



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Altech Autopage Cellular (Pty) Ltd – WASP Division
Information Provider (IP): (if applicable)	N/A
Service Type:	Failure to comply with sanctions
Complainant:	WASPA Secretariat
Complaint Number:	11094
Code version:	Code v 10.0 and Ad Rules v 2.3
Date of Report:	31 December 2010

Complaint

1. On the 11th of November 2010 the WASPA Secretariat lodged a complaint against the Member. The substance of the complaint was that the Member had not complied with the sanctions imposed by Adjudicators in complaints 1743, 1986, 2090 and 2392.
2. The Adjudicator's reports in complaints 1743, 1986 and 2090 were all published on the 10th of January 2008. In each case the Adjudicator imposed a fine on the Member and ordered that the Member should suspend services to a certain IP for a period of 14 days or until such time as it was satisfied that the IP had complied with certain requirements. A formal reprimand was also issued in complaint 1743.
3. It is not the Adjudicator's intention to give a detailed history of the matter, but in a nutshell, the Member took the view that WASPA did not have jurisdiction to impose sanctions in the circumstances. A dispute arose between WASPA and the Member on this basis, and the Member refused to comply with the sanctions. Consequently the WASPA Secretariat brought complaint 3557 against the Member in terms of section 13.3.16 of version 5.7 of the Code of Conduct.
4. The Adjudicator in complaint 3557 found that the Member had indeed infringed section 13.3.16 of version 5.7, but was of the view that a further sanction would be of no assistance in resolving the matter. Consequently, the Adjudicator gave the Member a formal reprimand and made the suggestion that the Member should make use of the appeals process set out in the Code of Conduct.

5. The Member took the Adjudicator's advice, and subsequently appealed the Adjudicator's decisions in the above three complaints. The appeals panel's report was published on the 3rd of December 2009. In its decision, the appeals panel declined to uphold the Member's appeals, but did note that it would be impractical for the Member to suspend the IP concerned due to the significant passage of time since the original Adjudicator's reports were published. Consequently, the appeals panel imposed the following sanctions:
 - 5.1. The formal reprimand imposed in complaints 1743 and 3557 were confirmed; and
 - 5.2. The financial penalties imposed in complaints 1743, 1986 and 2090 were confirmed, payable immediately.
6. The report in complaint 2392 was also published on the 10th of January 2010, and the Member was fined the amount of R5 000. This complaint was not included in the appeal described above, presumably because the Member was not required to suspend an IP, but the fine was apparently nonetheless never paid.
7. The outstanding sanctions take the form of fines payable per complaint as follows:
 - 1743 – R7 500
 - 1986 - R10 000
 - 2090 - R7 500
 - 2392 – R5 000
8. The Member failed to pay the fines as set out above, resulting in the present complaint.
9. Notice of the complaint was sent to the Member on the 11th of November 2010, and a reminder to respond was sent on the 19th of November, but no response was ever received from the Member.

Portion of the Code Considered

10. The Member's failure to comply with the sanctions imposed is on-going, and consequently any version of the Code of Conduct extant between December 2009 and the date of this report could be used. The wording of the relevant sections has not changed over this period in any event. The section numbers in the current version 10.0 of the Code of Conduct are 14.3.22 and 14.6.15:

14.3.22. If no appeal is lodged, or if the adjudicator has specified certain sanctions as not being suspended pending an appeal, 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.

14.6.15. The member must, within five working days [after receipt of the appeal result], comply with any sanction imposed.

Decision

11. It is not for the Adjudicator to analyse the merits of the findings of the Adjudicators in complaints 1743, 1986, 2090, 2392, 3557 or the appeals panel. This complaint is solely in respect of the Member's failure to comply with sanctions imposed in terms of the WASPA Code of Conduct.
 12. The WASPA Secretariat has indicated that the Member has not complied with the sanctions in these complaints, and the Member has not denied this, despite being given adequate opportunity to respond to the complaint. Consequently the Adjudicator finds that the Member has infringed section 14.3.22 of the Code of Conduct in respect of its failure to comply with sanctions imposed in complaint 2392, and section 14.6.15 in respect of its failure to comply with sanctions imposed in complaints 1743, 1986 and 2090.
-

Sanction

13. The Member cannot be unaware of the result of the above appeal, or of the substance of this complaint. Moreover, the total amount of fines payable by the Member is R 30 000, which for a company the size of the Member is an inconsequential amount.
14. It thus appears to the Adjudicator that the Member has taken a principled stance on this issue. This factor taken with the length of the Member's intransigence leads the Adjudicator to the conclusion that there is little prospect of the Member complying with the sanction imposed unless pressed to do so.
15. The Adjudicator further agrees with the sentiments of the Adjudicator in complaint 3557 that the failure by members to comply with sanctions imposed in terms of the Code of Conduct severely compromises the ability of WASPA to act as a self-regulating body.
16. Consequently the following sanction is imposed:
 - 16.1. The Member must comply with the fines imposed on it in complaints 1743, 1986, 2090 and 2392 within five working days from the date of notification of this report.
 - 16.2. Should the Member not meet the above deadline, it shall be suspended from membership of WASPA until it so complies.
 - 16.3. Should the Member not have complied with the sanctions imposed on it in complaints 1743, 1986, 2090 and 2392 by a date 180 (one hundred and eighty) days from the date of notification of this report, its membership of WASPA shall be terminated.

-----oooOooo-----