



REPORT OF THE ADJUDICATOR

Complaint reference number:	16211
WASPA member(s):	Clarion Marketing (IP) Opera Interactive (SP)
Membership number(s):	IP (1156) (SP) (0068)
Complainant:	Public
Type of complaint:	Subscription Service
Date complaint was lodged:	2012-01-24
Date of the alleged offence:	28 May 2011
Relevant version of the Code:	10
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	11.5 and 11.6
Related cases considered:	

Complaint

Complaint History:

Complaint 16211 is the escalation of unsubscribe request 2432497 regarding subscription services charges.

The formal complaint was sent to the SP on 2012-01-25.

The SP requested on 2012-01-25 to re-direct the complaint to their IP.

The formal complaint was sent to the IP on 2012-01-25.

The complainant provided feedback on 2012-02-06.

SP provided a response on 2012-02-13 with regards to refund to the complainant.

Complainant provided a further response on 2012-02-28 and 2012-03-10.

The IP provided a response on 2012-03-12 and 2012-03-13.

The secretariat provided clarification on 2012-03-14.

The IP provide a further four responses between 2012-03-14 and 2012-03-26.

The secretariat advised on 2012-03-29.

IP responded on 2012-03-30.

The complainant responded on 2012-04-03.

The IP responded to the complainant on 2012-04-03.

The complaint provided feedback on 2012-04-21.

The IP responded to the complainant and WASPA on 2012-04-23.

In the complainants response he indicated that he does not want to persist with the complaint, for this reason the WASPA Secretariat closed the case.

On 2012-05-15 the complainant however sent another mail, which resulted in the complaint being reopened.

IP responded on 2012-05-16.

No further responses were received from the complainant.

Complaint:

The Complainant complained of monies being deducted from his account without authorisation. He asserted that he never subscribed to the services in question. He also stated that no one else could have subscribed to the service as no one else ever used the cell phone in question.

On being challenged he admitted that his son did use his cell phone but that his son had left the country in June 2011 and as such could not have subscribed.

When challenged on the fact that subscription happened in May and not June 2011 and thus the possibility that his son could have subscribed he stated that his son had actually left on 18 May 2011 and as such could not have subscribed.

The Complainant further questioned the value of the refund offered (R162) stating that he should be refunded in excess of R1122 due to the fact that R6 per day could have been deducted over six months.

He refused resolution notwithstanding the provision of logs and a full refund of all monies deducted.

Service provider's response

The Service Provider referred the matter to the IP who provided logs as proof of subscription. The IP and the SP both contacted the Complainant. The Complainant was offered a full refund for all charges deducted, which the complainant accepted.

Proof of Payment was provided for the refund as well as an explanation of how the services operate.

The IP further explained how the service worked and why the amount was not R1122 and only R162 due to the fact that for a large part of the six months in question there was no credit on the cell phone and thus no monies could have been deducted.

As a further gesture of goodwill the IP offered to pay R2500 to a charity of the Complainant's choice.

Sections of the Code considered

Sections of the Code considered

The service complained of falls within the ambit of subscription related services. The sections of the Code of Conduct applicable to this issue are sections 11.5 and 11.6 respectively.

The requirements of section 11.5 and 11.6 are set out below:

11.5. Welcome message

11.5.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message should not be mistaken for an advert or marketing message. The customer may not be charged for this message.

11.5.2. The welcome message must start with the text "Welcome: " and must also be a clear notification of the following information:

1. The name of the subscription service;
2. The cost of the subscription service and the frequency of the charges;
3. Clear and concise instructions for unsubscribing from the service;
4. The service provider's telephone number.

11.6. Reminder messages

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.

11.6.2. The reminder messages specified in 11.6.1 must adhere exactly to the following format, flow, wording and spacing:

Reminder: You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. SMS HELP [optional keyword] to [short code]/call [call centre number + "(VAS)" if applicable]. To unsub, sms STOP [service keyword] to [short code].

or

Reminder: You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsub, sms STOP [service keyword] to [short code].

11.6.3. The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.6.2.

11.6.4. The content/service description must be text describing the content, promotion or service (e.g. "tones" or "poems"). This text must not be worded in a way that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

11.6.5. The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.

11.6.6. The text "(VAS)" must be included after any VAS-rated phone number. It does not need to be included after phone numbers which are not VAS-rated.

11.6.7. Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically.

Decision

There was a litany of correspondence between the parties from which I have extracted the salient points. I have not attached all correspondence as the parties in question all have copies thereof and it is too voluminous to do so and would serve no further purpose.

Once again this complaint turns on the logs provided by the IP.

The parties' tell a different story and as such either the Complainant is mistaken about the possible use of his cell phone by his son, or the IP is being untruthful.

In the circumstances I must balance the Complainant's word against the evidence of the logs. I cannot dispute the logs provided. When weighing up the evidence provided by the logs with the Complainant's version of events which unfortunately changed several times and as such was weakened by inconsistencies and inaccuracies, I have no ability to determine that the subscription was unauthorised and as such must follow the evidence of the logs and find that the IP's did not subscribe the MSISDN in question without authorisation.

Sanctions

No sanctions.