



REPORT OF THE ADJUDICATOR

WASPA Member (SP) Vending for Africa t/a Fantastic 1
Information Provider (IP) N/A
(if any)
Service Type API for bulk delivery
Source of Complaints Public
Complaint Number #0353

Complaint

This Complaint was lodged by the WASPA Secretariat on 16 July 2006. The Complaint reads as follows:

“On 2006-01-09 a complaint was lodged against Vending for Africa. You responded to this complaint on 2006-02-16. The complaint was then assigned to an independent adjudicator for review, and he lodged his report on 2006-03-31.

You were sent a copy of this report on 2006-04-02, together with instruction for lodging an appeal. Since you did not lodge an appeal within the five day period set out in the Code of Conduct, a further message was sent to you on 2006-04-18 requesting that you confirm your compliance with the adjudicator's report. A copy of this message is appended below.

Subsequently, WASPA has received correspondence from the complainant stating that you have not refunded the complainant as prescribed by the adjudicator.

According to clause 13.3.15 of the WASPA Code of Conduct, "failure of any member to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed".

Given these circumstances, the WASPA Secretariat has no choice but to lodge a new complaint against Vending for Africa for failing to comply with the sanctions for complaint #0353.”

SP Response

No Response to the Complaint was received from the SP.

Sections of the Code considered

The following sections of version 4.3 of the WASPA Code of Conduct were considered:

13.3.15. The failure of any member to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed.

Decision

The lodging of the Complaint is directly due to the SP's failure to comply with the Finding of the Independent Adjudicator under Complaint #0106. A copy of the Adjudicator's Report in this matter can be downloaded from http://www.waspa.org.za/code/complaint_idx3.shtml.

The Adjudicator who dealt with the original Complaint found that the SP breached section 3.1.1 of version 3.2 of the Code in “displaying a lack of professionalism in its conduct towards the complainant”.

The Order made under Complaint #0106 read as follows:

“The Adjudicator orders the SP to pay the Complainant's reasonable and valid claim for compensation as contemplated in section 13.4.1.d of the WASPA Code of Conduct, by refunding all monies paid by the complainant to the SP. Such payment is to be effected within five (5) working days of receipt of this report and proof thereof shall be provided to the Secretariat. “

The failure of the SP to comply with this Order is a matter of considerable gravity which goes to the very root of the rationale for the existence of WASPA. The primary objective of the Code is set out in section 1.2 of the Code as follows:

“The primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services. The Code aims to equip customers and consumers with a mechanism for addressing any concerns or complaints relating to services provided by WASPA members, and a framework for impartial, fair and consistent evaluation and response to any complaints made.”

In order to properly serve this primary objective it is my view that a severe sanction should be imposed on the SP. The failure of the SP to comply with the Order or to respond to the Complaint here under adjudication is tantamount to an expression of contempt for WASPA and the Code and procedures which it oversees.

In the absence of a Response a finding that the SP has breached section 13.3.15 of the Code is unavoidable. The failure to pay the refund as required is also a further breach of Section 3.1.1 of the Code.

In considering an appropriate sanction in this matter I have taken into account the following factors:

- The gravity of the breach as outlined above;
- The interests of the Complainant who remains out of pocket in respect of his dealings with the SP;
- The nature of the original breach of the Code and the fact that such breach has been compounded by the SP's ongoing failure to refund the Complainant or to engage with the WASPA Secretariat in respect of the Complaint currently under adjudication.

In the light of the above the following sanctions are imposed:

- The SP is suspended from membership of WASPA with effect from the date of issue of this Report and such suspension will remain in place until such

time as the Complainant has complied in full with the Order made under Complaint #0106.

- The Complainant is fined the sum of R10 000.00 in respect of its breach of clause 13.3.15 of the WASPA Code of Conduct. This fine is payable to the WASPA Secretariat within five (5) days of the date of issue of this Report.
- In the event that the SP does not comply with the above Orders within one (1) month of the date of issue of this Report then the WASPA Secretariat is required to lodge a further Complaint in respect of such breach. It is emphasized that such further breach will in all likelihood result in the expulsion of the SP from WASPA together with further sanction to be implemented at a network operator level.
- It appears from the SP's Response to the initial Complaint that the SP has recently completed a merger process. For the avoidance of doubt it is explicitly stated that the sanctions listed above apply directly to such merged entity insofar as this may be distinguishable from the SP as it existed at the time of the lodging of the initial Complaint.