



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Contact SMS
Information Provider (IP):	N/A
Service Type:	SPAM / Subscription
Complainant:	Public
Complaint Number:	12033
Code Version:	10.0
Advertising Rules Version:	N/A

Complaint

The Complaint relates to an unsolicited message and subscription. The Complainant requested an escalation to a formal complaint since he claimed that he did not click on the banner claimed by the SP.

Service and Information providers' response

The SP provided a detailed response as to how the Complainant subscribed, the handset used and timing of the alleged "subscription".

Sections of the Code considered

2.23. "**Spam**" means unsolicited commercial communications, including unsolicited commercial messages as referred to in section 5.2.1.

4.2.1. WASPA and its members must respect the constitutional right of consumers to personal privacy and privacy of communications.

4.2.2. Members must respect the confidentiality of customers' personal information and will not sell or distribute such information to any other party without the explicit consent of the customer, except where required to do so by law.

5.1.7. Upon request of the recipient, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained.

5.2.1. Any commercial message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;
- (b) the message recipient has a direct and recent (within the last six months) prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator;
- or
- (c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

5.2.2. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

5.3.1. Members will not send or promote the sending of spam and will take reasonable measures to ensure that their facilities are not used by others for this purpose.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

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.

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's formal response.

Although the Adjudicator does not imply that the Complainant in this matter is making false accusations, it cannot assume that the SP's explanation of events is false either.

The Complainant has not provided the Adjudicator with any form of evidence while the SP in this matter, did provide some proof of the fact that the Complainant subscribed.

It has to be stated that the Complainant was unsubscribed and offered a reimbursement as a gesture of goodwill by the SP, which reimbursement was subsequently rejected. This must imply that the Complainant in this matter truly believed it had not subscribed and wanted to defend this principle.

Whether somebody utilised the Complainant's handset without his knowledge is unknown and it would be unwise for the Adjudicator to speculate on such occurrence, but it could surely be argued.

However, the Adjudicator cannot make a ruling on hearsay alone and has to concur with the evidence in front of him / her.

Therefore the Adjudicator has no alternative but to dismiss the claim.