



March 24, 2020



ICA Canada On-Line Inc.
5155 Spectrum Way Bldg. 36
Mississauga, Ontario
L4W 5A1

Re: CCTS Complaint #1011644

On March 4, 2020, we issued a Recommendation regarding the above complaint. As ICA Canada On-line (“ICA”) rejected our Recommendation, I am required to issue a Decision under Section 13 of our Procedural Code (“the Code”).

Our Recommendation

██████████ was subscribed to ICA’s internet service. She was experiencing technical difficulties with the service and reported these issues to her family friend, ██████████, who she claims set up her ICA account. Many of ██████████ troubleshooting requests went unresolved and therefore on November 05, 2018, she sent a text message to ██████████ requesting cancellation of her Internet service.

ICA continued to bill ██████████ for the service¹ in the months of November and December 2018, following her cancellation request.

ICA maintains that ██████████ agreed to receive its internet service, and also consented to its Terms and Conditions (“Terms”). It also said that she was receiving monthly invoices via the email address ██████████, an email address to which ██████████ claims she never had access. ICA confirms it received a cancellation request from ██████████ on behalf of ██████████ on December 31, 2018, and cancelled the service at that time and as a result, the November and December 2018 monthly service charges are valid.

ICA began contacting ██████████ in February 2019 when it received credit card charge-backs associated with the November and December 2018 invoices. ICA claims it contacted ██████████ numerous times and did get in touch with her, however, ██████████ refused to pay the outstanding balance. As a result, ICA informed ██████████ that the account would be sent to a collection agency. The account was then forwarded to a third-party collection agency on May 07, 2019.

In May 2019, ██████████ received a letter from ██████████. This letter confirmed that ICA had retained ██████████ services and assigned ██████████ account to Collections. The account balance assigned to ██████████ by ICA was \$690.28, consisting of the disputed

¹ \$45.14 monthly

monthly charges for November and December 2018, two \$50.00 chargeback fees², as well as a \$250.00 “administration fee” and a \$250.00 “handling fee”.

██████████ is disputing the validity of all these charges and asks that all charges related to her account be credited.

In response, ICA maintains that ██████████ use of the service constitutes her consent to ICA’s service and its Terms³, allowing it to bill her in the manner it did. Furthermore, ICA’s Terms outline that additional charges will be incurred should an account go to Collections. ICA argues that under this section, it is entitled to bill ██████████ handling and administration fees, as the account became delinquent. ICA has recently informed the CCTS that it intends to bill ██████████ an additional amount of \$450.00 for the amount of time it has spent to address her complaint to the CCTS.

On numerous occasions, we requested that ICA provide some form of proof of ██████████ consent to ICA’s services and Terms, however ICA failed to provide anything to support its position.

The CCTS standard of review is to determine whether the service provider reasonably met its obligations to the customer, and the onus of demonstrating this falls on the service provider, which is the professional party in the relationship with its customer. This dispute could have been avoided had ICA ensured that it received and documented ██████████ subscription to its service and consent to be bound by its Terms. Based on its failure to do so, we concluded that ICA should bear the financial loss associated with this dispute. Since it cannot demonstrate that ██████████ agreed to receive its service, it cannot reasonably expect to recover the service charges from November and December 2018. Since it cannot demonstrate that ██████████ agreed to its Terms, it cannot recover the various other charges billed to her, including for the credit card charge backs, and the administrative and other fees it has purported to bill to her.

Therefore, on March 4, 2020, we Recommended that ICA waive all the outstanding charges billed to ██████████ and withdraw the account from collections, taking no further steps to collect on these amounts.

Objection

Under Section 13 of the Procedural Code a party may reject a Recommendation. That party is required to explain why he or she considers it to be inappropriate. The Commissioner is then required to determine whether there is substantial doubt as to the correctness of the

² These fees were a result of ██████████ filing a dispute with her credit card company for the November and December 2018 charges.

³ Found at <http://ica.net/terms.asp>.

Recommendation. [REDACTED] accepted the Recommendation, but ICA rejected it on March 11, 2020.

ICA maintains that all charges billed to [REDACTED] are valid and therefore will not be removed.

We asked ICA to clarify its position and provide documentation to support its rejection. ICA confirmed it has no further documentation to provide, however maintained its objection to the Recommendation and indicated that it would decline to comply with it.

Decision

Section 13.2 of our Procedural Code provides that in formulating a Decision the Commissioner shall consider whether there is substantial doubt as to the correctness of the original Recommendation.

ICA has not provided any information, document or argument to support its position, despite many requests, both before and after the Recommendation was issued. In addition, following the issuance of the Recommendation, we informed ICA in writing about how the Decision process works and that it could support its position by providing material casting doubt on the correctness of the Recommendation. ICA has been unable or unwilling to do so. Therefore, we maintain the findings of our Recommendation, which we are supplementing given ICA's threat to bill additional charges to [REDACTED].

In summary, my Decision is that ICA must:

- Waive all the outstanding charges billed to [REDACTED];
- Not bill any additional charges to [REDACTED];
- Withdraw the account from collections and take no further steps to collect on these amounts.

Further to Section 13.4 of our Procedural Code, [REDACTED] may accept or reject this Decision within 20 days of receipt. Should [REDACTED] accept this Decision, it becomes immediately binding on ICA under Section 13.5 of our Procedural Code. Should she decide to reject this Decision, she may pursue this complaint through any other forum and ICA shall be fully released from the Decision.

A copy of our Procedural Code is attached for reference.

Yours truly,

Howard Maker
Commissioner