

REPORT OF THE ADJUDICATOR

WASPA Member (SP):	iTouch
Information Provider (IP): (if applicable)	
Service Type:	Complaints Procedure
Complainant:	Member of the public
Complaint Number:	3128
Code version:	Code v5.7 and Ad Rules v1.6

Complaint

1. On the 17th of January 2008 the Complainant, a member of the public, registered the following complaint via the WASPA website at URL www.waspa.org.za:

Code_Breached: 2nd complaint. I am being charged for zero seconds from 11.11.2007 to 10.12.2007 R24.56

Spoke to Mzukisi today who said he would hand this complaint to his supervisor.

Detailed_Description_Complaint: This is my 2nd complaint for being charged by this company and they have not phoned, faxed or emailed me the details of what we are being charged for.

Tick_as_appropriate: Service provider has not resolved my complaint to my satisfaction

2. The WASPA Secretariat advised the SP of the complaint by email on the 18th of January. The notice of complaint was sent to two email addresses, viz rosalinda@itouch.co.za and greg@itouch.co.za. The Secretariat suggested that the complaint be dealt with informally. No response was received to this email.
3. On the 28th of January the WASPA secretariat sent the SP an email requesting feedback on progress made in resolving the complaint.
4. On the 4th of February the Secretariat sent the SP a further email advising it that the complaint was about to be escalated pursuant to the formal complaints procedure set out in the Code of Conduct and further asking for progress in resolving the complaint.
5. On the 4th of February the Secretariat also sent an email to the Complainant asking if she would like the complaint to be escalated. The Complainant's husband, whose cell phone account was being debited with the disputed charges, advised that the

erroneous billing was still ongoing and agreed (presumably on behalf of his wife) that the dispute should be escalated.

6. Later on the 4th of February the Secretariat sent an email to the SP advising it that the complaint had been escalated and giving the SP five days to respond to the complaint.
7. On the 12th of February the Secretariat sent an email to the SP noting that it had received no response to the complaint from the SP and requesting that any response be sent by close of business that day.
8. On the 14th of February the Secretariat sent an email to the SP advising it that the matter had been referred to an adjudicator in terms of the formal complaints procedure set out in the WASPA Code of Conduct.

Response

9. No response was received from the SP to any communication from the Secretariat to the SP relating to this complaint; nor did the Complainant receive any response.

Portion of the Code Considered

10. The following clauses of the WASPA Code of Conduct were considered:

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

4.1.5. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, *and must respond to any complaints within a reasonable period of time.* (my emphasis)

4.1.6. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).

4.1.7. Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

Decision

Charge for service not provided

11. The Complainant alleges that the SP has been billing her in respect of “zero seconds” for the period 11/11/2007 to 10/12/2007 as well as for a subsequent period if I understood the contents of the Complainant’s husband’s email correctly. Unfortunately there is no indication given as to the nature of the service in question. On the facts the items billed for could have been one of several possibilities, for example:

- 11.1. Zero-length telephone calls (on examination of the SP's website at URL www.iTouch.co.za the SP does appear that it offers services that could be billed by time, such as their "Dateline" service).
 - 11.2. An SMS-based service that has been incorrectly reflected on the relevant statement as zero seconds.
 - 11.3. Downloads from the above website that have been incorrectly described as zero seconds.
12. As I am unable to determine what the alleged service was I am unable to determine whether the Complainant has been billed when she should not have been or whether a correct billing has been incorrectly described. Both scenarios would involve breaches of the Code of Conduct but as the sanction would differ significantly depending upon the breach it would be unfair to find the SP guilty of a breach of the code on the imperfect facts at my disposal.

Complaints Procedure

- 13. It *is* clear from the facts that the SP did not respond to the Complainant's complaint, either when it was approached by the Complainant directly, or when it was advised of the complaint by the Secretariat.
- 14. There is no specific requirement in the Code of Conduct that an SP should respond to notifications by the Secretariat of either formal or informal complaints. Should it fail to respond to a formal complaint it merely prejudices its case should the matter be referred to an Arbitrator.
- 15. It is however quite a different matter where a member of the public complains to the SP, as the Code of Conduct sets out clearly in clauses 4.1.5, 4.1.6 and 4.1.7 the standard that is expected of the SP in this regard.
- 16. Given that the Complainant has received no response from the SP regarding the complaint in a space of a month, and moreover the fact that this is her second complaint to the SP in this regard, it is clear that the SP's complaints procedure falls short of what is expected by the Code of Conduct. Specifically, the SP is in breach of clause 4.1.5 in that it did not respond to the Complainant's complaint "...within a reasonable period of time." The clause does not require that the complaint be resolved, merely that it be responded to within a reasonable period. As the SP has not responded at all, it is clearly in breach of clause 4.1.5.

Sanction

- 17. The SP is fined an amount of R 500 for each business day that passes from the date that the Secretariat delivers this report to the SP until the occurrence of one of the following, the first day excluded:
 - 17.1. The Complainant indicates to the Secretariat that she has been contacted by the SP with feedback relating to her complaint, or

- 17.2. The SP provides the Secretariat with proof that indicates to the Secretariat's reasonable satisfaction that the SP has fulfilled the condition set out in paragraph 17.1,
18. Notwithstanding the period taken by the SP to fulfil the condition set out in paragraph 17, the fine shall be an amount of not less than R2 500 and shall be payable to the Secretariat within five days of a notice delivered to the SP by the Secretariat indicating the total fine.