



REPORT OF THE ADJUDICATOR

Complaint reference number:	16882
WASPA member(s):	Peach Mobile
Membership number(s):	1068
Complainant:	WASPA Secretariat
Type of complaint:	Failure to comply with sanction
Date complaint was lodged:	4/4/2012
Date of the alleged offence:	6/12/2011
Relevant version of the Code:	11.6
Clauses considered:	14.3.22; 14.3.24
Relevant version of the Ad. Rules:	Not Applicable
Clauses considered:	None
Related cases considered:	11094; 13378; 13379

Complaint and Response

1. The member was the subject of complaint number 14586. The report in that matter was published on the 29th of November 2011 and the adjudicator imposed the following sanction:

The IP is in breach of section 5.3.1 of the Code in that they sent an unsolicited message (as defined in section 5.2.1) to the Complainant.

Due to the fact that the IP has been provided with incorrect legal advice and at least attempted to comply with the law the IP is fined R10000. R5000 payable immediately and R5000 to be suspended pending the IP amending their direct marketing processes and ensuring compliance with section 5.2.1 and 5.3.1 of the Code.

The IP is also formally reprimanded.

2. The WASPA Secretariat did not receive any response from the member concerning this complaint, nor did it receive payment of the fine.
3. As no payment was received, and matter was escalated to a formal complaint by notice to the member on the 4th of April 2012.
4. The WASPA Secretariat sent a reminder to the member on the 19th of April.
5. The member responded on the 20th of April as follows:

I was unfortunately not in e-mail communication today – so I have just picked up this mail now. (12h16am 20th April) – Apologies for not responding by close of business as requested.

I have been in contact and consultation with Leon Perlman with respect to all our listed code of conduct complaints and whilst we have been dragging our heels slightly on the response, we would like to take this opportunity to request a 30 day extensions on all complaints currently lodged with WASPA. I can provide the references but I am sure you have them all noted.

Reason being is that we have consulted various role players in the Direct Marketing industry and are currently struggling with the restrictions placed on our business in order to effectively operate as a major contributor in this space. We do understand our obligations with respect to compliance but would still like the extension of 30 days in order for us to put in an effective response and provide some meaningful feedback with respect to our business and the direct marketing industry as a whole.

6. The Secretariat responded the same day:

Please advise why you need so much time.

This complaint (including the other two logged by the WASPA Secretariat) is because of failure to comply with sanction, not because of marketing messages.

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.

If you wish to advise the adjudicator regarding the sanctions imposed in complaint #14638 you should have appealed this complaints.

7. On the 7th of May 2012 the WASPA Secretariat sent the member a breakdown of fines owing to WASPA, including the fine imposed under complaint number 14586.
 8. Finally, on the 14th of May the Secretariat referred the matter to adjudication.
 9. The record does not show any further response to the complaint by the member.
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Sections of the Code considered

10. The conduct complained of took place on or about the 6th of December 2011, and consequently version 11.6 of the WASPA Code of Conduct is applicable. The following clauses have relevance:

14.3. Formal complaint procedure

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.

14.3.23. The member must provide the secretariat with confirmation of compliance with any applicable sanctions within five working days of receiving the adjudicator's report.

14.3.24. The member must pay any applicable fine(s) imposed by an adjudicator within five working days of receipt of invoice.

Sections of the Advertising Rules considered

11. Not Applicable

Decision

12. In terms of clause 14.3.24 the member should have paid the relevant fine on or before the 6th of December 2011, being five working days after the date on which the adjudicator's report in complaint number 14586 was published. This assumes that the WASPA secretariat issued the relevant invoice on the same day.
13. By not complying with a sanction imposed by the adjudicator in complaint number 14586 within the period specified, the member has infringed clause 14.3.22 of the Code of Conduct.
14. The merits of the original complaint are not relevant to this complaint.

Sanctions

15. The continued existence of WASPA as the self-regulatory body of the WASP industry is dependent on enforcement of its Code of Conduct. If members refuse to comply with sanctions imposed on them for breaches of the Code of Conduct, the ability of WASPA to regulate the industry is undermined.
16. I do not consider that a further fine is an appropriate sanction for this infringement, as the member clearly does not feel any pressing need to pay fines. I have accordingly followed the approach taken in complaints 11094, 13378 and 13379 which also deal with infringements of clause 14.3.22.
17. Accordingly the following sanction is imposed on the member:

- 17.1. The member is to pay the fine imposed by the adjudicator in complaint 14586 within five days after the date of notification of this report.
- 17.2. If the member fails to pay the fine within the aforementioned period, the member's membership of WASPA will be suspended until such time as the fine is paid.
- 17.3. If the member has not paid the fine by a date 180 (one hundred and eighty) days after the date of notification of this report, its membership of WASPA will be terminated.