



REPORT OF THE ADJUDICATOR

Complaint reference number:	12653
WASPA member(s):	Lessa Ltd (IP) / Smartcall Technology Solutions (SP)
Membership number(s):	IP - (1182) / SP - (0090)
Complainant:	Public
Type of complaint:	Subscription service
Date complaint was lodged:	2011-04-14
Date of the alleged offence:	2011-04-13
Relevant version of the Code:	10.0
Clauses considered:	11.1.5, 11.6.1, 11.9.2, 14.3.10 and 14.3.14
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	N/A
Related cases considered:	10802

Complaint

The Complainant raised various issues pertaining to an alleged illegal subscription service. The Complainant's phone was stolen and he subsequently became subscribed without any intention of becoming subscribed. In his complaint he alleged that the SP deducted money from his account on a monthly basis, without giving him the opportunity to unsubscribe.

Service and Information providers' response

The SP in its response indicated that the user was subscribed on the day the phone was stolen and subsequently indicated that the text provided was more than sufficient to justify their actions. They further indicated that they refunded the user and that the stealing of the phone and subsequent subscription, were unfortunate events.

The SP and / or IP failed to provide any further response.

Sections of the Code considered

11.1.5. Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

11.6.1. A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter. The customer may not be charged for these reminder messages.

11.9.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.10.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:

- (a) proof that the customer has opted in to a service or services;
- (b) proof that all required reminder messages have been sent to that customer;
- (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
- (d) any record of successful or unsuccessful unsubscribe requests.

14.3.10. The adjudicator may ask the secretariat to request that the complainant, the member, or both, furnish additional information relating to the complaint. Specifically, the adjudicator may request that the member respond to any additional breaches of the Code of Conduct discovered during the investigation of the complaint, but which were not specified in the original complaint.

14.3.14. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits.

Decision

In accordance with section 14.3.10, the Adjudicator, on the 26th of October 2011, requested the Secretariat to retain logs from the IP for services billed to the Complainant for the period of May 2010 to February 2011.

It was also requested that the IP indicate whether it sent reminder messages to the Complainant on a monthly basis and whether the monthly reminder included an opt-out or unsubscribe provision – a copy of the reminder messages was requested.

On the 15th of November 2011, the Secretariat notified the Adjudicator that no response was forthcoming from either the IP or SP.

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent reply.

According to section 11.1.5 it is not permissible for a member, after having subscribed a customer, to increase the charges of the service, without the customer's explicit permission.

According to the amounts specified by the Complainant, there seems to be irregularities in the amounts charged by the SP, and the Adjudicator, without the SP having provided him / her with any further evidence to state the contrary, as requested, finds the SP in breach of section 11.1.5.

Section 11.6.1 states that a monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter. The customer may not be charged for these reminder messages.

No proof of such reminder messages were received, as requested, from the IP and / or SP, and the Adjudicator finds the IP in breach of section 11.6.1.

Section 11.9.2 states that customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

No proof of such process was received, as requested, from the IP and / or SP, and the Adjudicator finds the IP in breach of section 11.9.2.

On the basis of evidence presented, the Adjudicator upholds the Complaint.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP and IP with regard to breaches of the relevant sections of the Code of Conduct; and
- The SP's and IP's subsequent response.

The IP is fined R 50 000-00 for its breaches of sections 11.6.1 and 11.9.2 which fine must be paid to the WASPA Secretariat within 7 (seven) days after notification hereof.

The SP is fined R30 000-00 for its breach of section 11.1.5, which fine is suspended for 6 months.