



REPORT OF THE ADJUDICATOR

WASPA Member	Zoukmobile
Information Provider (IP) (if any)	n/a
Service Type	Subscription
Source of Complaints	Public
Complaint Number	6926
Date lodged	30 June 2009
Code of Conduct version	7.4

Complaint

The Complainant in this matter purchased a new SIM card which was unwrapped and activated on 12 June 2009. After performing a R5 recharge on 15 June 2009 the Complainant noted that R5 of airtime was deducted on the same day. The Complainant requested a refund and further that the member (affiliate) be sanctioned for its conduct.

The WASPA member unsubscribed and blocked the relevant MSISDN when requested to do so through the WASPA unsubscribe system. The member also provided logs which indicate the following:

- The MSISDN was subscribed to the service offered by the member on 24 July 2008.
- Since that date 4 SMS messages per week had been delivered to that MSISDN at a cost of R5 per week.
- The recipient of the service was only billed successfully once, on 1 August 2008, before the billing event that took place when the MSISDN was in the possession of the Complainant on 15 June 2009.

The Complainant expressed the view that the member did not seem to be aware of the effect of their conduct and that “sloppy systems that don't remove a subscriber after a long period of failed billing attempts are the scourge of the industry”.

In its final response to the Complaint, the member stated that:

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- It ensured adherence to section 8.1 of the Code regarding the sending of marketing messages to adult service subscribers
 - This was the first time it had subscribed or charged a user on a recycled number, i.e. this was an isolated case. Notwithstanding which the member indicated that it would take full responsibility for this.
 - Although a refund had been offered this had been refused – the total of the refund offered was R10.
 - The member offered a full apology to the Complainant and pledged that such an occurrence would not happen again.

Sections of the Code considered

The following section of version 7.4 of the WASPA Code of Conduct was considered:

11.5.7. 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

1. It is evident that the member has continued to unsuccessfully bill the MSISDN in question for a period well in excess of the three months referred to in section 11.5.7. The subscription service was continued for more than ten months after the last successful billing event on 1 August 2008.
2. The Adjudicator is further satisfied that section 11.5.7 is identical to section 11.2.5 as it existed under Version 6.1 of the WASPA Code of Conduct, which was in force at the time that the MSISDN was subscribed to the service. The “three month rule” therefore applied at all times relevant to this Adjudication.
3. The Complaint is upheld and the WASPA member is found to have breached section 11.5.7 of the Code of Conduct.
4. In assessing an appropriate sanction the following considerations were taken into account:
 - 4.1. The seriousness of the offence: publicity surrounding billing of recycled numbers and the undoubted damage which this does to the WASP industry and to consumer confidence in subscription services. See for example:
<http://mybroadband.co.za/news/index.php?news=4785> &
http://www.noseweek.co.za/article.php?current_article=2138.
 - 4.2. The clean record of the WASPA member & its acknowledgement of wrongdoing.
 - 4.3. The extended period for which unsuccessful billing took place.

4.4. The sanction imposed under Adjudication 4168:

“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.”
5. In the circumstances the Adjudicator is of the view that a suspended sentence would be appropriate given the pledge provided by the member that such a breach will not reoccur as also its clean record. The size of the fine to be suspended, however, should take into account the seriousness of the breach and leave the member in no doubt that any further breach will be harshly dealt with.
6. The member is fined the sum of R200 000, payment of which is suspended for a period of one (1) year from date of this Adjudication subject to the member not breaching section 11.5.7 of the Code during this time.
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