



REPORT OF THE ADJUDICATOR

Complaint reference number:	23214
WASPA member(s):	MobileNOBO (IP) / Mira Networks (SP)
Membership number(s):	1091 / 0011
Complainant:	Public
Type of complaint:	Subscription
Date complaint was lodged:	2014-01-20
Date of the alleged offence:	N/A
Relevant version of the Code:	12.4
Clauses considered:	3 & 11
Relevant version of the Ad. Rules:	N/A
Clauses considered:	N/A
Related cases considered:	N/A

Complaint

The Complainant in this matter alleged that she was subscribed to a service without her consent and / or knowledge.

She refused a refund and felt that the system has let her down. She also reiterated that she wants WASPA to get to the bottom of the complaint and felt that It is in everybody's interest that this matter be properly investigated and that assurances are given that something like this will never happen again.

After the Adjudicator requested further information, the Complainant complied and provided a detailed log of her activities on the date of the alleged subscription amongst other things.

Information Provider's Responses

The IP provided detailed logs and screen prints of the subscription service as well as the IP Address from where the alleged subscription took place.

The IP also requested the SP in this matter to fully refund the Complainant, to which the SP agreed.

The IP went so far as to highlight the following:

We believe you when you said you have not subscribed to the service knowingly, and that leaves us with 2 options:

- 1.) Either someone with access to your incoming SMSs has subscribed to the service without you knowing it (could be a sibling, colleague, etc); OR
- 2.) Someone have placed your phone number on our web-page and guessed the pin code. This option is rare, as a person needs to guess a 4 digit pin code, but can be taken under consideration due to the circumstances of the matter.

The Complainant refused the refund or any resolution of any kind.

Sections of the Code considered

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

3.1.2. Members are committed to lawful conduct at all times.

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 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 requested further information from both the Complainant and the IP in this matter. Both parties complied with the request and provided further information which was subsequently treated by the Adjudicator as further evidence to purport the claims / denials of both parties.

From the evidence provided, it would seem clear from the relevant logs and subsequent information, that the number of the Complainant was indeed used to subscribe her to the subscription service in contest.

The procedures followed were aligned with the WASPA Code of Conduct, and the relevant notices and un-subscription procedures were also provided to the Complainant via SMS on her phone with number XXXXXXXX.

There is in this instance therefore, and by way of sufficient evidence provided on behalf of the IP, no doubt that the Complainant was subscribed to the subscription service being contested in this matter.

However, the question that arises now is how?

The Complainant denies ANY involvement in the subscription process and therefore claims that she did not knowingly subscribe to the service and further alleges that she was therefore subscribed to the service without her consent.

The Complainant further denied any refund and went through great lengths and effort to obtain supporting evidence.

This would surely be indicative of someone that is convinced of his / her conviction and also be indicative of someone who strives to iterate or emphasise a point based on sheer principle, and not necessarily for mere reward in the form of monetary gratification.

The Complainant further provided proof that during the time of the alleged subscription she was pre-occupied, detailing the events of the day and precise time of her activities with logs (verified and stamped). The Adjudicator is of the opinion that based on these logs it would have been highly unlikely for her to have knowingly subscribed to the subscription service.

The IP in this matter has however never doubted her version and categorically stated that it left them with only two options, the two options that were described above under the "Information Provider's Response".

The Adjudicator is in agreement with this and concurs with the IP.

From the evidence provided and having scrutinised the processes and subsequent information and purporting evidence tabled, the Adjudicator is of the opinion that the IP did not contravene any of the sections / clauses of the WASPA Code of Conduct. In fact, the Adjudicator is of the opinion that the IP also went through great lengths in assisting the Complainant in this matter.

Does this mean that the Complainant erred in this matter? Most definitely not and is the Adjudicator not in a position to negate her recollection of events.

However, the purpose of this adjudication was to seek the so-called "truth".

The Adjudicator is of the opinion that none of the participants in this matter erred or is untruthful.

A due technical process was followed by the IP to unravel the sequence of events and it made double sure that its systems and measures were so-called "up to scratch".

The new regulations that have been issued since this matter came to be, have also further strengthened the whole subscription process and would most definitely further minimise any irregularities, in the unlikely event that they might occur.

WASPA continuously strive to better its code and to phase out any unforeseen problems end-users of the services might experience or be subjected to.

In light of the above, the Complaint is dismissed.

The Adjudicator however recommends that the IP refunds the Complainant in this matter, elaborating on its initial compromise and act of good faith.