



ADJUDICATOR'S REPORT

WASPA Member (SP):	Buongiorno
Information Provider (IP):	n/a
Service Type:	Subscription Services
Source of Complaints:	WASPA Monitor
Complaint Number:	4649
Code of Conduct version:	Code v6.1

Complaint

On 5 August 2008 a complaint was lodged by the WASPA Monitor regarding several alleged service failures by the SP. Although the complainant broke the complaint down into 7 separate problems that were experienced with the SP service, these service problems can be conveniently summarised into 4 issues as set out below:

1. When subscribing on 4 August 2008 from a MTN number to a subscription service offered by the SP via the access code 31191, the Complainant did not receive any welcome message and was not subscribed to the service (nor was any airtime subtracted). The particular service in question is however available to MTN subscribers.
2. After subscribing on 4 August 2008 from a Vodacom number to a subscription service offered by the SP via the access code 31191, the Complainant was unable to access any content via the link that was forward to the Vodacom number by the SP and repeatedly received a "Code 413" error when attempting to access content via the link. The Complainant's cell phone account was however debited for the service at a rate of R30 per 5 days.
3. In an attempt to address the inaccessibility of content by means of the link sent to the Vodacom number, the Complainant telephoned the SP call centre and was placed on hold for approximately 15 minutes without being assisted and at a cost to the Complainant of more than R50. Further, when the Complainant did get through to the call centre, an agent advised that the problems being experienced by the Complainant were being caused by problems being experienced by the Vodacom network, however when the Complainant contacted Vodacom directly, Vodacom advised that it was not experiencing any such problems. On a later call, a SP call centre agent advised that the problems being experienced on the Vodacom number were being caused by the internet settings on the Complainant's cellphone, but when the Complainant again enquired directly with Vodacom, the Complainant was advised that the cellphone's internet settings were correctly configured.

4. The Complainant attempted to subscribe to a further service offered by the SP via the access code 31191 but after sending the relevant key word to the SP, no link through which content could be accessed was received although the Complainant was still charged for subscribing to the service at a rate of R5 per day.

SP Response

The SP's response of 1 September 2008 to the complaint can be summarised as follows:

Ad issue 1 above: the SP stated that two subscription verification messages were sent to the Complainant's MTN number on 4 August 2008 at 12:20:19 and 12:37:51 but that these messages resulted in rejection messages being returned by the network. The SP provided copies of message logs to support its response. The SP confirmed that the Complainant was not billed and stated that investigations were underway with MTN to diagnose the cause of the problem. The SP stated that "once resolution has been achieved on this, notification will be sent through to the WASPA secretaries".

Ad issue 2 above: the SP stated that the "Code 413" error is a handset error which means that the handset is not able to display the requested content. The SP noted that its records showed that the handset used by the Complainant was a Motorola V360 and stated that its WAP site would be redeveloped to reduce the number of content items displayed in a row (presumably to cater for cellphones like the Motorola V360).

Ad issue 3 above: the SP denied that the Complainant had been placed on hold for as long as 15 minutes and produced copies of its call centre's incoming call logs showing that the longest time a call was on hold on 5 and 6 August 2008 did not exceed 6 minutes. The SP noted that between 08h00 and 15h00 on 5 August 2008 it had experienced an internal problem with its telephone system and that no automated call logs for that particular period could be produced. The SP however stated that no calls from the Complainant's cellphone number were received in that period. The SP stated further that it could not trace the Complainant's initial call and could not trace the agent who dealt with the Complainant's call and allegedly advised that the problem existed with the Vodacom network. The SP stated that it would attempt to trace the particular agent if the Complainant furnished the number that was used to make the support calls. The SP stated further that agents are instructed to suggest that Vodacom users who are unable to access WAP sites check their phone's WAP settings. In this case, the SP emphasised that the problems experienced by the Complainant were a result of the particular handset used.

