

# REPORT OF THE ADJUDICATOR

WASPA Member (SP): WASPA

Information Provider (IP):

(if applicable)

N/A

Service Type: Customer Relations

Complainant: WASPA Monitor

Complaint Number: 4722

Code version: Code v6.1 and Ad Rules v1.6

**Date of Report:** 22/9/2008

## Complaint

 On the 21<sup>st</sup> of August 2008 the WASPA Monitor lodged the following complaint with the WASPA Secretariat:

Date of breach: Augsut 2008 WASP or service: Jippi - iTouch

Clauses breached: 4.1.1

4.1.2

Description of complaint:

The following complaint was received from cellphone number [removed] utilising the Jackpot Mobile gaming service provided by iTouch. The activities on this handset is set out below.

#### Activities:

- MSISDN [removed]
- $\,\cdot\,\,$  Java application downloaded on my handset Nokia 6234 Beginning of the year.
- · iTouch service Jackpot Mobile Double Magic Slots.
- No interaction with game for weeks.
- Received a SMS on 31 July 2008 01:49:09 PM
- o Your payment was successful. Your game balance is now 1670. Keep playing and see if youre a Jackpot Mobile winner! Goodluck.
- o Long code 27820070002
- o NO INTERACTION TO TRIGGER THIS EVENT.
- · Vodacom itemized billing report shows:
- o Content service iTouch
- o Call Date 31 July 2008
- o Call Time 01:49:09: PM

- o Duration/Bytes 0
- o Total Data 0
- o Service Description Jippii
- o Cost 8.77 (Excl. VAT)

The customer contacted the itouch call centre, who claimed that no services were subscribed to on that cellphone number.

No notifications were sent to the subscriber prior to billing.

No billings have taken place since 31 July 2008.

Charging the customer R8.77 for no apparent reason, weeks after they last interacted with the services is not \"honest and fair dealings\".

Urgent complaint:

The Monitor considers this to be an urgent complaint and requests that the Secretariat expedite it.

- 2. Presumably this complaint was lodged by a member of the public through the monitor.
- 3. The complaint relates to the download by the Complainant of a game or games written in the Java programming language and designed to be played on a cellular telephone.

### Response

- 4. The SP was advised of the complaint and on the 1st of September 2008 requested an extension of time within which to respond. On the 2nd of September 2008 the SP furnished the WASPA Secretariat with its response to the complaint.
- 5. In its response the SP advised that the Complainant had downloaded a poker game subsequent to downloading the "Double Magic Slots" game, and that the billing complained of related to this second game. The SP furnished logs in support of its contention. A fuller treatment of the response is given in the discussion below.

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

- The Complainant alleges breaches of the following sections of the Code of Conduct:
  - 4. Customer relations
  - 4.1. Provision of information to customers

- 4.1.1. Members are committed to 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.

### Decision

- 7. On the SP's version, the timeline of this complaint runs as follows:
  - 7.1. On the 21st of April 2008 the Complainant downloaded the "Double Magic Slots" game. Attempts to bill the Complainant were unsuccessful.
  - 7.2. On the 26th of June 2008 the SP received an SMS from the Complainant's cellphone number requesting a download of a poker game. A WAP link was sent to the Complainant to allow for download of the game. These two actions are confirmed by the SP's logs.
  - 7.3. The Complainant downloaded the poker game and was billed R 20 for it. The SP did not provide log confirmation for these two actions in its response.
  - 7.4. On the 31st of July the Complainant requested a top up of R 10 (including VAT). The top up was successful. The transaction is confirmed in the SP's logs. It is the SP's version that top-ups can only be requested from within the game itself.
- 8. Against the SP's version we have the Complainant's contention that the Complainant downloaded the Double Magic Slots game, and not the poker game, and that no interaction had taken place between the Complainant and the SP from the beginning of the year (as stated in the complaint) until the 31st of July 2008 when the SP billed the Complainant an amount of R 8.77 plus VAT.
- 9. The poker game was provided to the Complainant based on a clear SMS request on the 26th of June 2008. This is confirmed by the SP's logs. As the Adjudicator has been given no reason to doubt the veracity of the SP's logs, that evidence must stand. Further, the Complainant cannot have ordered the poker game without taking the positive step of sending an SMS as recorded in the logs. Accordingly there was indeed interaction between the parties approximately one month before the billing event complained of. It is the SP's contention that billing requests can only be effected from within a game, and that hence the Complainant or someone using the Complainant's cellular telephone must have requested the "top up".
- 10. Unfortunately the determination in this complaint comes down to determining whose evidence is the more compelling, based on a rather scanty submission from the Complainant. The Adjudicator finds that of the SP's version is the more plausible, and accordingly finds that there has been no breach of the Code of Conduct in this matter.

11. A final word: the Complainant states that the SP's call centre operator had said that there were no services subscribed to on the Complainant's cellphone number. There is too little information before the Adjudicator to make any determination of wrongdoing here. The call centre staff may have been referring to subscription services, and the Adjudicator accepts that the service complained of is not a subscription service. However, the SP is nonetheless reminded that it has a duty to provide adequate customer support.

