



REPORT OF THE ADJUDICATOR

Complaint reference number:	21436
WASPA member(s):	Mobile Messenger EU Ltd (IP) / Integrat (SP)
Membership number(s):	1045 / 0030
Complainant:	WASPA Secretariat
Type of complaint:	Non-compliance with sanctions
Date complaint was lodged:	15 August 2013
Date of the alleged offence:	16 July 2009
Relevant version of the Code:	12.1
Clauses considered:	14.3 and 14.4
Relevant version of the Ad. Rules:	n/a
Clauses considered:	n/a
Related cases considered:	6984; 7029; 7769; 7988; 19955; 19956; 19957

Background

1. The WASPA Secretariat previously lodged formal complaints against the IP, who is a WASPA member, for its failure to comply with the sanctions handed down by the adjudicator in complaints 6984, 7029 and 7769 (see complaints 19955; 19956 and 19957).
 2. The IP was found to have committed a breach of the WASPA Code and was suspended for a period of 6 months, pending the payment of the necessary fines imposed by the adjudicator in the previous complaints.
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Complaint

3. The current complaint has been lodged by the WASPA Secretariat against the IP for its continued non-compliance with the sanctions handed down in complaints 6984, 7029 and 7769.
 4. The SP has also been cited in the complaint.
 5. The complainant also states that it appears that the suspension of the IP's membership has been ineffective in ensuring compliance with the fines previously imposed.
 6. The complainant states further that the SP has indicated that they have withheld income from the IP. The WASPA Code provides for the handing over of withheld income to WASPA as a sanction.
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IP's response

7. The IP has failed to respond to the complaint despite the necessary reminder messages being sent to it by the WASPA Secretariat. The SP has also indicated that it has struggled to make contact with the IP for some time.
 8. The IP's membership of WASPA has been terminated prior to the hearing of this adjudication.
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Sections of the Code considered

9. Section 14.3.5:
The member will be given five working days to respond to the complaint, and to provide any additional information the member deems relevant to the complaint, including any mitigating factors that the member wishes the adjudicator to consider.

10. Section 14.3.6:

If the member fails to respond within this time period, it will be assumed that the member does not wish to respond. An extension to this time period may be given to the member at the discretion of the WASPA Secretariat.
11. Section 14.3.20:

The member has five working days to notify the secretariat if it wishes to appeal against the decision of the adjudicator. An extension to this time period may be given to the member at the discretion of the WASPA Secretariat.
12. Section 14.3.21:

Unless otherwise specified in the adjudicator's report, any sanctions will be considered suspended if an appeal is lodged, until the appeal process is completed.
13. Section 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. Section 14.3.24:

The member must pay any applicable fine(s) imposed by an adjudicator within five working days of receipt of invoice.
15. Section 14.4.2:

For all other clauses of the Code, possible sanctions that may be imposed on a member found to be in breach of the Code of Conduct are one or more of the following:

 - a. a requirement for the member to remedy the breach;
 - b. a formal reprimand;
 - c. an appropriate fine on the member, to be collected by WASPA;
 - d. suspension of the member from WASPA for a defined period;
 - e. expulsion of the member from WASPA;
 - f. a requirement for the member to disclose the identity of any information provider found to be acting in breach of this Code of Conduct;

- g. a requirement for the member to suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct;
- h. a requirement to withhold a specified amount or portion of money payable by the member to the information provider.

16. Section 14.4.4:

In addition, possible sanctions against a member in breach of the Code include advising the relevant network operators or that member's aggregator to do one or more of the following:

- a. block a member's access to a specific number for a defined period;
- b. block a member's access to a specific category of service for a defined period;
- c. terminate a member's access to a specific number;
- d. terminate a member's access to a specific category of service;
- e. withhold a specified amount or portion of money payable by the network operator to that service provider;
- f. pay some or all of withheld funds to WASPA, as an appropriate fine on the service provider;
- g. issue a blanket refund to the customers of a service found to be in breach of the Code of Conduct.

17. Section 14.4.7:

For the avoidance of doubt, no sanction may be applied to a member who has not been given an opportunity to respond to a complaint.

Decision

- 18. The IP has failed to respond to this complaint despite being given the relevant five (5) working days to respond as per section 14.3.5 of the Code. It must therefore be assumed that the IP does not wish to respond.
- 19. The failure of the IP to pay the fines previously imposed upon it in respect of complaints 6984, 7029 and 7769, despite the additional sanction of its suspension from WASPA, amounts to a further breach of the Code.

20. I therefore find that the IP has breached section 14.3.22 of the Code.

Sanction

21. The SP has indicated that it is withholding funds payable to the IP.
22. In terms of section 14.4.4(f), the SP is required to pay over all amounts withheld from the IP to the WASPA Secretariat within 7 (seven) days of being notified of this report, in satisfaction of the sanctions imposed in respect of complaints 6984, 7029 and 7769.
23. I am satisfied that the provisions of section 14.4.7 have been met and that the IP has been given an opportunity to respond to this complaint before the aforesaid sanction was imposed.