



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	13939
<b>WASPA member(s):</b>	Sprint Media (IP) (1168) / Mira Networks (SP) (0011)
<b>Membership number(s):</b>	(IP) (1168) / (SP) (0011)
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Subscription
<b>Date complaint was lodged:</b>	2011-07-18
<b>Date of the alleged offence:</b>	2010-08-19
<b>Relevant version of the Code:</b>	9.0
<b>Clauses considered:</b>	11.2.1, 11.2.4, 11.5.1 and 11.10.2
<b>Relevant version of the Ad. Rules:</b>	Not applicable
<b>Clauses considered:</b>	N/A
<b>Related cases considered:</b>	N/A

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### Complaint

The Complainant alleged that the IP in this matter subscribed him / her to a service he / she never subscribed to, and deducted money when he / she never utilised the service.

The Complainant's unsubscribe request was processed but the Complainant requested an escalation of the Complaint and a refund.

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### Information provider's response

The IP provided a very detailed response to the allegations raised and provided a breakdown of the history and also issued logs to sustain its own allegations of the Complainant having been subscribed to its services. Due to the sheer size of the logs in the IP's response, it will not be provided here in full.

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## 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.

11.2.4. 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 number which is then confirmed or validated on the web page, or
- (b) contain a URL with a unique identifier, which, when clicked, validates the handset number.

11.4.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

11.5.1. 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.

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.

12.3.10. If a consumer lodges a request with WASPA to be removed from a notification service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.

14.3.13. 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.

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## 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 in this matter has to commend the IP on the thoroughness of its response.

Without elaborating on the allegations made, the Adjudicator cannot rule against a member unless there is sufficient proof to negate the evidence provided by such a member.

Section 14.3.13 states that 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.

Although the Adjudicator can sympathise with the Complainant on the fact that he or she only utilised the service once, it has to be re-iterated that the Complainant signed up for the service and hence accepted the Terms and Conditions thereto.

The IP provided the Complainant with a pin to confirm his or her number, with a welcoming message confirming subscription, and further issued the Complainant with monthly reminder messages of the subscription service, therefore adhering to the WASPA Code of Conduct.

At no stage, according to the evidence provided, was the Complainant forced into entering an agreement with the IP. The Complainant did this at his or her own free will. With such decisions, come responsibilities. The Complainant was given ample time and opportunities to unsubscribe to the service to which he or she, as indicated by the logs, subscribed, even if it was only to utilise the service for one free SMS,.

The Complainant's failure to fully utilise the service and his or her subsequent failure to unsubscribe to the service (irrelevant of the reasons offered by the Complainant), does not render the validity of the subscription service invalid.

The Adjudicator is therefore satisfied that the IP in this matter acted according to the WASPA Code of Conduct in its dealings with the Complainant and does not deem a refund appropriate or justified.

The Complaint is dismissed.

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