



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	17868
<b>WASPA member(s):</b>	Opera Telecom Pty Ltd trading as Opera Interactive (SP) / Sprint Media S.L. (IP)
<b>Membership number(s):</b>	SP – 0068 / IP - 1168
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Subscription related
<b>Date complaint was lodged:</b>	2012-07-17
<b>Date of the alleged offence:</b>	2011-06-21
<b>Relevant version of the Code:</b>	11
<b>Clauses considered:</b>	4.1.1; 4.1.2; 11.3.1; 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 the SP in this matter subscribed her to a service without her doing so.

In reply to the SP's initial response the Complainant was adamant that the SP incorrectly subscribed her and that the evidence provided by the SP was incorrect and not acceptable.

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### Service & Information provider's response

The SP in return furnished a response whereby it passed the matter onto the IP in this matter. The SP provided a very detailed response, which will not be replicated here, wherein it evidenced proof of the Complainant's subscription and date and subscription, logs of such subscription, proof in the form of logs of the reminder messages as well as detail inserts of the process required to gain subscription.

In a further response, the IP gave detailed explanations of the UK Internet Protocol Address provided, which was in her further response, disputed by the Complainant.

## Sections of the Code considered

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

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.

11.5.1. 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.

**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 SP and IP's subsequent reply.

The IP has gone through great lengths in providing a detailed analysis of its processes, the Complainant's subsequent subscription and relevant proof, logs indicating the welcome and subsequent reminder messages.

The Complainant in this matter alleged that she did not subscribe and that she did not receive any reminders, although she could remember receiving something in the month of January.

Section 14.3.14 of the Code makes it quite clear that the Adjudicator will decide whether there has been a breach of the Code, on the basis of the evidence presented.

The Adjudicator analysed the relevant information received from the IP and could not find any breach of the relevant sections, based on the evidence received.

The Adjudicator is also of the opinion that the IP made a sufficient case for subscription.

The Adjudicator is further of the opinion that the Complainant, should she for instance have been subscribed in error, would have had ample opportunity in the one year that lapsed since alleged subscription, to have brought such error to the attention of the SP and / or IP in responding to the information provided for in either the welcoming message, or subsequent reminder messages.

The mere fact that the Complainant referred to her recalling a reminder message, or message equivalent thereto, suggests that she did indeed received these.

Without any further evidence from the Complainant negating any proof submitted by the IP, the Adjudicator has no alternative but to dismiss the Complaint.

The Complaint is therefore not upheld and subsequently dismissed.