



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	21717
<b>WASPA member(s):</b>	Zed Mobile (IP) / Mira Networks (Pty) Ltd (SP)
<b>Membership number(s):</b>	0146 / 0011
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Subscription
<b>Date complaint was lodged:</b>	2013-09-17
<b>Date of the alleged offence:</b>	2012 -09-25
<b>Relevant version of the Code:</b>	12.1
<b>Clauses considered:</b>	11.2.1
<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 he could not have subscribed to the alleged subscription service as the number assigned to the simcard is used as an alarm system on sheep, which is locked in a collar and to which simcard only he has the relevant pin.

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### Information provider's responses

The IP responded that all the relevant rules of WASPA were followed in the subscription process and subsequently also provided proof of the double opt-in mechanism which was requested from it by the Secretariat.

The IP further through the SP unsubscribed the Complainant. The IP refused to provide a refund because Vodacom confirmed that the Mesh DOI steps were followed.

It further stated that if the "incorrect" billing were brought to their attention a month after the incident occurred in 2012, they would have unsubscribed the number and

issued a refund for that month, a gesture they are still willing to uphold. They do however feel that since the assumed "incorrect" billing was only brought to their attention one year after the initial subscription, coupled with the Mesh DOI proof, that they are not willing to refund more than the one month.

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### **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.

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### **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.

This seems to be one of those cases where one party alleges a certain set of "facts" which is then contradicted by the other party, either in sincere honesty, or in some instances, in sheer disbelief due to the impracticable sequence of events or particular circumstances.

In this instance, the Adjudicator has to admit that the specific set of circumstances does render a subscription almost inconceivable, but not improbable.

However, the Adjudicator does have a responsibility to look at what information is presented to him or her as possible evidence and can only rely on such information, if proven, to be the set of facts of the particular case in front of him or her.

In this matter, it was submitted as evidence, that the "handler" of the phone at the time when the alleged subscription took place, clicked on the "Click to subscribe" button and was re-directed to the Vodacom Mesh page which is a double opt in mechanism for all Vodacom clients to ensure that their clients do not get subscribed to any "scams".

On this Mesh page the customer MUST either click on "Confirm" or "Decline" before they can proceed any further.

In this case the "handler" of the phone seems to have clicked on the "Confirm" button. Subsequent logs were provided to confirm this.

In the absence of any other information that could be relied upon as facts, the Adjudicator has no alternative but to side with the version as alleged by the IP.

The Adjudicator is also of the opinion that the Complainant should have brought the irregularity in his statements to the attention of the IP / SP at an earlier stage.

The complaint is therefore dismissed.

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