Wireless Application Service Provider Association

REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno UK
Information Provider (IP):	Not applicable
Service Type:	R200 billing threshold
Complainants:	Media Monitor
Complaint Number:	7251 / 7252
Code Version:	7.4
Advertising Rules Version:	N/A

Introduction

Due to the similarity of the cases and the nature thereof complaints 7251 and 7252 are bundled.

Complaint

This complaint is a Media Monitor complaint related to the R200 billing threshold.

The Monitor wrote:

"iTouch is not sending the R200 threshold notification message. Test attached. Emergency panel requested. Suspension requested, until fixed."

The Monitor provided the test results:

"On June 26th I smsed Play to 31194 to join the above service. The purpose of this test was to see if I in fact got my R200 cap reminder after spending R200 as I was suppose to. In both cases my findings were the same:

TEST NUMBER ONE

I smsed play to 31194 and received three smses:

1. Information: Welcome 2 FunClub! Click 4 ur FREE game. URL: http://212.239.11.193/j/j.jad?p=0906160000666153693231

2. Information: Hi: U're a member of the FunClub! Click now 4 tones, pics & more! URL: http://wap.funfone.co.za/

3. Welcome 2 FUN CLUB! U have UNLIMITED access 2 downloads & the chance 2 win a Nintendo wii! Help: 0214178001. (Sms stop fun to 31194 to end. Subscription R10/day)

On JULY 26TH, exactly a month after joining I received a reminder message:

FUN CLUB Reminder:U have unlimited games, music & more 2 d/load PLUS the chance to win a Wii! Help:021 4178001 (R10/day subscription. Sms stop fun to 31194 to end)

TEST NUMBER TWO

I once again smsed play to 31194 and received three smses:

1. Information: Welcome 2 FunClub! Click 4 ur FREE game. URL: http://212.239.11.193/j/j.jad?p=0906160000665512627591

2. Information: Hi: U're a member of the FunClub! Click now 4 tones, pics & more! URL: http://wap.funfone.co.za/

3. Welcome 2 FUN CLUB! U have UNLIMITED access 2 downloads & the chance 2 win a Nintendo wii! Help: 0214178001. (Sms stop fun to 31194 to end. Subscription R10/day)

On JULY 26TH, exactly a month after joining I received a reminder message:

FUN CLUB Reminder:U have unlimited games, music & more 2 d/load PLUS the chance to win a Wii! Help: 021 4178001 (R10/day subscription. Sms stop fun to 31194 to end)

Conclusion:

It is now the 3rd August and I still have not received a R200 cap reminder. With the subscription service clearly being charged at R10 a day I should have received my R200 cap reminder message on the 17th of July. I am still joined to the service which means my total in service charges, which has been running for 39 day is so far is R390 to date.

Breeches of the code:

6.2.9. During any calendar month, if the total cost of any service exceeds R200 for that month:

(a) Where the WASP is in control of the billing (e.g. an OBS), an additional communication is required from the customer, confirming acceptance of any costs over this amount, prior to any additional costs being billed.

(b) Where the WASP is not in control of the billing (e.g. the customer sends an SMS to a premium rated number), the member must send a notification to the customer once they have reached this limit.
EMERGENCY PANEL REQUESTED.
SUSPENSION REQUESTED."

The Monitor provided the following feedback:

"I have been given a directive to proceed to EMERGENCY PANEL. The intention of the emergency is not only to prevent future harm, but to also stop ongoing harm as a result of the breach that caused the emergency. All the services that caused the breach will thus have to cease billing until the formal. Also I have more feedback from our Tester. These tests were done until 12 August 2009.

Herewith her correspondence to me today, August 13.

Hi,

As far as the iTouch Fun club R200 cap reminder message test goes, on all six cases tested, I did not receive one R200 expenditure cap reminder message nor did I receive an additional R400 reminder message thereafter. As of yesterdays date, August 12th the amount of money been billed on each phone by the services tested all exceeded the R400 cap reminder message threshold.

This means I have spent over R2400 over the six subscriptions and have not received even one reminder cap message!

This information is vital for the adjudicators, as iTouch have not seemed to repair any of their technical errors since they have been informed of this problem on 4 August 2009.(8 days ago)."

Service provider's response

The SP wrote:

"We thank you for bringing this to our attention. We are current investigating and will advise shortly once we have reviewed our findings."

The SP provided a feedback:

"It was great speaking to you today, and thank you for your help with the above mentioned complaints.
I would just like it to be noted for the panel that we did not deliberately withhold the R200 threshold messages from the users but rather that we experienced an unexpected technical problem with our platform. We thank the WASPA monitor for making this issue known to us in such a timely manner.

We have taken the decision to rather change the billing price of the Subscription Service Fun Club to R6 / day vs. R10 / day. This is to ensure that we do not exceed the R200 threshold by any means as this part of our platform is currently in re-development.

We as iTouch Buongiorno do not wish to mislead the public in any way and have therefore weighed up the tarnishing of the WASP reputation vs. the loss of daily revenue. We have opted for the later of the two, with revenue losses amounting to tens of thousands of Rand per day as we do not wish to have the WASP industry further stained. This embarrassing situation has come about at a time when the networks as a whole are not happy with the WASP industry.

I am available at any time if the panel requires any further information regarding this situation."

Sections of the Code considered

6.2.9. During any calendar month, if the total cost of any service exceeds R200 for that month:

(a) Where the WASP is in control of the billing (e.g. an OBS), an additional communication is required from the customer, confirming acceptance of any costs over this amount, prior to any additional costs being billed.

(b) Where the WASP is not in control of the billing (e.g. the customer sends an SMS to a premium rated number), the member must send a notification to the customer once they have reached this limit.

Decision

In adjudicating a matter the Adjudicator has to rely on the information provided to him / her.

In this matter the Adjudicator has taken note of the complaint lodged and the SP's subsequent response.

It is also important to note that an emergency panel convened and that some timelines have been included to refer thereto. It also needs to be noted that the Adjudicator concur with the outcome of the Emergency Panel and will therefore incorporate its findings in his / her decision albeit not steering entirely away from its findings in Adjudication 7250.

By the time of the emergency panel hearing, the SP had already responded to the complaints, admitting that a breach of clause 6.2.9 had occurred. The SP indicated that it did not know why the required message in terms of clause 6.2.9 had not been sent and that the matter was still under investigation. As an interim solution, the SP had reduced the daily billing for the FunClub service from R10/day to R6/day, so that the monthly billing for the service dropped to below the R200 threshold set out in clause 6.2.9.

The panel noted that clause 6.2.9 (a) applies to the FunClub service, since the billing for the service is controlled by the SP.

Since the SP had confirmed that it was operating in breach of clause 6.2.9, the panel dealt principally with appropriate remedies to address this breach.

Having considered all the information the Adjudicator does not feel that the excuse offered by the SP validates a sufficient excuse. It has further come to the attention of the Adjudicator that the fun club services offered by the SP are flawed with errors.

This is evident from various complaints that have been received over the bigger part of 2009 pertaining to the issuing of pin codes and customers being alleged to have entered such codes to name but a few.

It is therefore the opinion of the Adjudicator that the SP should have been able to pick up from the sheer volume of complaints that something regarding its procedures and systems must be wrong.

In no such instance did the SP come forth with a pro-active approach in trying to resolve these matters, and only once the WASPA Monitor picked up on it, did it in fact admit a technical error.

The SP is in found in breach of section 6.2.9

The Complaint is upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct;

The sanctions in Adjudication 7250 refer.