



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	SMS Net
Information Provider (IP) (if any)	n/a
Service Type	Subscription service
Source of Complaints	WASPA Monitor
Complaint Number	6730
Date received	8 June 2009
Code of Conduct version	7.0

Complaint

This complaint was initially logged by the WASPA Monitor on 8 June 2009 against the SP. The complainant alleges that clauses 4.1.6 and 4.1.7 of the WASPA Code of Conduct have been breached in that the SP's telephonic customer support is not easily available and/or does not function effectively in providing immediate support or the ability for a customer to leave a message.

The complainant also makes reference to a number of similar complaints received against the SP for the same reason. For that reason, the WASPA Monitor tested the SP's support lines and found that on six attempts to call two different numbers given by the SP, 5 out of 6 times the line rang but was never answered and there was no opportunity given to the caller to leave a message. Only on one occasion was a line answered by an operator.

The complainant requested that the complaint be considered urgent and be dealt with according to the WAPA emergency panel procedure.

SP's response

In its initial response to the complaint, the SP acknowledged that it had been experiencing problems with its fixed support lines. The SP offered an explanation that the problem was due to the cutting of a Telkom line by the Gautrain constructors which affected the surrounding area of Hatfield, Pretoria, including the offices of the SP. The SP stated that Telkom could attest to the crisis.

The SP stated further that the problem persisted for over a week, during which time it made every effort to provide alternative means for its customers to make contact, including the distribution of cell phone numbers on which it could be reached. These numbers were distributed to network operators' customer care and its network operators business managers were informed of the crisis.

The SP tendered to refund all charges incurred by customers who had not been able to successfully contact it during the aforesaid period to unsubscribe from its service.

The SP concluded by confirming that all its lines were again functional and could be tested again using its main number helpline number, which had a hunting facility which linked to other available lines.

Emergency panel report

After receipt of the SP's initial response, further information and proof was requested from the SP to substantiate its explanation for the problem. The SP provided a number of Telkom fault reference numbers which included the date on which faults were logged. Unfortunately, the SP failed to provide an adequate explanation as to why there had been numerous other complaints made for the same reason outside the period it was alleged to have experienced the difficulties with Telkom.

The complainant also conducted further tests on the lines after the SP had confirmed that the lines were functional and once again experienced the same problem of the line just ringing without being answered or converted to a message system.

The complaint was then referred to the WASPA emergency panel procedure, pursuant to which an emergency panel hearing was conducted on 13 July 2009. The emergency panel made the following finding:

On 2009-07-03, the WASPA Secretariat invoked the emergency procedure set out in section 13.7 of the WASPA Code of Conduct. Consequently, an emergency panel consisting of three panelists was convened to review these complaints.

Versions 7.0 and 7.4 of the WASPA Code of Conduct and version 2.3 of the WASPA Advertising Rules were considered by the panel reviewing these complaints. This notice is effective as of 2009-07-13.

Complaint 6730: SMS-Net customer support

This complaint relates to customer support provided by SMS-Net. The WASPA Monitor tested SMS-Net's customer support during a week in June, and found it to be below the standard expected by the WASPA Code.

SMS-Net responded to the initial complaint, noting that the problem was a result of Telkom outages. Based on a review of recent consumer complaints lodged with WASPA regarding SMS-Net's customer support, the WASPA Monitor and the WASPA Secretariat believe that the problems are not adequately explained by Telkom faults. There continue to be public complaints lodged in this regard.

After reviewing the available information, the emergency panel concluded that there was substantial evidence of breaches of clauses 4.1.6 and 4.1.7 of the WASPA Code of Conduct.

Consequently:

- 1. The panel orders the SP to take immediate steps to comply fully with clauses 4.1.6 and 4.1.7. The SP must provide a report to the WASPA Secretariat on the specific steps taken to ensure full compliance within five days of this notice.*
- 2. The panel requests that the WASPA Media Monitor continue to test the SP's customer support, and provide additional feedback on the SP's ongoing compliance for the adjudicator reviewing this matter to consider.*

The panel also requests that the WASPA Secretariat expedite the adjudication of this complaint.

