



REPORT OF THE ADJUDICATOR

Complaint reference number:	13649
WASPA member(s):	Quadra Mobile Media Ltd. (IP)
Membership number(s):	IP - (1177)
Complainant:	Public
Type of complaint:	Subscription
Date complaint was lodged:	2011-06-28
Date of the alleged offence:	2011-06-10
Relevant version of the Code:	11.0
Clauses considered:	11.2.1, 11.3.1, 11.6.1 and 11.10.2.
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	N/A
Related cases considered:	12203

Complaint

The Complainant alleged that the IP in this matter subscribed him to a service he never subscribed to, and deducted money even after he sent an unsubscribe request.

Information provider's response

The IP alleged that the Complainant in this matter subscribed to its services by entering his number on a webpage, where after they sent a link to his number in order to proceed with authorisation. Thereafter the Complainant apparently received a link which took him to a page where the T&C were confirmed and accepted by the Complainant.

Sections of the Code considered

11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

11.3.1. If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation message must be sent to the customer's mobile handset in order to prove that the number entered matches the customer's mobile handset number. This message may either:

- (a) contain a PIN which is then confirmed or validated on the web page, or
- (b) contain the name of the service, an explanation of the confirmation process, and a URL with a unique identifier, which, when clicked, validates the handset number.

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.

11.10.2. 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.

Decision

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 IP's subsequent reply.

The Adjudicator is not satisfied that the IP in this matter has provided sufficient proof to illustrate how the Complainant in this matter has become subscribed to its services.

This is the second such instance that the Adjudicator has presided over allegations of a similar nature against the IP and it is the second time that the logs provided by the IP do not conform to the dates issued by the Complainant. In this instance the IP provided a log for the 16th of April 2011, while the Complainant suggested that he received the link on the 10th of June 2011.

Section 11.2.1 states clearly that customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

If the allegations of the IP are presumed to be correct and the Complainant did subscribe to its services, then the Adjudicator fails to see how the logs have provided any sufficient proof to illustrate compliance with section 11.3.1.

The Adjudicator also fails to see any proof of subsequent reminder messages as required by section 11.6.1 if the IP alleges that the Complainant was subscribed on the 16th of April. The alleged breach took place on the 10th of June 2011.

The Adjudicator, in the absence of the IP complying with section 11.10.2, has no alternative but to rule in favour of the Complainant.

Without sufficient proof in the form of logs provided, the Adjudicator finds the IP in breach of section 11.2.1.

The Complaint is upheld.

Sanctions

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

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

The IP is fined R 75 000-00 for its breach of section 11.2.1, of which R 75 000-00 is suspended for 6 months.