



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Clickatell
Information Provider (IP) (if any)	Mediadeck
Service Type	SMS
Source of Complaints	Public
Complaint Number	#3574
Date received	26 February 2008
Code of Conduct version	5.7

Complaint

A member of the public alleged breaches of sections 3.1.1, 3.3.1 & 3.3.2 of version 5.7 of the WASPA Code of Conduct.

The Complainant is a registered account holder in respect of a service provided by the IP (a WASPA affiliate member) which allows the sending of SMS communications in various ways. The Complaint arises from a sudden inability to access the service which arose without warning during February 2008.

The Complainant queried the service unavailability by way of two emails sent during the evening of 19 February 2008 and received the following reply from the IP early the next morning:

"Subject: Re: DIFFICULTIES WITH LOGIN TO MDECK WEB SITE AND TO
SEND SMS

Dear Xxxxx

I will be contacting you shortly to explain what has happened, We have been

working around the clock on our issues with the system, but I will happy explain it to you shortly,

Kind Regards

Khashifa "

The Complainant, having heard nothing further sent another email at midday on the 21st February expressing his dissatisfaction and stating:

"You are hereby requested to have my services be enabled not later than 09h00 tomorrow 22nd February 2008! Failing this request, you leave me no choice as to report this matter to higher authorities."

According to the Complainant he received a telephone call from a representative of the IP who explained that the IP was still working on their system to rectify the problem. The representative further stated that once all issues had been resolved the IP would allot free SMS credits to the Complainant's accounts.

The Complaint concludes as follows:

"I request that this poor and unprofessional state of affairs be investigated and Mdeck be ordered to rectify their inability to provide a proper service as in the past, failing ~ to compensate me the available sms credits to my disposal."

SP Response

During the course of the informal resolution process the IP indicated that it had been in contact with the Complainant by phone and email to explain the exact circumstances behind the failure of their system. The IP also indicated that the Complainant had confirmed "that he is happy with the feedback regarding that our system will be back and up and running in the next 15 to 20 days".

The Complainant, however, had a different view, and requested that the matter be escalated for formal resolution.

The IP thereafter filed a formal Response in which it apologised to the Complainant before outlining the reasons for the system failure as well as the steps taken to communicate with the Complainant.

The IP stated that:

“Having said that due to circumstance beyond our control one of our suppliers chose to close all services that we were running with them on the (14 February 2008). As you can imagine the impact on the business as a whole has been immense. We are seeking redress with this matter but that is a side issue to the one at hand.

As a result the sms wap service we supply in South Africa was closed without our knowledge or consent, and at this stage we are litigating against this technical supplier as we own the IPR (Intellectual Property Rights). We notified our local WASPA (Clickatell) that this had happened and that if they received any complaints please to us know as we did not want disappointed customers. We then contacted WASPA (18th February 2008) and spoke to Elaine to notify her of the problem we were experiencing, reconfirm our contact details and that if they received any complaints to please notify us immediately as we were aware of the trouble this would be causing our users. As a result of the action of our technology partner we are now in the process to rebuild a new service which we had hoped would be ready to re-launch but this is still a few weeks away. This service will be fully operational and we will be contacting all previous users of the service to re-inform them that the service is active. All accounts will be given adequate credit to use before any form of further purchase is necessary.”

The Response continues:

We received an email from Mr Jaftha on the 19th February 2008 and responded the following day. We try to keep this as standard practice for all our queries as we do not like to leave the customer thinking they have been ignored.

We also then contacted WASPA again to ask if they would like us to run a broadcast to all our users notifying them that we were aware of the problem and were working on it. WASPA advised against running the broadcast, as our service had been shut and we would not have the latest up to date stop/black

list we would then be in breach of the code of conduct if we broadcast to a number in error that had sent in stop within the last week that our service had been shut down.

During this time we were in telephone conversation with Mr Jaftha and did offer to refund him in airtime vouchers as a small apology for the inconvenience this had caused.

Unfortunately we then received the informal complaint on the 28th February 2008, we contacted Mr Jaftha within a couple of days again explaining that this was unfortunately a matter that was beyond our control but that we were working on it. At this stage Mediadeck as a company was in the middle of rebuilding the platform to use to be able to resume services as they were before. There have been a few difficulties along the way but we believe we have tried to maintain customer service as well as getting the company fully functional again.

This is a period in the company history that is unusual and completely unexpected and we ask for your understanding in this matter. We are more than willing to reimburse Mr Jaftha but in order to offer him the service that he had before we need to make sure it is fully tested and functional across all levels before handing it back to our loyal consumers.

We look for your understanding in this matter and hope you can see that we have not knowingly tried to offer a service knowing it does not function and have tried at all times to keep in touch with our customers. Having operated this service in South Africa for 12 months without complaints we have always credited customer that were unable to use the service as we believe customer service is one of the most valuable assets to any company.”

Sections of the Code considered

The following sections of version 5.7 of the WASPA Code of Conduct were considered:

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.

3.3.1. Members will not offer or promise services that they are unable to provide.

3.3.2. Services must not be unreasonably prolonged or delayed.

Decision

After reviewing the documentation provided the Adjudicator is satisfied that

- The IP has acted in such a manner as not to be in breach of the standard of behaviour required by section 3.1.1. It has generally been responsive and has offered compensation – it has not, however, been able to satisfy the Complainant's desire to have the service reinstated as this has been beyond its control.
- At the time of offering the service the IP was in fact able to provide it and the Complainant made use of it. The Adjudicator is satisfied on the facts put before him that the subsequent inability to provide a service was beyond the reasonable control of the IP. The IP cannot reasonably be said to have been negligent in this regard.
- If the meaning of section 3.3.2 can be adapted to apply to these facts then again it is found that the "delay" in the provision of the service was beyond the reasonable control of the IP.
-

Accordingly the Adjudicator finds that there is no breach and the Complaint is dismissed.

The Adjudicator understands the unhappiness and frustration of the Complainant and the fact that his inability to use the service may have impacted on his business and reputation. The Complainant's potential redress in this regard will be found in the terms and conditions of his agreement with the IP for the provision of the service.

The Complainant will also no doubt appreciate that the IP would not have willingly placed itself in a situation where it could not provide the service and that its inability to do so must have had serious implications for its business and goodwill in general.

The IP has offered compensation in its Response and to the extent that this may be necessary such offer is hereby formalised as an Order in terms of this Adjudication.