investigation may be carried out.
  - 3.4. "In addition, I confirm that Sybase 365 runs a live agent customer care line but please let me know if you require any further information in the meantime."

### **Further Interactions**

4. The request by the SP set out in paragraph 3.3 was forwarded to the Complainant on the 30<sup>th</sup> of January.

5. A follow-up email from the Secretariat to the SP on the 14<sup>th</sup> of February elicited a response the following day to the effect that the SP had liaised with the IP which had in turn liaised with the Complainant.
6. On the 18<sup>th</sup> of February the Complainant wrote an email to the Secretariat advising that:
  - 6.1. She had had several conversations with a representative of the IP over the preceding week. The representative had advised her that the IP has employed a new customer care provider and are in the process of setting up a 24 hour customer care division.
  - 6.2. Nonetheless the IP failed to meet the standards required by the Code of Conduct during the two-week period described in the initial complaint, and that in her opinion the matter should proceed to adjudication on that basis.
  - 6.3. She had called the IP's customer care number that day. The call was not answered and was not diverted to a mailbox.

### **Portion of the Code Considered**

7. The Complaint cites the following clauses from the WASPA Code of Conduct:
  - 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.
  - 4.1.7. Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

### **Decision**

8. The SP / IP acknowledged that the number dialled by the Complainant was indeed the IP's customer care line.
9. Given that the incident described in paragraph 6.3 took place after the SP/IP had responded to the initial complaint and that they did not have an opportunity to respond to the allegation, I have not taken it into account.
10. While the SP advised that the IP would deal with the Complainant's enquiries which gave rise to the initial complaint, no mention of any feedback in this regard is made by the Complainant even though she furnished the IP with sufficient detail to allow them to do this.
11. The description of the IP's system as quoted in paragraphs 3.1 and 3.2 above is of little assistance, as the system clearly does not function as described.
12. The IP has infringed clause 4.1.5 in that the IP neither acknowledged receipt of nor responded to the Complainant's enquiries over a two week period. A response was

only elicited after a formal complaint was lodged through the WASPA Secretariat, which response did not acknowledge the initial enquiries.

13. The IP has infringed clause 4.1.7 in that its telephonic support clearly did not function effectively during the period in question. The Complainant's unanswered telephone calls were not consistently directed to a mailbox.

### **Sanction**

14. I must again take issue with the SP's assertion that it cannot be held liable for breaches of the Code of Conduct by the IP, as I did in the report in complaint 3106: it is trite that SPs **can** be so liable and have frequently been held to be so. In the present case the fact that the IP happens to be an affiliate member of WASPA means that sanctions can indeed be directed at the IP, but WASPA is not constrained from directing sanctions at the SP merely because the IP is an affiliate member.
15. In complaint number 3128 this adjudicator imposed a fine in a set amount for each day that the IP did not respond to the complaint in question, but in the current case the Complainant was investigating the effectiveness of the IP's complaints procedure, so this approach would not be appropriate.
16. The following sanction is imposed: the IP will pay a fine in the amount of R 3 500.00 for infringements of clauses 4.1.5 and 4.1.7 within five days of the publication of this report.
17. The WASPA Monitor is requested to re-examine the IP's complaints procedure after 14 days have passed from the publication of this report. Should the IP by that date fail to meet the criteria set out in the above clauses of the Code of Conduct, the WASPA Monitor is invited to institute a new complaint and should cite this complaint number when doing so.