



REPORT OF THE ADJUDICATOR

Complaint reference number:	13485
WASPA member(s):	Teleplay
Membership number(s):	0064
Complainant:	WASPA
Type of complaint:	Failure to comply with sanction
Date complaint was lodged:	17/6/2011
Date of the alleged offence:	27/9/2010
Relevant version of the Code:	9.0
Clauses considered:	14.6.16
Relevant version of the Ad. Rules:	Not Applicable
Clauses considered:	Not Applicable
Related cases considered:	None

Complaint and Response

1. This complaint was brought against the member as a result of the member allegedly not complying with a sanction imposed on it in terms of the formal complaints process set out in the WASPA Code of Conduct. Teleplay is a full member of WASPA.
2. The facts are briefly the following. Complaint 6542 was lodged against the member on the 22nd of May 2009 for alleged breaches of the Code relating to adult services. The matter was escalated to the formal complaints procedure; on the 3rd of December 2009 the adjudicator's report in that matter was published, which found that the member had infringed sections 8.1.3 and 8.1.4 of version 7.9 of the Code of Conduct. The sanctions imposed were a formal warning and a fine of R 150 000.
3. The member appealed the decision and sanction of the adjudicator, and the appeals panel's decision was published on the 21st of September 2010. The panel reduced the fine to the amount of R 50 000, and ruled that the appeal fee was not refundable.

4. The WASPA Secretariat sent the member notification of the current complaint on the 17th of June 2011. The complaint was described as:

Failure to comply with sanctions of appeal #6542

5. The member's representative initially appeared to be unsure what the matter related to, but after a reminder from the Secretariat asked who to speak to regarding payment of the fine. The Secretariat advised that the fine was payable within 5 working days of publication of the appeal decision, but suggested that if it was not possible to pay the fine off in one lump sum, the member could make an initial payment and make a proposal for payment of the balance. The member responded as follows on the 27th of June:

You will have to give us more time, we cannot afford to pay this fine (also the fine isn't right- see the appeal we lodged) the future of Teleplay is not clear since that Vodacom cut all the revenue share with regards to IVR (Vodacom's interconnect issues) Teleplay got a direct hit since its main bearer is IVR. Our priorities now is to pay our staff

We will have to find a way to pay this fine

6. The Secretariat asked the member the period of extension it required, and received no response. It followed up on the 4th of July, with the warning that if it received no response from the member by close of business that day, it would proceed to adjudication. This elicited the following response from the member:

I send my response below on the 27.6

What else you want me to write?

7. Accordingly the Secretariat referred the matter to adjudication.

Sections of the Code considered

8. The fine imposed by the appeals panel would have been due for payment five working days after publication of the appeals panel report. As publication was made on the 21st of September 2010, the fine should have been paid by the 27th of September 2010. Version 9.0 of the Code of Conduct was current at that time, and will accordingly be applied to this complaint.
9. The following section of the Code of Conduct refers to sanctions imposed by the appeals panel and has relevance to this complaint:

14.6.16. 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

10. There can be no question that the member was aware that it was liable to pay a fine in terms of the Code of Conduct. After all, it appealed the initial decision in complaint 6542.

11. The Secretariat took the member's financial difficulties into account by giving it the opportunity to propose a "payment plan" for the fine rather than paying it in a lump sum (despite the lapse of some 9 months from the date upon which the fine was due). The member chose not to take advantage of this opportunity.
12. There is no reason to doubt that the member has not paid the fine imposed upon it by the appeals panel, and there does not appear to be any valid defence available to the member for not doing so. Consequently, the member has infringed section 14.6.16 of the Code of Conduct.

Sanctions

13. The adjudicator does not think it appropriate to impose a further fine upon a member which clearly has no intention of paying one.
14. 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.
15. Consequently the following sanction is imposed: the member must pay the fine imposed by the appeals panel in complaint 6542 within 10 working days of publication of this report. Should it fail to do so, its membership of WASPA shall be suspended until such time as the fine is paid.

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