

WASPA Member (SP)	iTouch
Information Provider (IP)	N/A
Service Type	Failure imposing sanctions
Source of Complaint	WASPA Secretariat
Complaint Number	#4111
Code of Conduct Version	5.7
Date of Adjudication	14/07/2008

Complaint

The WASPA Secretariat initiated the following complaint:

“Failure to comply with the sanctions for complaint 2445. (See clause 13.3.6 of the WASPA Code.)

Requests for the SP to confirm compliance with the sanctions for complaint #2445 were sent on 2008-02-07 and again on 2008-02-25, but the SP has failed to respond.”

SP Response

In its response the SP indicated that it had not received various emails sent by WASPA due to an incorrect email address. It further requested that these complaints be resend.

Sections of the Code of Conduct considered

13.3.15. 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.

13.3.16. 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.

Decision

In a matter before it the Adjudicator has to rely on the information presented to him / her. In this particular matter, and more specifically Adjudication #2445, certain sanctions were imposed on the SP which read as follow:

- The SP is ordered to immediately remove the complainant's details from its database and to provide written confirmation to the Secretariat within 7 (seven) days of being notified of this decision that it has done so.
- The SP is ordered to ensure in future that all its commercial communications of an adult nature comply with section 5.2.1 of the Code. Such communications must only be sent to intended recipients under the following circumstances:
 - The intended recipient has requested the communication;
 - There is a prior commercial relationship with the intended recipient (not the number used) with the last interaction taking place within the previous 6 months;
 - The intended recipient has explicated consented to his/her contact information being given to and/or used by the SP for this purpose.

The SP is ordered to adjust its internal processes and measures accordingly.

The WASPA Secretariat then requested that the SP confirms its compliance with the said sanctions.

None of this happened and it has been brought to the attention of the Adjudicator that after various attempts, the SP still failed in complying with the said sanctions.

In its response the SP indicated that this was due to miscommunication caused by an incorrect email address. It is however necessary to highlight that WASPA initially communicated using the last address issued to it by the SP in this matter. The WASPA Secretariat resolved the issue and eventually gained a correct address, resending all the information. Even though so, the SP still hasn't resolved the issue and still seems to be failing in providing relevant information pertaining to the sanctions imposed on it by Adjudication #2445.

This has to imply that the SP in this particular instance has had little regard for the process and it is to be assumed that it further had paid very little regard to the sanctions imposed. The WASPA Code of Conduct specifically makes provision for an appeal process and should such process be followed, the said sanctions would be considered suspended until an appeal decision is reached.

The Adjudicator further wants to bring Adjudication #3560 to the attention of the reader where the following was stated:

“Not complying with sanctions imposed by an Adjudicator has to be viewed in a serious light. In fact, if sanctions imposed are ignored by the offending party and such party is further allowed to follow its own assumptions then one might end up sending out conflicting signals to other offenders. This will lead to the setting of an unwanted precedent.”

The Adjudicator in this matter is therefore of the opinion that the correct process for the SP to have followed, would have been to appeal the sanctions reached in the aforementioned decisions.

It is therefore held that the SP has committed a further breach of the Code.

Accordingly, the Complaint against the SP is upheld.

Due to the seriousness of the offence the SP is fined R 30 000-00 of which R 25 000-00 is suspended for 24 months from date of adjudication. Should the SP commit a further breach of section 13.3.16 within this period, the SP would become liable for paying the R 25 000-00.

R 5 000-00 is payable to the WASPA Secretariat within five (5) days of notification hereof.

The SP is further ordered to comply with the sanctions imposed by Adjudication # 2445 and indicate such compliance to the WASPA Secretariat within five (5) days of notification hereof.

Finally, SP is ordered to verify its correct contact details with the WASPA Secretariat on a regular basis and remember that such duty is its own responsibility.
