

WASPA Member (SP)	Integrat
Information Provider (IP)	N/A
Service Type	Unlawful Conduct
Source of Complaint	Gareth Marchant
Complaint Number	#3646
Code of Conduct Version	5.7
Date of Adjudication	07/07/2008

Complaint

The Complainant raised a complaint stating that deductions were made off his account without him actually being able to retrieve the specific content onto his iPhone. He felt that his network operator has let him down and further feels that the SP had no right to debit his account and therefore have access to his bank account or details. Numerous attempts were made on his behalf to resolve the disputed issue but it was not according to him done in a satisfactory manner.

SP Response

The SP gave a very detailed response which the Adjudicator believes should be reproduced here in full:

1. There was no mention made of the clause(s) potentially breached of the code of conduct, advertising rules and / or advertising notices.
2. We have therefore responded in a more general way discussing the particular clauses of the code that we thought we could be considered in breach of, with regards to the complaint lodged. The complainant did apply for once off content out of his own free will to a service as provided by one of our clients. Integrat's platform was successfully used in providing the content which is provided by our client. Our Call Centre Manager Meladi Mosobe has provided her very best efforts in resolving this complaint in the informal procedure. She is however of the opinion that the complainant is despondent and hostile towards any attempts made by herself. If one considers the tone of the complainant in his e-mails it can be clearly seen that the complainant is on a warpath. We therefore insert hereto responses by Meladi to WASPA to clarify en illustrate her efforts in

resolving the complaint - this should also be read as incorporated to our formal response.

From: *meladi* [<mailto:meladi@integrat.co.za>]
Sent: Tuesday, April 15, 2008 8:26 PM
To: 'complaints@waspa.org.za'
Subject: RE: [WASPA.complaints] WASPA Code of Conduct complaint #3646: content charges

Dear WASPA

The customer was contacted, he admitted to the subscription being initiated, but he insists that we need to assist him with the setting on how to download content on his Imate phone.

Due to the solution required, can we please have an extension of another week?

*Kind regards
Meladi Mosobe.*

From: *meladi* [<mailto:meladi@integrat.co.za>]
Sent: Friday, April 25, 2008 1:59 PM
To: 'complaints@waspa.org.za'; 'Integrat Complaints'
Subject: RE: Reminder: (extension) complaint #3646: content charges

Dear WASPA

We would like to apologize for not adhering to the deadline as set for the 24th April instantly.

The complainant has been despondent in any attempts by our personnel to resolve this complaint. We at Integrat have gone above and beyond our call of duty to assist this complainant with no positive response from the complainant. The complainant did subscribe out of his own free will to a service as provided by one of our clients. Integrat's platform was successfully used in providing the content which is provided by our client.

He could not download the content that he subscribed to. This could be because of a technical problem or an unexhausted amount of reasons why this could not be done. Integrat has performed its duty by providing the content as requested and in addition have assisted the complainant by contacting Imate the device manufacturer of the complainant, who could unfortunately not assist us. This was with the intention to try and establish assistance for the complainant, which clearly is not part of our duty or role. Integrat has tried to explain the situation to the complainant, who despite our very best efforts has continued with his despondent actions. Integrat is of the opinion that it has done all and more required for providing the service as offered.

We can however do nothing more to resolve this complaint, and are satisfied that we have exhausted all our resources and remedies in assisting with same.

4. As is evidently seen from the above and the complaint, it is apparent that the complainant willfully and intentionally initiated the application for the content and the predicament is that he could not retrieve the content he requested. We hereby continue our general response forthwith.
5. We are of the opinion that the breach could be construed to consist of the following, but is of the set of mind that there was no breach of the following:

Code

3.1. Professional and lawful conduct

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.

6. Integrat has been professional and lawful in its conduct to assist this complainant, although there have been some time delays in our responses to WASPA. Integrat hereby once again offers its apologies to WASPA and the complainant for the time delay and the requesting of prolonged time limits to resolve the matter. Integrat is however of the outlook that the time delays that occurred was due to the fact that Integrat was liaising with third parties, which is not required by any law or regulatory body in an attempt to resolve same, as more clearly put out in the response of Meladi inserted above dated the 25th April 2008.

3.3.1. Members will not offer or promise services that they are unable to provide.

7. The content offered was delivered to the complainant, the fact that the complainant could not retrieve and / or utilize same can be attributed to a numerous and unexhausted sum of reasons. Although it is not required from us to assist the complainant in retrieving same we have gone a step further and contacted the complainants handset or device provider in order to assist the complainant with retrieving the content.
8. We also would like to refer the Adjudicator to Complaint #3574 and submit that the problem or situation that led to the complaint #3646 was beyond the control of Integrat and that Integrat was by no means negligent. Integrat was also responsive to the complaint and has done more than required to resolve same. And therefore quote the adjudicator in the matter of –

WASPA Member (SP) Clickatell, Information Provider (IP) Mediadeck, Complaint #3574

“• The IP has acted in such a manner as not to be in breach of the standard of behaviour required by section 3.1.1. It has generally been responsive and has

offered compensation – it has not, however, been able to satisfy the Complainant’s desire to have the service reinstated as this has been beyond its control.