Ad issue 4 above: the SP provided copies of its message logs detailing the services that had been successfully subscribed and billed for (i.e. the Sexy Cherry Straight and Sexy Cherry Lesbian services) for those that had not been successfully subscribed to (i.e. the Bikini Babes service). A copy of the message logs appears below:

date	service	phone	sender	message
04/08/2008 12:15	sexy:cherry:cherrys_HOT	31191	27713795482	hot
04/08/2008 12:15	sexy:cherry:cherrys_HOT	27713795482	27820048352	SEXY CHERRY:UNLIMITED hot & sexy downloads now!Hot action 4 over 18's ONLY.Reply with the word ADULT to this sms. Reply now!
04/08/2008 12:16	sexy:cherry:cherrys_ADULT	27820048352	27713795482	adult
04/08/2008 12:16	sexy:cherry:cherrys_ADULT	27713795482	27820048352	Welcome 2 Sexy Cherry: Download UNLIMITED x-rated goodies as often as u like. HELPLINE 0822327400. [R30/5days Subscription. Sms stop club to 31191 to end]
04/08/2008 12:16	sexy:cherry:cherrys_ADULT	27713795482	27820048352	Sexy Cherry: Click here 4 UNLIMITED steamy downloads!
04/08/2008 12:38	sexy:cherry:cherry! GTG	31191	27713795482	gtg
04/08/2008 12:38	sexy:cherry:cherry! GTG	27713795482	27820048352	SEXY CHERRY:UNLIMITED hot & sexy downloads now!Girl 2 Girl fun 4 over 18 women ONLY.Reply with the word OH to this sms. Reply now!
04/08/2008 12:39	sexy:cherry:cherry! OH	27820048352	27713795482	oh
04/08/2008 12:39	sexy cherry!	27713795482	27820048352	msgcode:653552(Sexy Cherry: Click here 4 UNLIMITED girl 2 girl action.)
04/08/2008 12:39	sexy:cherry:cherry! OH	27713795482	27820048352	Welcome 2 Sexy Cherry 4 women: Download UNLIMITED lesbian action all u like! HELPLINE 0822327400[R30/5days Subscription. Sms stop cherry to 31191 to end]
05/08/2008 13:09	sexy:cherry:cherrys_HOT	31191	27713795482	hot
05/08/2008 13:09	sexy:cherry:cherrys_HOT	27713795482	27820048352	SEXY CHERRY:UNLIMITED hot & sexy downloads now!Hot action 4 over 18's ONLY.Reply with the word ADULT to this sms. Reply now!
05/08/2008 13:11	sexy:cherry:cherrys_ADULT	27820048352	27713795482	adult
05/08/2008 13:11	sexy:cherry:cherrys_ADULT	27713795482	27820048352	Ur Already a member-NOW get the BIKINI BABES every week 4 ur fone! Get them hot chicks now! Sms CHICK to 31191. [R5/day service].
05/08/2008 13:11	sexy:error:sexy_errors	27820048352	27713795482	chick
11/08/2008 11:34	sexy:error:sexy_errors	31191	27713795482	stop

The SP also furnished billing records for the Complainant's number on the 31191 services which are set out below:

[MSISDN: +27713795482 the SPilling](#)

Service	currenttime	amount	result
Sexy Cherry Lesbian	20080804123927	30.00	OK
Sexy Cherry Lesbian	20080809101535	30.00	OK
Sexy Cherry Lesbian	20080814101514	30.00	FAIL
Sexy Cherry Lesbian	20080815101503	10.00	FAIL
Sexy Cherry Lesbian	20080816101504	10.00	FAIL
Sexy Cherry Lesbian	20080817101511	10.00	FAIL
Sexy Cherry Lesbian	20080818101439	10.00	FAIL

Sexy Cherry Lesbian	20080820101508	10.00	FAIL
Sexy Cherry Lesbian	20080821101544	10.00	FAIL
Sexy Cherry Lesbian	20080822101540	10.00	FAIL
Sexy Cherry Straight	20080804121626	30.00	OK
Sexy Cherry Straight	20080809102636	30.00	FAIL
Sexy Cherry Straight	20080810102709	10.00	FAIL
Sexy Cherry Straight	20080811102716	10.00	FAIL
Sexy Cherry Straight	20080812102818	10.00	FAIL
Sexy Cherry Straight	20080813102723	10.00	FAIL
Sexy Cherry Straight	20080814102751	10.00	FAIL
Sexy Cherry Straight	20080815102659	10.00	FAIL
Sexy Cherry Straight	20080816102726	10.00	FAIL
Sexy Cherry Straight	20080817102712	10.00	FAIL
Sexy Cherry Straight	20080818102818	10.00	FAIL
Sexy Cherry Straight	20080819102803	10.00	FAIL
Sexy Cherry Straight	20080820102656	10.00	FAIL
Sexy Cherry Straight	20080821102938	10.00	FAIL
Sexy Cherry Straight	20080822103043	10.00	FAIL

