



REPORT OF THE ADJUDICATOR

WASP (IP):	Allied Pacific Investments
Service Provider (SP):	Opera Telecom Pty Ltd
Service Type:	Subscription services
Complainant:	Public
Complaint Number:	25889
Code Version:	13.0

Complaint

The complainant stated that they never subscribed to the service in question in this matter and requested a refund.

WASP's response

After some communication in this matter, including a request from WASPA for the promotional material from which this subscription commenced and a denial by the IP that the subscriber was not one of their subscribers, the IP eventually responded by stating:

We take full responsibility for the misunderstanding that has occurred due to a technical error on our systems, this was done completely accidentally and without malicious intent. We most certainly did not intent to mislead the customer. This has not occurred before and we have taken steps to ensure that it will not happen again. Our aim is to establish long term business relationships with our customers and to provide them with high quality value added services in the mobile industry and as such we would never intentionally engage in any activities that would provoke our clients or cause angst as this would be counter-intuitive to our business model.

Sections of the Code considered

The following sections of the Code were identified in the complaint:

5.5 Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

Decision

I have a number of challenges before me. The first is that the scope of my investigation is severely curtailed by the fact that the only cited clause is Clause 5.5 and my investigation is therefore limited to that clause at this time.

In addition, while the WASP eventually takes responsibility for a “misunderstanding”, I am in the dark as to the nature of that misunderstanding, nor am I enlightened as to why the WASP initially denied any knowledge of this subscription – although I can assume that this is part of the “technical error”.

The complaint relates to an automatic subscription. I have logs showing subscription, but at no point was the promotional material that led to the interaction put before me. The only substantial response is that there was a misunderstanding and technical error that has been rectified. In addition, it would appear that the requested refund has now been paid or is in the process of payment. I must assume that the WASP is admitting that there was an automatic subscription.

However, in the absence of any more information as to how this has occurred and what the initiating material looked like (or if that was part of the “misunderstanding”) I am unable to find a *prima facie* argument for a breach of Clause 5.5.

On the facts before me there is therefore no case for a breach of Clause 5.5.

Sanctions

Given that I have made no finding of breach, and given that the refund appears to have been paid, I impose no sanction.

However, I strongly recommend that the WASP:

- [Conducts an audit to ensure that no other consumers have been affected by this “technical error”;
- [Refunds any consumers that have been similarly affected by the “technical error”.

I would also encourage the WASP, in future, to take WASPA fully into its confidences in responses and provide all the requested material. It is inevitable that a pattern of incomplete and evasive responses will result in adjudicators no longer affording the WASP the benefit of the doubt.