



## REPORT OF THE ADJUDICATOR

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<b>Complaint reference number:</b>	12035
<b>WASPA member(s):</b>	HR Computek Mobile
<b>Membership number(s):</b>	0114
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Subscription Service
<b>Date complaint was lodged:</b>	2011 – 01 - 24
<b>Date of the alleged offence:</b>	Unknown
<b>Relevant version of the Code:</b>	10.0
<b>Clauses considered:</b>	2.2.4, 11.2.1, 11.9.2 and 11.9.12
<b>Relevant version of the Ad. Rules:</b>	Not Applicable
<b>Clauses considered:</b>	Not Applicable
<b>Related cases considered:</b>	# 11892, #11748 and #11288

## Complaint

The complaint is the escalation of the unsubscribe request #1011508 logged by the complainant on the 24th of January 2011 via the WASPA unsubscribe facility.

The subscription services pertained to a subscription service fee of R84,42 per month. The complainant asserted that she did not subscribe to the relevant subscription services and that, despite having received an SMS communication from the SP confirming cancellation of the subscription, she was then charged the same subscription service fee the following month.

In accordance, the Service Provider was requested to attend to the following:

- *To unsubscribe the customer (complainant);*
- *To send an SMS communication to the complainant confirming that the complainant has been unsubscribed; and*
- *To contact the complainant regarding the refund requested by the complainant.*

The SP:

- *unsubscribed the customer (complainant); and*
- *sent an SMS communication to the complainant confirming that the complainant has been unsubscribed;*

The complaint was escalated because the SP failed to refund the complainant and then continued to debit the complainant's account despite having allegedly been unsubscribed from the service by the SP.

Service provider's response

**Notwithstanding the formal complaint issued to the Service Provider on 21 February 2011 and the reminder correspondence to the SP on 02 March 2011 and 14 March 2011, the Service Provider neglected to respond to the formal complaint.**

Sections of the Code considered

2. Definitions

**2.24 "subscription service" is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.**

11.2 Subscription process

**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.**

11.9 Subscription service directory and logs

**11.9.2 When requested to do so by WASPA, a member must provide 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.

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

#### Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. With reference to (i) the complaint and (ii) the sections of the Code considered, **it being recorded that HR Computek has not formally responded to the complaint:**

**I find that the SP contravened the following sections of the WASPA Code of Conduct:**

Clause	Basis of Finding
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.	Owing to the failure of the SP to provide any logs or reports evidencing the Complainant's subscription to the service in question, I find the SP to have breached section 11.2.1 for the automatic subscription of the Complainant to their service without having received an opt-in from said Complainant.
11.9.12 If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must	The SP also failed to effect the unsubscribe request received from the Complainant continued to debit the Complainant's

<b>honour that request within two working days (48 hours) of that request being passed on by WASPA.</b>	<b>account with the subscription service fee.</b>
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**The complaint is accordingly upheld.**

Sanctions

**In aggravation of sentence, I have observed multiple prior breaches of the Code on substantially the same sets of circumstances. Furthermore, the repeated failure of the SP to respond to formal complaints is treated in a serious light.**

The SP is:

- (i) Fined the sum of R50 000.00 payable to the WASPA Secretariat within ten (10) days of date of notification of this Adjudication;**
- (ii) Ordered to refund all monies deducted from the Complainant's account in respect of this subscription service and provide proof of the refund to the WASPA Secretariat within 10 (ten) days of date of notification of this Adjudication.**