



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Clickatell
Information Provider (IP) (if any)	Andromeda
Service Type	Live chat services
Source of Complaints	Ms N Makhubele
Complaint Number	3614
Date received	5 March 2008
Code of Conduct version	5.7

Complaint

The complaint is in regard to live chat services subscribed to using the complainant's telephone and SIM number. The complainant alleges that she has never subscribed to or received any such services and is requesting a refund of an amount of R845.52 charged to her Vodacom account.

SP Response

The SP has acknowledged that it has unsubscribed the complainant from the service but has denied the request for a refund. The SP alleges that the live chat services are accessed once the user has accepted the charges by punching a key on their phone. It alleges that this was done by the complainant or someone using her handset. The SP has also furnished records of the dates and times when the services were activated.

Sections of the Code considered

10. Contact and dating services

10.2. Restrictions on the service

10.2.1. Members must take reasonable steps to ensure that users of contact and dating services are authorized by the bill-payer to use that service.

10.2.2. Providers of contact and dating services must take reasonable steps to ensure that no children use the services.

10.3. Removal and deactivation of services

10.3.1. When so requested by a customer, the provider of a contact and dating service must ensure that the customer's details are removed from the service at the earliest opportunity and in all cases within 24 hours.

Decision

In terms of section 10.2.1, the SP must take *reasonable steps* to ensure that users of the contact services are authorized by the bill-payer to use that service. In the present matter, the complainant alleges that she did not authorize the use of the service. The SP alleges that the service cannot be activated without the user expressly accepting charges by first pressing a key on the relevant handset. It is also noted from the SP's records that the service was activated on no less than 18 occasions between September 2007 and March 2008.

In my opinion, the service activation process implemented by the SP is reasonable in the circumstances. The services cannot be activated without someone being in possession of the complainant's handset.

In the present matter, it does not appear that the complainant's handset was stolen or misplaced during the period in question. On a balance of probabilities, it appears that someone has gained access to her handset while it was in her custody. It would be unreasonable to expect the SP to cater for situations where the complainant's handset is in her custody but someone is able to access the chat service in question.

The complaint is accordingly not upheld.