



REPORT OF THE ADJUDICATOR

Complaint reference number:	23350
WASPA member(s):	JP Consulting FZE (IP) / Smartcall Technology Solutions (SP)
Membership number(s):	1192 & 0090
Complainant:	Public
Type of complaint:	Subscription
Date complaint was lodged:	2014-01-31
Date of the alleged offence:	2013-02-01
Relevant version of the Code:	12.1
Clauses considered:	11.2.1
Relevant version of the Ad. Rules:	N/A
Clauses considered:	N/A
Related cases considered:	N/A

Complaint

The Complainant was unsubscribed from services. He was offered a full refund which was accepted and subsequently paid.

The Complainant then indicated that he wanted an additional amount for compensation, due to financial losses attributed to interest and elsewhere indicated that the SP should be fined as a re-imbusement was construed by him as a mere slap on the wrist.

This complaint was escalated due to the fact that the Complainant did not indicate whether he was satisfied that the complaint was resolved to his satisfaction.

Service provider's responses

The SP in this complaint neither acknowledged nor disputed a breach of the Code and refunded the Complainant in full, which amount is substantial.

The SP at several times requested additional information from the Complainant to ascertain the breakdown of his additional claim for financial losses.

The SP also indicated to the Complainant in this matter that regard must be given to the fact that he did have the opportunity to unsubscribe right from the outset and at monthly intervals thereafter.

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.

4.1.3. Each member must provide their full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.

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 subsequent reply.

This complaint has been escalated due to the fact that the Complainant in this matter was not satisfied with the amount of money that has been paid to him, even though the amount represented a total refund.

The Adjudicator is not in a position to rule on the origins of the complaint since no detail on behalf of the Complainant and no response from the SP as to whether it materially disagrees with the Complainant's version or not, have been tabled or made available to the Adjudicator.

The communication between the parties only relate to the refund and subsequent alleged financial damages, although the original complaint does make reference and does provide detail as to the origins of the complaint, which if taken unchallenged, seems to indicate wrongful subscription.

An inference can be drawn that the SP's refund to the Complainant is further an admission of wrongful subscription, and one could further sustain such inference by arguing that the request by the Complainant for a refund went unchallenged, albeit the size thereof.

The Adjudicator is of the opinion that the Complainant in this matter has not provided sufficient information to justify further financial compensation.

The Adjudicator is however of the opinion that the SP has committed a breach of section 11.2.1

The complaint is therefore partially upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- [The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct; and
- [The SP's subsequent response.

The SP is given a formal reprimand for its breach of section 11.2.1, future breaches of which should be levied with financial penalties.