Request for Additional Information

In terms of section 13.3.8 of the Code, I requested the following additional information from the SP: (i) a full report on the outcome of the investigation referred to by the SP in its response to item 1 supra; (ii) copies of advertising used to promote the relevant services on or around 8 August 2008 and (iii) comments on whether its advertising contained any information regarding minimum handset requirements for accessing the service. From the Complainant I requested copies of the Complainant's itemized billing or other information indicating the duration of the support calls made and an identification of the telephone number used when calling in to the SP call centre for support. I also invited the Complainant to reply to the SP's responses that were furnished in response to the Complainant's allegations regarding the failure to be subscribed to the Bikini Babes service and the alleged lack of proper support from the SP's call centre.

No further information was received from the SP in response to my request. The Complainant advised that it was not possible to be certain what telephone number the support calls were made from and, further, that the Complainant did not have access to itemised billing reports. The Complainant also stated that the message logs proved the SP had received the subscription request SMS for the Bikini Babes Club and re-iterated that charges for this service had been billed for.

Decision

With regard to issue 1 above, section 3.3.3 of the Code of Conduct provides that "[A] member is not liable for any failure to provide a service due to circumstances beyond that member's control." It is not clear from the information put up by either the Complainant or the SP whether the failure to send the welcome message to an MTN number (referred to in issue 1 above) occurred as a result of circumstances within or beyond the control of the member. The SP was requested to deliver a full report on the outcome of the investigation that it was undertaking with MTN but failed to

produce any such report nor any information to the effect that the investigation had not yet been completed. In the absence of any further information no finding can be made that the SP failed (with regard to the sending of the welcome address to the MTN number dealt with in issue 1 above) to provide a service due to circumstances that were within its control. However, section 3.3.1 of the Code provides that “[M]embers will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.” I do not regard the failure to produce any further information whatsoever regarding the outcome of the investigations with MTN in response to the specific request for same as an example of the SP dealing with WASPA or a customer in a professional manner.

With regard to issue 2 above, I have accepted that the service failure was probably caused by the limitations on the Complainant’s handset and the fact that the WAP site in question did not, at the time, cater for that particular type of handset. However, section 6.3.1. of the Code provides that for services such as MMS, that have specific handset requirements, advertisements must make it clear that the customer needs to have a compatible handset that has been correctly configured to use that service. As I have not been furnished with copies of any advertising used for the service on or around the time the Complaint was made I am not in a position to assess whether the provisions of 6.3.1 have been complied with. Again, I regard the failure to provide any response to the specific request made for copies of advertising used for the service to be inconsistent with the obligation in section 3.3.1 of the Code that “[M]embers will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.” I am aware that no specific allegation was made about advertising by the Complainant and have also noted that my request was phrased for copies of advertising promoting the service “on or about 8 August 2008” (own emphasis) whereas the complaint actually arose on 5 August 2008. I do not regard either of these aforementioned factors to be at all relevant in excusing the complete failure to respond to the request. It would have been clear to the SP what was being requested of it and yet no response was furnished.

With regard to issue 3 above, documentary evidence showing the length of calls placed by the Complainant with the SP’s call centre was not capable of being produced by the Complainant. The Complainant did not dispute the information contained in the call centre logs produced by the SP, however it was noted that the call centre logs contain no information about calls received between 08h00 and 15h00 on 5 August 2008. It has also been noted that, prior to 08h00 on Tuesday 5 August 2008, the logs show what appear to be irregular statistics of 1183 calls having been received between 00h00 and 02h00 that morning compared with just 5 calls being received in the same corresponding period on Wednesday 6 August 2008. The total number of calls experienced on 5 August 2008 by midnight of that day then drops to a total of 978 calls. The Complainant stated in its reply that “I can only restate that I spent 15 minutes; and have no reason to exaggerate the time spent holding”. The SP’s own response that it had experienced some internal problems, read with the additional information that was contained in the call centre logs that it was able to produce, suggest that the SP was clearly experiencing some irregularities and problems with its telephony system and/or call tracking system on 5 August 2008. I have accepted the Complainant’s allegation that more than R50 was spent holding in the call centre queue as being credible. As stated above, section 3.3.1 of the Code obliges members at all times to conduct themselves in a professional manner in their dealings with the public and customers. I would interpret this to include support services as well. The parameters of what constitutes a professional support service are not expressly defined in the Code, however I would

