



ADJUDICATOR'S REPORT

WASPA Member (SP):	Leaf Wireless
Information Provider (IP):	
Service Type:	Subscription
Source of Complaints:	Consumer
Complaint Number:	6746
Code of Conduct version:	7.0 (until 17 June 2009) and 7.4 (from 17 June 2009)

Complaint

An unsubscribe request was logged by a consumer of the WASPA website on 31 May 2009. By 8 June 2009, the SP had failed to respond to the request. On 21 July 2009 the SP was advised by email that the matter had been escalated to a formal complaint. By 3 August 2009 no response to the complaint had been received from the SP and the SP was advised by further email that the matter was to be referred for adjudication. In its further email to the SP of 3 August 2009, WASPA advised the SP as follows:

"While you are not required to provide WASPA with a response, should no response be forthcoming from your office today, the WASPA Secretariat will be obliged to hand this complaint to an adjudicator without the benefit of your input".

Response of SP

On 3 August 2009, the SP responded to WASPA's email of the same date and advised WASPA that it had not received WASPA's email of 21 July 2009. The SP undertook to address the complaint. No further information or response was received from the SP.

The following additional information was provided to the adjudicator by WASPA:

Complaint #6746 is the escalation of unsubscribe request #17536 where the WASP did not respond. The complaint was initially withdrawn as no contact details were on unsubscribe system so the WASP didn't get notices. Contact details for unsubscribe system were updated 2009-06-09. However the complaint was re-opened 2009-07-21.

Decision

Version 7.0 of the WASPA Code of Conduct was in force until 17 June 2009, whereafter version 7.4 of the Code became effective.

Section 11.5.8 of version 7.0 of the Code provided as follows:

11.5.8. If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.

An identical provision remained in version 7.4 of the Code although the section was renumbered as section 11.5.9.

Even taking into account the fact that the contact details of the SP were updated on the unsubscribe system on 9 June 2009, the SP in this matter failed to comply with section 11.5.8 of version 7.0 of the Code in the period until 17 June 2009 and failed to comply with section 7.4 of the Code thereafter. The SP failed to give reasons for its failure to comply with the above sections and specifically failed to give any reason for its failure to do so by 23 July 2009 (i.e. within 48 hours of the complaint having been re-opened on 21 July 2009 by which time the contact details for the SP had been updated).

Sanction

The SP is directed:

1. to immediately unsubscribe the consumer from its services (to the extent that it has not already been unsubscribed);
2. to pay R1 000 compensation to the consumer and to refund the consumer all charges debited against the consumer's cellphone account from 23 July 2009 until the date of unsubscribing the consumer together with interest thereon at the rate of 15,5% calculated daily and compounded monthly in arrears from the date of debiting any such charge until the date of reimbursement with such compensation and refund to be paid by direct deposit into the consumer's bank account within 5 days of the consumer providing the SP with its bank account details;
3. within 15 days of delivery of this report to provide WASPA with written confirmation in the form of a sworn affidavit deposed to by a senior manager of the SP that it has complied with the sanctions contained in paragraphs 1 and 2 above or detailing the reasons why it has not complied; and
4. to pay to WASPA a fine in the amount of R25 000 within 5 days of delivery of this report;

failing which the SP's membership of WASPA shall be suspended and all network operators requested to bar the SP from access to their services and billing platforms for a period of 60 days or until such time as the above sanctions have been complied with, whichever period is the longer.

In the event of any appeal being lodged by the SP, interest on the compensation amount provided for in paragraph 2 and the amount of the fine provided for in paragraph 4 shall run at the rate of 15,5% from the sixth day following delivery of this report.