



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	121 SMS t/a Sports-Insider
Information Provider (IP) (if any)	
Service Type	Subscription
Source of Complaints	Mr J Ntamu
Complaint Number	7385
Date received	20 August 2009
Code of Conduct version	7.4

Complaint

The complainant lodged this complaint with WASPA against the SP, alleging that section 11.5.7 of the WASPA Code of Conduct had been contravened. A previous complaint of the same nature had been lodged by the complainant but was later withdrawn on the understanding that the SP would remedy a bug it had detected in its system.

In terms of the current complaint, the complainant states that the SP has once again failed to remove a subscriber where no billing took place over a period of 3 (three) months.

SP's response

The SP denied that there had been any contravention of section 11.5.7 of the Code. They indicate that, pursuant to the previous complaint from the complainant, they tightened their applications to remove subscribers who are not successfully billed for

a period of three months after acknowledging that loopholes had been found in their applications.

The SP provided proof of subscription to the service on 5 February 2005 and then alleged from a further log that there was no successive period of 3 (three) months where the sim in question had an unsuccessful OBS transaction returned. However the SP admitted that further logs had to be obtained from its aggregator, Mira Networks.

Notwithstanding its denial, the SP confirmed that the complainant had been unsubscribed from the MySport service and offered to refund all monies deducted from the time that the recycled sim was activated. They requested the activation form from the complainant to determine the amount to be refunded.

Complainant's reply

In response to the SP's explanation, the complainant correctly argues that it is impossible for the SP to assert that section 11.5.7 has not been violated when they were not even in a position to consult the relevant OBS logs.

After the OBS logs were eventually obtained from Mira Networks, it became clear that Mira failed to bill via OBS from 4 April 2008 to 10 December 2008 and the same probably holds true for the period 13 April 2007 to 3 April 2008, as this MSISDN was not active on the network over that period.

This sim was reconnected on 9 December 2008, airtime was loaded and billing took place on 10 December 2008.

Sections of the Code 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

The SP has stated on its own version that it cannot comply with section 11.5.7 of the Code if it does not receive proper OBS results from its aggregator, Mira Networks. The SP has also stated that it is experiencing ongoing problems with its system, which are being addressed.

Based on the foregoing, which I take to be an admission of guilt in this complaint, I confirm that the SP has contravened section 11.5.7 of the Code.

This complaint is accordingly upheld.

Sanction

This is a repeat offence and despite stating previously that it would rectify the problem on its system, the SP has failed to do so.

In response to the lodging of this complaint, the SP has initially denied the contravention even though it clearly was not in a position to do so.

These aggravating factors have been taken into account in selecting an appropriate sanction. No mitigating factors were presented or taken into account.

The following sanctions are given:

1. The SP is ordered to suspend its My Sport subscription service until such time as it is in a position to comply with section 11.5.7 of the Code.
2. The SP is fined an amount of R 100 000.00.
3. The SP is ordered to refund all amounts deducted from the complainant's account if it has not already done so and proof of the refund must be furnished to the WASPA Secretariat within 7 (seven) days of the SP receiving notice of this report.