



REPORT OF THE ADJUDICATOR

Complaint reference number:	13487
WASPA member(s):	121 SMS (Pty) Ltd t/a Sports-Insider
Membership number(s):	1056
Complainant:	WASPA
Type of complaint:	Failure to comply with sanction
Date complaint was lodged:	17/6/2011
Date of the alleged offence:	19/3/2010
Relevant version of the Code:	8.0
Clauses considered:	13.3.20
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. 121 SMS (Pty) Ltd t/a Sports-Insider is an affiliate member of WASPA.
2. The facts are briefly the following. Complaint 7385 was lodged against the member on the 19th of August 2009 for alleged breaches of the Code relating to subscription services. The matter was escalated to the formal complaints procedure; on the 12th of March 2010 the adjudicator in that matter found that the member had infringed section 11.5.7 of version 7.4 of the Code of Conduct. The sanctions imposed were a fine of R 100 000, suspension of the relevant service until it was compliant with section 11.5.7, and a full refund to the complainant.
3. The WASPA Secretariat sent the member notification of this complaint on the 17th of June 2011. The complaint was described as:

Failure to comply with sanctions of complaint #7385

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4. The member responded on the 21st of June as follows:
- Email received.
- Company 121SMS (PTY) Ltd was placed into Liquidation
5. The member's representative then furnished the name and contact details of the liquidator.
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Sections of the Code considered

6. The fine imposed by adjudicator in complaint 7385 would have been due for payment five working days after publication of the adjudicator's report. As publication was effected on the 12th of March 2010, the fine should have been paid by the 19th of March 2010. Version 8.0 of the Code of Conduct was current at that time, and will accordingly be applied to this complaint.
7. The following sections of the Code of Conduct have relevance to this complaint:
- 13.3.20. 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.
- 13.3.21. The member must provide the secretariat with confirmation of compliance with any applicable sanctions within five working days of receiving the adjudicator's report.
- 13.3.22. The member must pay any applicable fine(s) imposed by an adjudicator within five working days of receipt of invoice.
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Decision

8. There is no reason to doubt that the member has not paid the fine imposed upon it by the adjudicator in complaint number 7385 despite a considerable lapse of time. The fine would have been payable within five working days, as set out in section 13.3.22. Consequently the member has infringed section 13.3.20 of version 8.0 of the Code of Conduct.
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Sanctions

9. The adjudicator does not think it appropriate to impose a further fine upon the member, because there seems little prospect of it being paid – both due to the time that has already lapsed since imposition of the fine that is the subject of this complaint, and because the member is apparently in liquidation.
10. However, 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, and the adjudicator feels that some action must be taken.

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11. Consequently the following sanction is imposed: the member must pay the fine imposed by the adjudicator in complaint 7385 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.
 12. The adjudicator strongly suggests that the WASPA Secretariat take advice on the best manner to advise the liquidator of the fine in complaint 7385, if he is not already so aware. The danger exists that pursuing this matter in the wrong manner may expose WASPA to costs in the liquidation.

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