regard the placing of a customer on hold for 15 minutes at cellular rates as an example of unprofessional dealings with a customer and I would also regard an inability to measure, and therefore account, for support response times on the day in question as another example of unprofessionalism in providing the support service. In my view, both the Complainant's version (that the Complainant was placed on hold for 15 minutes) and the SP's statement (that it is unable to report and account for any calls received between 08h00 and 15h00 on 5 August 2008) demonstrate a degree of unprofessionalism in the management of the support service to customers during the period in question.

With regard to issue 4 above, i.e. the allegation that the Complainant had attempted to subscribe to a further service (the Bikini Babes service) offered by the SP via the access code 31191 but that, after sending the relevant key word to the SP, no link to access content was received by the Complainant although the service was charged for at a rate of R5 per day, I have paid attention the message logs furnished by the SP and to the response of the Complainant to those logs. I agree with the Complainant that the message logs show that a subscription request for the the Bikini Babes service was received by the SP but the logs in fact suggest that the subscription request keyword was "chick" and not "bikini" as alleged by the Complainant and, furthermore, that the keyword was sent (probably by a reply SMS) to the SP's number 27820048352 and not to the specific short code 31191 advertised for this purpose (in this regard see the message log entry for 5 August 2008 at 13:11:50). I therefore do not find that the SP was to blame for a failure to subscribe the Complainant to the Bikini Babes service but rather that the Complainant did not send the activation key word to the advertised short code. In the absence of any itemized billing showing charges as having been debited for this service, there is no documentary evidence to rebut the SP's billing records that suggest that the Complainant was not billed for this particular service but only for the two other services simultaneously subscribed to during the same period in question. I therefore do not find on a balance of probabilities that the SP has billed for a service it was not providing.

My decision is therefore that the SP has breached section 3.1.1 of the Code in the manner and instances described above. No other breaches of the WASPA Code have been established.

Sanction

Insofar as issue 3 is concerned, I regard a small payment of compensation to the Complainant to be an appropriate sanction. Provided that the Complainant, within 21 days of delivery of this adjudication report, furnishes the SP in writing with details a bank account into which the below mentioned sum must be deposited, the SP is directed to make payment to the Complainant of R50 within 7 days of receipt of the Complainant's bank account details.

I regard the instances of unprofessional conduct relating to issues 1 and 2 above in a more serious light. The SP has plainly not complied with a request for information that may have assisted substantially in the resolution of this complaint. As a self-regulated industry body, WASPA depends on the voluntary co-operation of its members in order to achieve the primary purposes for which it was established, i.e. to ensure that members of the public can use mobile services with confidence and to equip customers and consumers with a mechanism for addressing any concerns or complaints relating to services provided by WASPA members, and to provide a framework for impartial, fair and consistent evaluation and response to any complaints made (see section 1.2 of the Code). Therefore, in determining an appropriate sanction to be applied in this regard, I have taken into account that the

unprofessional conduct of the SP in this matter strikes at the very purpose of WASPA as a self-regulating industry body and affects not only consumers, but all members of the industry as a whole.

I have also specifically taken into account that had the SP furnished the requested information, it might well have revealed that the fault for non-delivery of the SMS in issue no 1 lay with the SP and not the network and may additionally have revealed other breaches of the Code and Advertising Rules insofar as its advertising for the particular service was concerned. I would not consider it to be appropriate for any SP involved in a complaint to avoid being sanctioned for breaches of the Code and Advertising Rules by not responding to requests for further information. I therefore think that the sanction to be imposed for failing to respond to an adjudicator's request for further information must carry sufficient weight to act as a deterrent to any SP deliberately adopting such a course of action in future.

In the circumstances I regard a fine of R50 000 to be an appropriate sanction and direct the SP to pay the aforesaid sum to WASPA within 7 days of this adjudication being reported, failing which the SP shall be suspended from WASPA until such time as the fine has been paid and in which event WASPA shall advise all mobile network operators of the SP's suspension.