



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Sybase 365
Information Provider (IP) (if any)	Venista
Service Type	Subscription services
Source of Complaints	Mr K Snijders
Complaint Number	4168
Date received	14 May 2008
Code of Conduct version	5.7

Complaint

This complaint was lodged via the WASPA website. The complainant is associated with another WASPA member.

The subject matter of the complaint is the alleged breach of section 11.2.5 of the WASPA code by the SP. The pertinent dates given by the complainant are as follows:

Sim provisioned on Vod Network : 29-11-2007

Sim Connected : 20-12-2007

First recharge: 25-4-2008

First billed for content by SP: 25-4-2008

According to the complainant, the number has since been billed for amounts totalling R45.

The complainant has indicated in his complaint that he was not interested in obtaining a refund and that he wanted WASPA to sanction the breach of section 11.2.5 as he believes such breaches are becoming widespread in the industry with the resultant harm to unsuspecting consumers being serious.

SP Response

The SP responded to the complaint on 9 July 2008. In its response, the SP stated firstly that based on information from the network operator, it was not made aware that the number had been recycled. It also stated that based on the transactions processed and information received from Vodacom there was never a break in service of less than three months from June to October. A copy of the SP's internal logs was attached to the response also.

The SP did acknowledge in its response that there were numerous failed billing requests, but stated further that, according to its system, the failures were interpreted as either "*Subscriber is Temporarily out of credit*" or "*Failed Message Delivery*". The argument being that there was no indication that the number was no longer in use.

The SP also states that it received positive message acknowledgments from the network operators on 10/7/2007, 18/9/2007, 28/9/2007, 3/10/2007, 21/1/2008 but admitted that the period interrupt between failed billing requests exceeded three months.

The IP added that it wasn't aware of the 3 month unsubscribe rule and that it had been processing this on a 6 month rule. The IP undertook to amend its suspend system to comply.

The SP went on to state that "*Venista (the IP) runs a very clean subscription service in South Africa and they try to ensure that they are always following the rules and regulations set by WASPA, Venista must be one of the few content companies in the industry that actually send's a content message along with a advisory message after every transaction.*"

The SP undertook to take further steps with the IP to ensure that they have not made any errors like this with any other customers. Additionally it would ensure that the customer signs up with WASPA as an affiliate member and would then have a direct relationship with WASPA.

The SP offered to process a refund on request and additionally blacklist all MSISDN's the complaint was prepared to provide. It stated that the complainant had actually only been billed for a total of R20 for 4 message at R5 per message.

Sections of the Code considered

Section 11.2.5:

A user must be removed from a subscription service if no successful bills have been processed for that service for more than three months, or if there is an indication from one of the mobile networks that the number is no longer in use.

Decision

Number recycling is common practice amongst the network operators. Although recycling is not expressly dealt with in section 11.2 of the code, subsection 11.2.5 makes provision for a user to be removed from a subscription service if the service provider has been unable to process a bill for a period of 3 months or if there is an indication from the network operator that the number is no longer in use.

In the current complaint, there is no evidence that the SP received an indication from the network operator that the number was no longer in use. The SP also argued that the subscription service was never interrupted for longer than 3 months.

However what is clear from the evidence before me, and which has been acknowledged by the SP, that it was unable to successfully process a bill for the service for over the prescribed period of 3 months. The number should have been removed from the SP's subscription service in terms of section 11.2.5.

The SP has therefore breached 11.2.5 by continuing to bill for this service outside the 3 month period.

In terms of the evidence presented by the complainant, it appears that he has been charged for a total amount of R45 and not R20, as suggested by the SP.

Sanctions

I agree with the complainant's sentiment that the widespread breach of 11.2.5 in the industry poses a substantial risk to consumers, especially when in most cases they may be unaware of the charges being levied for subscription services intended for another party. While I accept that SP's may not always receive information from network operators that a number has been recycled or is otherwise no longer in use, the fact that failed billing requests have exceeded the prescribed 3 month period is always within the SP's knowledge.

The SP is ordered to:

1. Immediately refund the complainant the amount of R45.
2. Pay a fine of R50 000, which is suspended for a period of 6 (six) months from the date of this report. Should there be further contraventions of this section of the code by the SP within that period, this fine will become payable in addition to any further sanctions made against the SP pursuant to such future complaints being upheld.