



REPORT OF THE ADJUDICATOR

Complaint reference number:	23430
WASPA member(s):	Zed Mobile (IP)
Membership number(s):	0146
Complainant:	Public
Type of complaint:	Subscription
Date complaint was lodged:	2014-02-10
Date of the alleged offence:	2012 -06-12
Relevant version of the Code:	12.0
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 in this matter alleged that he did not subscribe to the alleged subscription service and never clicked on the advertising banner or followed any subsequent subscription processes.

He does however admit that he did receive certain reminder messages but purported it to be SPAM. He still believes that he was not legally subscribed and money was unfairly / unlawfully deducted.

He subsequently wants a refund.

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 subscription, welcome messages and un-subscription process by way of logs.

The IP is of the opinion that the Complainant in the event of a erred subscription had more than ample time to unsubscribe or discontinue the subscription service and the IP is therefore only willing to refund the Complainant with one month.

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.

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.

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 banner.

After this the handler clicked on the '**click here to confirm**' button on the landing page where after a welcome message was sent.

The IP then also forwarded on a monthly basis reminder messages (20 in total over the 20 month subscription) to the Complainant affording him the opportunity to unsubscribe.

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 at an earlier stage and that he have had more than ample time to unsubscribe, even though he thought the relevant reminder messages were in fact SPAM.

The complaint is therefore dismissed.
