



REPORT OF THE ADJUDICATOR

WASPA Member	Smartcall Technology Solutions
Service Type	Subscription
Source of Complaints	Public
Complaint Number	4909
Date lodged	5 September 2008
Code of Conduct version	6.2

Complaint

The Complainant was aggrieved at having been subscribed to a service via WAP whilst out of the country and denied having done so. The full text of the complaint is laid out below to give a more rounded context for the adjudication thereof:

"MTN told me to lodge a complaint against Smartcall Technology Solutions. I will also lodge a complaint against MTN at the National Consumer Forum as I hold them responsible. For allowing this. I will also contact the press.

MTN invoiced me (Invoice# E222268649) for Content Charges. I did phone 808 (Ref# 414 308 88) and was told to contact a company called Smartcall Technology Solutions as they actually invoice me.

That was the first time they tried to shift the responsibility away from MTN. I did NOT receive a invoice from Smartcall Technology Solutions!!! I know that Smartcall Technology Solutions invoiced MTN and then MTN invoiced me but they (MTN) keep on mentioning that Smartcall Technology Solutions invoiced me. The truth is that Smartcall Technology Solutions claimed the money from MTN and they (MTN) just invoiced me without checking or validating their records!!!

I know it is only for an amount of R52.64, but if you steal from a few thousand MTN subscribers it will add up to real money.

MTN keep on telling me to sort it out with Smartcall Technology Solutions but I believe that I'm a client of MTN, I got a contract with them and they should sort out the problem and take responsibility for my problems. They invoice me and they should take responsibility for it!!!

As mentioned before, I did contact Smartcall Technology Solutions on the 12th of September 2008 as advised by MTN (Ref# 414 308 88). I spoke to a [Smartcall representative] and she told me that I did subscribe to African Music Portal. I told her that my Itemized billing statement show NO sms requesting any subscription. She said that I subscribed via WAP on 23 August 2008 at 22:54. She e-mailed me their proof that I did subscribe to their service.

I told her that I was in Australia from the 15th to the 25th of August and DID NOT use WAP. According to my Itemized billing, I can proof that I did not use WAP on my cell phone while in Australia. The only Packet Switched Data for the 23rd !

I had a long talk with someone from MTN (Cxxxxx) on the 12th of September and had to explain the whole story! I told him that I was in Australia from 15 to the 25 of August and DID NOT use WAP. According to my Itemized billing, I can proof that I did not use WAP on my cell phone while in Australia. The only Packet Switched Data for the 23rd ! He (Cxxxxx) agreed that there was no data traffic on my cell phone and thus I did not use WAP. He ask me to fax the information received from [Smartcall representative] (Smartcall Technology Solutions) to 0866 190 516. He then ask me to call MTN in 3 days (Ref# 414 768 29). On the 17 September I phone MTN and spoke to lxxxxx (Ref# 416 176 79). She told me that I should phone back in 3 days as there is no response to my problem on the system!!!! On Monday 22 September (at about 10:50) I phone MTN (Ref# 417 362 01) and was told there is no answer to my problem on the system!!! I asked to speak to the supervisor regarding the matter. I was told she will call me back.

At about 11:30 I got a call from a private number (Jxxxxx from MTN). She started feeding me the same useless information and she had no idea or background regarding my problem. She did not know about the fax, she did not read it etc.. I asked her for a reference number and she told me that I will have to phone 808 as she is phoning from her own phone.

Eventually she gave the phone to her supervisor (Rxxxxxxxxx) who once again start feeding me the same useless info. I ask her if she knew about the fax, did she read it, did she know about my problem etc. Her answer to all were NO. She then starts to explain that I should contact Smartcall Technology Solutions regarding the content charges!! She tried to explain to me that Smartcall Technology Solutions did send me the invoice and not MTN!! I explained to her that is it bullshit, I got the invoice with the content charges from MTN and not from Smartcall Technology Solutions. I told her I want the name of the person that received my fax on 12 September so that I can take the matter further."

SP Response

The WASPA member unsubscribed the complainant and responded:

“Please be advised that we have tried to refund this customer on numerous occasions. He has had many discussions with various employees in our company. The last correspondence I had with him was that he was going to sue us even if it cost him R50 000. He requested from me all our details to pass it onto his lawyers. I don't think he will be satisfied with whatever we do.”

Sections of the Code considered

The following sections of version 6.2 of the WASPA Code of Conduct were considered:

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.

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

Decision

The simple question to be addressed arising from the complaint is whether the WASPA member was entitled to invoice, through the agency of MTN, the complainant in respect of the subscription service. It should be noted that WASPA has jurisdiction only over its members and therefore has no jurisdiction over MTN.

In the absence of the itemised billing of the complainant the logs provided by the WASPA member must be regarded as disposing of this matter as it represents the best proof as to the interaction between the member and the complainant. There is further no evidence that the member has acted unprofessionally or in a dishonest or unfair manner.

The WASPA member is therefore not found to have breached the Code of Conduct.

It is noted that a refund has been offered in recognition of the obvious displeasure of the complainant, and this should be pursued.