



REPORT OF THE ADJUDICATOR

Complaint reference number:	17708
WASPA member(s):	Sprint Media (IP) / Opera Interactive (SP)
Membership number(s):	1168 (IP) / 0068 (SP)
Complainant:	Public
Type of complaint:	Subscription Services
Date complaint was lodged:	2012-07-03
Date of the alleged offence:	N/A
Relevant version of the Code:	12
Clauses considered:	11.2.1, 11.2.5, 11.5.1, 11.6.1 & 14.3.14
Relevant version of the Ad. Rules:	2.3
Clauses considered:	12
Related cases considered:	17394

Complaint

The Complainant in this matter alleged that he was misled into subscribing to the service.

The Complainant also added that the reminder message sent was in breach of the format required by the Code.

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 later in its response to the Complainant's reply stated that:

"2. " Sprint uses incoherent language that contravenes the prescribed wording as per the code of conduct": All relevant information is displayed in the Reminder message, as it informs the user of the subscription, its charge,

frequency of the billing as well as how to opt out by sending sms to the short code 39327 or contact us for help to 0213002334. Therefore, our reminders are in accordance to clause 11.6.2 of the WASPA Code of Practice.

4. " They have included hyperlink in their message (probably to lure unsuspecting mobile surfers into another of their dodgy 'double opt-in' pages)" .The hyperlink provided in the sms is to allow the user direct access to the service.

5. "How would a user know what 'Help 021 300 2334' means? : It is of public knowledge that South African numbers have 10 digits and if they are preceded with the word help it is easily understood that it refers to a helpline""

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.

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.

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.

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 to render his subscription invalid.

The Adjudicator therefore concurs with the IP's response in as far as it contended 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, subsequent deductions and frequency of reminder messages.

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, 11.5.1 and 11.6.1.

However, the Adjudicator is not of the opinion that the IP in this matter complies with sections 11.6.2 and 11.6.3 of the Code.

The WASPA Code of Conduct in conjunction with Clause 12 of the Advertising Rules are very clear on the format, and section 11.6.2 states that the format **must adhere exactly** to the format, flow, wording and spacing as described therein.

Section 11.6.3 is correctly referred to by the Complainant as a further indication of the IP's breach insofar as it provides a link in its reminder message.

The Adjudicator therefore concurs with the Complainant's assumption expressed regarding the reminder messages and finds the IP in breach of sections 11.6.2 and 11.6.3 of the Code.

The Adjudicator does however not feel that the degree of variation between the format shown in the reminder message and that required in the Code of Conduct is sufficient to render a refund.

The Complaint is partially upheld.

Sanctions

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

The prior record of the SPs with regard to breaches of the relevant sections of the Code of Conduct; and
The SPs' subsequent response

Due to the number of complaints against the IP, the IP is ordered to refund the Complainant for any monies deducted.