



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	17643
<b>WASPA member(s):</b>	Sprint Media (IP) / Opera Interactive (SP)
<b>Membership number(s):</b>	1168 (IP) / 0068 (SP)
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Subscription Services
<b>Date complaint was lodged:</b>	2012-07-04
<b>Date of the alleged offence:</b>	N/A
<b>Relevant version of the Code:</b>	12
<b>Clauses considered:</b>	11.2.1, 11.2.5, 11.5.1, 11.6.1 & 14.3.14
<b>Relevant version of the Ad. Rules:</b>	N/A
<b>Clauses considered:</b>	N/A
<b>Related cases considered:</b>	N/A

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### Complaint

The Complainant in this matter alleged that he never subscribed to the service.

The Complainant later responded to the IP's response that he never received confirmation of his subscription (can't find it), this being the reason of escalation.

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### Information provider's response

The IP provided a response whereby it furnished the Complainant with a detailed explanation as to how the subscription confirmation and double opt-in procedure work. This was further evidenced by logs which illustrated the Complainant's interaction with the IP.

The IP then in response to the Complainant's later complaint stated that:

*"We are not responsible for what a user does with an SMS upon receipt. Our systems show and this information was provided within the POS (attached) that the Welcome and Reminder messages were delivered to the handset. Please, see attached proof of subscription on showing all the records.*

*(Annexe 1). The user agreed to the terms and conditions that are present on all the landing pages by going through the double opt-in procedure.*

*All terms & conditions are available on the landing pages.”*

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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.

11.2.5. If a subscription service is initiated by a customer sending an SMS to the service provider, then a separate confirmation message must then be sent to the customer's mobile handset. Only once the customer has followed the activation instructions in the confirmation message can they be subscribed to the subscription service.

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.

11.6.1. 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.

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.

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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 Complainant has failed to provide any sufficient content or any material for that matter to provide the Adjudicator with any sufficient information assisting him or her to make a decision favouring the Complainant.

The mere allegation by the Complainant that he failed to “find” or “allocate” the confirmation SMS is just simply not sufficient evidence for the Adjudicator to overrule the following statement by the IP:

- *The complainant subscribed to Mobmatic subscription service through a double opt-in process.*
- *The terms and conditions of the service were clearly displayed on the Landing Page as well as the Confirmation page.*

- *A Welcome message was sent to the Complainant, which contained all the required information*
- *A monthly Reminder Message was sent to the Complainant, which contained all the required information.*

The Adjudicator therefore has no alternative but to concur with the IP's response in as far as it contend the actual subscription of the Complainant by way of logs provided, which, if read with the subsequent and additional information provided, is deemed by the Adjudicator, to be sufficient evidence to justify and confirm the Complainant's subscription and subsequent deductions.

Therefore, on the basis of evidence **submitted** and therefore **presented**, there is no proof to establish any non-compliance by the IP with sections 11.2.1, 11.2.5 and 11.5.1.

The Complaint is dismissed.