

WASPA Member (SP)	SMSNET-SA
Information Provider (IP)	N/A
Service Type	Unlawful Conduct
Source of Complaint	Vuyelwa Sobazile
Complaint Number	#3580
Code of Conduct Version	5.7
Date of Adjudication	09/04/2008

Complaint

The Complainant raised a complaint stating that deductions were made off his account without him actually subscribing to the said services. Numerous attempts were made on his behalf to resolve the disputed issue but it was not done in a satisfactory manner. He felt that his network operator has let him down and further feels that the SP is in fact fraudulent and/or a bogus company stealing his money.

SP Response

In its response the SP provided the Complainant with a log of the actual download that justified the deduction off the Complainant's account. The SP further reiterated that such a download could not take place unless the actual handset was actually used. Whether this then occurred with or without the knowledge of the Complainant, is debatable, but poses a problem since the SP is placed in a predicament every time somebody alleges that they were not downloading something. The SP further stated that it was not a subscription but a once-off download. The SP then requested advice on how to tackle future scenarios and also stated that it is willing to refund the Complainant.

Sections of the Code of Conduct 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.

3.1.2. Members are committed to lawful conduct at all times.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him.

In this matter it seems quite obvious that the Complainant was not aware of the download that took place. However, in the light of the evidence presented by the SP it is illustrated that a download has indeed taken place and has the SP also demonstrated in the log keeping that it was justified in its actions of deducting the account of the Complainant.

The Adjudicator is of the opinion that the handset of users are their own responsibility, and, should such a handset be used without the knowledge of the user, that such use still remain the responsibility of the said user, unless such a handset is reported stolen or misused. To burden SPs with complaints which are based on hearsay and which do not carry substantial weight apart from the hearsay, would be unjustified and naïve. In the Adjudicator's firm belief, it would prove sufficient for a SP to rebut such allegations based on hearsay by providing clear evidence, such as in this case, through the provision of a log record.

The Adjudicator further feels that the SP responded to the Complainant in a satisfactory manner. Although the Adjudicator regrets the loss on behalf of the Complainant, he does not feel that such loss is the responsibility of the SP.

In no way from the evidence gathered is there any proof of unlawful or unprofessional conduct on behalf of the SP.

The Complaint is dismissed.
