



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	17259
<b>WASPA member(s):</b>	Peach Mobile
<b>Membership number(s):</b>	1068
<b>Complainant:</b>	WASPA Secretariat
<b>Type of complaint:</b>	Failure to comply with sanction
<b>Date complaint was lodged:</b>	23/5/2012
<b>Date of the alleged offence:</b>	7/3/2012
<b>Relevant version of the Code:</b>	11.6
<b>Clauses considered:</b>	14.3.22; 14.3.24
<b>Relevant version of the Ad. Rules:</b>	Not Applicable
<b>Clauses considered:</b>	None
<b>Related cases considered:</b>	11094; 13378; 13379

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### Complaint and Response

1. The member was the subject of complaint number 11006. The report in that matter was published on the 31<sup>st</sup> of March 2011 and the adjudicator imposed the following sanction:

The IP is fined R 10 000-00 for its breach of section 5.3.1, payable to the WASPA Secretariat within five (5) working days after receiving notice hereof.

The IP is further instructed to provide the WASPA Secretariat a detailed report in how it managed to obtain the personal information of the Complainant in this matter within five (5) working days after receiving notice hereof.

2. The member appealed the adjudicator's ruling, and the appeals panel decision was published on the 29<sup>th</sup> of February 2012. The panel upheld the adjudicator's ruling and sanction.
3. On the 23<sup>rd</sup> of May 2012, the WASPA Secretariat lodged a complaint against the member on the basis that it had not complied with the sanctions imposed under complaint 11006.
4. The member requested an extension to reply to the complaint, and was granted an extension until the 8<sup>th</sup> of June.
5. On the 5<sup>th</sup> of June the member submitted a formal response to the complaint.
6. The member seems to make the same arguments in its submission that it made to the appeals panel in its appeal of complaint number 11006, but also add that it has taken the following steps in respect of *this* complaint:

Lastly, notwithstanding the above concerns, Peach has taken the following steps with respect to the complaint #17259 referenced in this letter:

Below find the current process flow from our compliancy division:

1. We have added the complainants contact details to our internal opt out register
  2. We removed the complainants details from all of our contact lists
  3. We have flagged the complainants details for non-contact on all future campaigns
7. The Secretariat responded on the 6th to the effect that this complaint 17259 relates to the member's failure to comply with sanctions, and not to the merits of the original complaint. The member was asked to provide a relevant submission.
8. The member then raised the point that the original complainant was anonymous, and that this amounted to unfair competition. The member's representative demanded to know who the original complainant was.
9. The Secretariat responded that the original complainant requested to remain anonymous, and is permitted to do so in terms of clause 14.1.5 of the Code of Conduct.
10. The member made one final submission on the 11<sup>th</sup> of June:

OK [removed] - what is now required from me here? I am at a loss... (your response listed below)

Can you advise what the next steps are and what is required from me ? I have a business to run and cannot spend my time figuring out your response mail below.

Just simply tell me what my next steps should be.... WASPA should go and attack the thousands of rogue traders in the market rather than targeting the legitimate Direct Marketing players who add value to the sector.
11. The record does not show any response from the Secretariat to this email.

12. To date the member has not paid the fine imposed on it under complaint number 11006.
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### **Sections of the Code considered**

13. The conduct complained of took place on or about the 7<sup>th</sup> of March 2012, 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.

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### **Sections of the Advertising Rules considered**

14. Not Applicable
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### **Decision**

15. In terms of clause 14.3.24 the member should have paid the relevant fine on or before the 7<sup>th</sup> of March 2012, being five working days after the date on which the adjudicator's report in complaint number 11006 was published. This assumes that the WASPA secretariat issued the relevant invoice on the same day.
  16. By not complying with a sanction imposed by the adjudicator in complaint number 11006 within the period specified, the member has infringed clause 14.3.22 of the Code of Conduct.
  17. The merits of the original complaint are not relevant to this complaint.
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### **Sanctions**

18. 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.
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19. 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.
20. Accordingly the following sanction is imposed on the member:
  - 20.1. The member is to pay the fine imposed by the adjudicator in complaint 11006 within five days after the date of notification of this report.
  - 20.2. 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.
  - 20.3. 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.