



REPORT OF THE ADJUDICATOR

WASPA Member	SMSNet
Service Type	Subscription
Source of Complaints	Public
Complaint Number	7706
Date lodged	28 September 2009
Code of Conduct version	7.4

Complaint

This complaint is an escalation of an unsubscribe request lodged with WASPA where the complainant alleges that the member was debiting an account attached to a recycled SIM card in contravention of the WASPA Code of Conduct.

“Our customer is using the SIMs in devices not used for voice but for data services. We supply these SIMs after they have just been activated. We use the SIMs that have been recycled and therefore do not understand as to why our clients get billed for the content services which have not been subscribed to. As per section 11.5.7 of the code of conduct, the service should be terminated after three months of unsuccessful billing due to inactivity of the SIM card.”

The complainant requested that the matter be escalated as a result of the failure of the member to provide proof of unsubscription and a refund.

After receiving the formal complaint, the member responded by stating that a refund had been processed and providing proof thereof. No representations were made regarding the substance of the complaint.

The complainant remain unsatisfied, pointing to previous complaints made relating to the same issue, and asked that the member be sanctioned for its conduct.

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. A log file provided by the member indicates that the single (unsuccessful) billing event took place on 30 August 2008. The amount charged of R15 tallies with the refund provided.
2. Although no date is specified for when the billing event was eventually processed, the Adjudicator accepts that, given that the complaint was lodged on 16 September 2009, the three month period referred to in section 11.5.7 had long since expired by time the billing was eventually affected.
3. The member is therefore found to have breached section 11.5.7.

Sanction

4. In reviewing applicable precedent the following matters – many of them raised by the complainant in this matter – were found to be relevant:
 - 4.1. In [Adjudication 4168](#), a WASPA member was fined R50 000 for a breach of section 11.2.5 of version 5.7 of the Code – the same obligation as considered in this matter - with payment of the full amount suspended for six months subject to the member not breaching the same clause during that time. The member was also ordered to affect a refund.
 - 4.2. In [Adjudication 4524](#) another member was issued with a formal reprimand for the same offence. A refund had already been given.
 - 4.3. In [Adjudication 6926](#) the same offence was committed, and the Adjudicator – summarised matters as follows:

“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.”

5. The period of billing after the initial unsuccessful event in this matter is approximately one year.
6. The Adjudicator considers that - notwithstanding the fact that the instant complaint is the first to be raised against the member and that other members in the same position have been sanctioned with a suspended fine or even a formal reprimand - the continuing breaches of this clause by WASPA members requires a stronger deterrent.

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7. The Adjudicator is also mindful of the failure of the member to offer any explanation for the breach or any assurance as to measures taken to ensure no further episodes of the same nature.
 8. The member is fined the sum of R100 000. Payment of R90 000 of this amount is suspended for a period of one (1) year subject to the member not being found to have breached section 11.5.7 of the Code or its future equivalent during that time. The balance of R10 000 is payable to the WASPA Secretariat within five (5) days of receipt of invoice to this affect.
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