SP's response to emergency panel ruling

The SP responded to the emergency panel ruling by confirming that it had taken the following steps:

1. To supplement its current land lines with 5 (five) cellphone numbers on which it could be reached (the numbers were provided to WASPA);
2. The existing helpline numbers affected by the construction problem previously referred to by the SP were to be replaced with 3 (three) new fixed line numbers and application had been made by the SP in this regard.

The SP confirmed that its customers could now cancel their subscription through the following means:

1. Sending STOP to 33912;
2. Calling the new land lines; or
3. Calling or sending SMS's to the mobile numbers used to supplement their current land lines; or

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4. Sending an email to helpdesk@smsnet-sa.co.za.
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Additional information from complainant

Pursuant to the emergency panel's request that the WASPA Monitor continue to test the SP's call centre and support service, the Monitor conducted further testing on each of the numbers provided by the SP, both fixed and mobile.

All but one of the 5 (five) fixed line numbers were functional. In three cases, it was found that the cause of the initial complaint had not been remedied and the lines simply rang without being answered or being converted to a message system. In one case, the caller got through to a company called the Management Training Centre, who reported that they had received a number of calls over the past 6 (six) months for the SP. It was confirmed that this company bears no relation to the SP.

Each of the supplementary help line numbers were found to be functional when tested.

Sections of the Code considered

Section 4.1.6:

Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).

Section 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

It is appropriate in my adjudication of this matter to review the SP's support service both prior to and after the emergency panel ruling in July 2009.

Based on the test information provided by the complainant and the numerous other complaints relating to the same problem received by WASPA, it is clear that the functionality of the SP's customer support, and in particular, its telephonic support, did not meet the requirements of sections 4.1.6 and 4.1.7 of the WASPA Code of Conduct over a period of at least 3-4 months.

I am less than impressed by the SP's attempt to absolve itself of responsibility for its non-compliance by conveniently blaming Telkom or the Gautrain contractors. Not only does the time period within which this "problem" was said to persist not correspond with the period over which complaints were received against the SP, but the SP has also offered little or no concrete evidence to substantiate its explanation in this regard.

Even after the emergency panel ruling, it appears that the SP's attempts to comply with the requirements of the Code fall well short of the mark. Whilst it is acknowledged that the SP has provided a number of functional mobile numbers to supplement its normal helpline numbers, this does not detract from the fact that its helpline numbers continue to be ineffective.

I therefore find that the SP has breached the provisions of sections 4.1.6 and 4.1.7 of the WASPA Code of Conduct and has remained in breach over a period of time despite being warned accordingly.

Sanction

In determining the appropriate sanctions to be made against the SP, I have taken the following factors into account:

- a) The fact that a number of other complaints have been made regarding the SP on the same or similar grounds as the current complaint;

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- b) The SP's bad faith in attempting to offer an explanation for its failure to meet the required service levels by blaming third parties;
 - c) The SP's continued breach of the relevant provisions of the Code after an emergency panel ruling had been made against it for the same contravention.

The following sanctions will apply:

1. The SP is fined an amount of R 250 000.00;
2. On the submission of appropriate proof by its customers to it, the SP is ordered to refund all additional amounts charged to such customers which were incurred as a result of such customers not being able to unsubscribe from the SP's services;
3. The SP is ordered to suspend all of the subscription services offered by it until such time as it has taken steps to ensure that the telephonic customer support offered by it complies with sections 4.1.6 and 4.1.7 of the WASPA Code of Conduct and it has notified the WASPA Secretariat in writing of such steps taken.
4. The suspension of the SP's subscription services will not be lifted until the WASPA Monitor has tested the SP's telephonic support lines over a period of not less than 10 (ten) days and no further problems are encountered.

The aforesaid sanctions will not be suspended pending the completion of any appeal process.