• At the time of offering the service the IP was in fact able to provide it and the Complainant made use of it. The Adjudicator is satisfied on the facts put before him that the subsequent inability to provide a service was beyond the reasonable control of the IP. The IP cannot reasonably be said to have been negligent in this regard. The Complainant will also no doubt appreciate that the IP would not have willingly placed itself in a situation where it could not provide the service and that its inability to do so must have had serious implications for its business and goodwill in general.”

9. The following adjudication is also relevant as to section 3.3.1 of the Code of Conduct and can be applied to the current set of facts that constitutes complaint #3464 -

WASPA Member (SP) Integrat, Service Type Misleading Advertising, Complaint Number #3629

“Sections of the Code of Conduct considered

3.3.1. Members will not offer or promise services that they are unable to provide.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him. In this particular instance after reviewing the website, the complaint lodged and the SP’s eventual response, it is unlikely in the opinion of the Adjudicator to assume that the SP has misled the consumer or offered or promised any services it is unable to provide.”

10. We are also of the opinion that the breach may consist of the following but is once again of the frame of mind that there was no breach of the following:

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.

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.

11. Integrat has adhered to all of the above requirements as set out by the code of conduct; our Meladi Mosobe has also made each exertion in assisting the complainant and WASPA in resolving of the informal complaint which has now regrettably escalated to a formal complaint.

12. As per our logs inserted beneath it can clearly be seen that the content was delivered for each request of the complainant.
13. We in adding together, consider that the following complaints adjudication can also be submitted as a valid response of the complaint at hand:

WASPA Member (SP) SMSNET-SA,Service Type Unlawful Conduct
Complaint Number #3580

“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.”

3.3.3. A member is not liable for any failure to provide a service due to circumstances beyond that member’s control.

14. We are of the view that this complaint falls under the ambit of the above 3.3.3 of the Code of Conduct. Integrat has done everything within our control to provide the service as offered, and that the failure to provide the service is due to circumstances beyond our control. We should as a result also not be liable for this failure.
15. Our client the content provider is also agreeable to liaise and mediate with the complainant to make certain that the complainant receives the content that he applied for, by probably providing a compact disc or similar to the complainant with the content requested by the complainant.
16. In considering the above it is clear that there has been no breach of the Code of Conduct, Advertising Rules and notices and therefore this complaint should be dismissed.

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.

3.3.1. Members will not offer or promise services that they are unable to provide

3.3.3. A member is not liable for any failure to provide a service due to circumstances beyond that member’s control.

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.

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

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

In this matter adjudication first has to be made on whether the inability of the Complainant to retrieve the disputed downloads on his phone after requesting such downloads, does indeed validate the SP to debit his account.

Secondly, adjudicating whether the SP in this matter did indeed conduct itself in a professional and lawful manner and lastly if they provided a sufficient complaint procedure.

From reviewing the Complaint and taking all the circumstances into account the Adjudicator can understand the frustrations of the Complainant in this matter. It is however regrettable that the Complainant had to resort to foul language, although this is not of any real relevance here. What does however raise questions is why the Complainant kept requesting downloads after it must have become clear to him that such downloads were irretrievable, whether such inability was caused by technical failure on his phone or otherwise.

From the records provided by the SP, it is indicative that several download requests were initiated on behalf of the Complainant. Since the billing process is automated, it would have been impossible for the SP to have noticed or have become aware of the fact that these downloads were irretrievable by the Complainant. Requests for downloads were initiated by the Complainant and the system subsequently made it available for download, thus allowing Cell C, billing per download.

From the SP's response it can be deduced that its download is in fact compatible with iPhone, although in this case, some circumstances beyond the control of the

SP, prevented the Complainant to actually retrieve the downloaded content. It could therefore be argued that the SP did not promise any service it could not deliver and has therefore not acted contradictory to the principle laid down in section 3.3.1 of the Code. The SP went even so far as to contact the Complainant's handset's manufacturer, something that is not obligatory due to the rule laid down in section 3.3.3 of the Code.

The Adjudicator is also of the opinion that the SP did not contravene any of the provisions as laid down in sections 3.1.1 and 3.1.2 of the Code, thus maintaining its lawful conduct and professional mannerism.

The fact that the SP has extended its assistance in this matter by offering the disputed content in another medium, clearly states its willingness to resolve the matter. From the procedures followed, the Adjudicator can also not assess whether the SP has indeed breached any of the provisions laid down in sections 4.1.5 to 4.1.7 of the Code and is henceforth obliged to dismiss such claims, were they to be made.

The Adjudicator cannot find any breach of the Code that might be relevant to this matter and has no alternative but to dismiss the Complaint in full.

However, the Adjudicator does feel that it would be unreasonable to leave the Complainant without any recourse. Therefore, the Adjudicator orders the SP to:

- Reimburse the Complainant for the content that were requested repeatedly and subsequently billed.

The Complainant should therefore only have had to pay for the content he originally requested and the SP is requested, although not obliged, to provide such content in another form or medium.
