REPORT OF THE ADJUDICATOR

Complaint reference number:	17264
WASPA member(s):	Opera Interactive (SP) (0068)
	Sprint Media (IP) (1168)
Membership number(s):	See above
Complainant:	Public
Type of complaint:	Subscription Service
Date complaint was lodged:	2012-05-23
Date of the alleged offence:	2012-06-25
Relevant version of the Code:	11.6
Clauses considered:	8, 11.3, 11.5 and 11.6.
Relevant version of the Ad. Rules:	N/A
Related cases considered:	17495, 17394 and 17481

Complaint

Complaint 17264 was logged regarding a subscription service.

The complaint progressed as follows:

Complaint 17264 is the escalation of unsubscribe request 2993961 regarding subscription service charges.

- The formal complaint was sent to the WASP on 2012-05-23.
- The SP was also notified of this complaint on 2012-05-23.
- The IP responded on 2012-06-01.
- The complainant refused resolution on 2012-06-05.
- The secretariat advise the IP and SP on 2012-06-06 that the complaint will proceed to adjudication, and if additional information want to be added, they should do so within 5 working days.
- On 2012-07-09 the secretariat advised the WASP that no additional information was received.

- The SP responded on 2012-07-10 advising that they do wish to add additional information.
- Additional information was supplied on 2012-07-24.

In summary the complaint sets out the following having been breached:

- Automatic subscription; and
- Subscription process not followed.

Service provider's response

The SP referred the complaint to the IP and also responded themselves. Due to the fact that all parties involved are privy to the SP's formal response I am not going to repeat every element thereof here.

The SP alleges additionally that at the time of the subscription being initiated during July 2010 up and until the end of June 2011, the applicable parties involved were:
1. Information Provider: Sprint Media S.L;
2. Service Provider: Mira Networks (Pty) Ltd.

On or about the 25th of June 2011 the Information Provider became the SP's client and their traffic was migrated to our system and consequently we took over the role as the Service Provider from the said date onwards. They therefore state that they can only respond to the issues required by the Code post subscription. This being said they state that they and the IP complied fully with the Code of Conduct and the requirements that it exacts in this regard.

Information provider's response

The IP responded in detail by stating that the complainant clicked on a banner advert while browsing the internet and then provided logs in the form of a table setting out dates of subscription, the sending of the welcome messages and the charges deducted. They also provided confirmation reminder messages and of the unsubscription of the complainant from the service.

The parties further stated that the amount which was deducted was for subscription to the service and not for the use thereof and as such the fact that the Complainant alleges that he never used the service is irrelevant.

Complainant's Further Reply

The Complainant responded to the WASP's response to state that they never subscribed to any service.

Sections of the Code considered

11.3. Subscription initiated via a browser (web or WAP)

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.

11.3.2. For any subscription services that are initiated via WAP, it is a requirement for the service provider who has a direct contract with the network operator to display a WAP confirmation page to the potential subscriber. This confirmation page must be displayed after the subscriber has first indicated an interest in the subscription service by clicking on a "join" or similar link.
11.3.3. The WAP confirmation page must display the following information in a clear and easy to read manner:
(a) The name of the service and an indication that it is a subscription service
(b) The price and frequency of billing
(c) A phone number for customer support

11.3.4. Where it is necessary for a consumer to confirm that their MSISDN may be made available to an application, this may be done by including the following wording on the WAP confirmation page:
[Application name] has requested that your mobile number be made available.

11.3.5. The information listed in 11.3.3 and 11.3.4 above must be presented as text and not as an image.

11.3.6. The WAP confirmation page described above must also present a confirmation button. It must be clearly communicated to the customer on the confirmation page that clicking the confirmation button will initiate a subscription service.

11.3.7. The WAP confirmation page may not contain any marketing messages or other content that is likely to distract the customer from the required confirmation information and process.

11.3.8. The WAP confirmation page must offer all languages used in the promotional material for that service.

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, in the following order:
(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.

11.6. 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. For services that are not billed on a daily, weekly or monthly basis, the pricing should be of the format "RX every [time period]".

11.6.7. 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.

11.6.8. Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically11.3. Subscription initiated via a browser (web or WAP)

Decision

I will now deal with each section of the Code that the Complainant alleged the IP infringed.

I have a general issue with the practical problems of determining when logs are valid. All too often, the WASP alleges that the Complainant entered their cell phone number into the website to initiate the process and the Complainant denies doing any such thing. Due to the fact that it is possible for anyone to enter any cell phone number into a website, it is very hard to demonstrate whether or not the Complainant actually did the inputting themselves.

However, it is quite clear that the welcome and the monthly reminder messages do not comply with the requirements of sections 11.5.2 and 11.6.2 of the Code in that they did not comply fully with the required format for such messages as explicitly stated and required by the Code.

Sanctions

I am not going to sanction the SP in this case.

Due to the number of complaints against the IP which are of the same nature I am going to order the IP to:

1.   Refund the Complainant any monies deducted; and
2.   Impose a fine of R10 000, R5000 payable immediately and R5000 to be held in abeyance pending the IP demonstrating to WASPA that they have corrected their welcome and reminder messages within 7 (seven) days of this ruling being published.