



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	IWS
Service Type	Subscriptions
Source of Complaints	WASPA Complaint
Complaint Number	4897, 4898, 5012
Date received	23 September 2008
Code of Conduct version	6.2

Complaint

In all three of these matters the original unsubscribe request was escalated to a formal complaint at the instance of the WASPA Secretariat as a result of the failure of the SP to respond to the request or any other correspondence relating to it.

SP Response

In all three matters the required notifications have been given by the WASPA Secretariat to the contact addresses provided by the SP for its nominated representatives, notwithstanding which no response has been forthcoming.

On 3 October 2008, the WASPA Secretariat, in respect of complaints 4897 & 4898, made a further effort to effect an informal resolution (there being no request for a refund the matter could have been easily resolved through the informal process) by sending the following communication:

"I notice that two WASPA complaints (4897 and 4898) are about to be assigned to an external adjudicator for review.

The WASPA complaints team has sent notifications regarding these matters to you on 2008-09-23 and 2008-10-02, and also confirmed telephonically that you have received these notifications.

I'd like to draw your attention to the following portion of the WASPA Code:

13.3.5. If the member fails to respond within this time period, it will be assumed that the member does not wish to respond.

When faced with a complaint for which the service provider has failed to provide a response, it is usually the case that an adjudicator rules against the service provider by default. This may result in fines or other sanctions being imposed on you.

Since it seems that both of these complaints could likely be resolved informally, without requiring formal review, I would like to encourage you to review the correspondence regarding these matters and provide a response to WASPA at your earliest convenience.

I will hold-off on sending these complaints for review until Monday next week, in the hope that you are able to respond to them before then."

No response was received.

Sections of the Code considered

The following sections of Version 6,2 of the WASPA Code of Conduct were considered:

3.1. Professional and lawful conduct

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

3.10. Nominated representatives

3.10.1. Each member must supply WASPA with contact information (including at least a telephone number and an email address) for a primary and a secondary Code of Conduct representative.

3.10.2. Should the nominated representatives change, or the contact information for the representatives change, the member must notify WASPA of the changes.

4.1.5. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

11.2.2. All subscription services must have a readily available unsubscribe facility which costs no more than one rand.

11.2.4. Members must ensure that the termination mechanism is functional and accessible at all times.

Decision

1. There are two issues which fall to be adjudicated. The underlying complaints as well as the failure of the SP to reply to the complaints or any other correspondence sent to it by the WASPA Secretariat in respect of all three matters.
2. The Adjudicator has no insight into the underlying complaints but, in the absence of any explanation or countervailing evidence from the SP and in the presence of three separate complaints, it is fair to deduce that the SP did not have a functioning unsubscribe mechanism.
3. The SP is accordingly found to have breached section 5.1.2 alternatively section 11.2.2 read with 11.2.4 of the Code of Conduct. There are separate breaches relating to each complaint.
4. As regards the failure of the SP to respond: a failure to lodge a response is not *per se* a breach of the Code but a pattern of such behaviour may indicate an unwillingness to participate in the complaints process, an attitude which would be at odds with the aims and objectives of WASPA as also the SP's membership thereof.
5. The Adjudicator noted that the Code requires the SP to have two nominated representatives and that it is under a continuing obligation to maintain the contact information of these representatives as lodged with WASPA.
6. There have been two prior occasions where this SP has failed to respond to a complaint. In Complaint 1982¹ a fine of R5 000 was imposed (payment of R3 000 suspended for 6 months) in respect of a breach of section 5.2.1 & 5.3.1 of the Code. In Complaint 2399² a fine of R5 000 was imposed in respect of the same offence, In neither matter did the SP file a response and in neither matter was any specific sanction imposed in respect of such failure as opposed to the underlying breach.
7. There are three instances currently under consideration.
8. In matters of this nature, where nothing is sought other than a straightforward unsubscribe, it is a waste of time and resources to have the matter escalated to an external adjudicator. Other WASPA members named in the same unsubscribe requests have complied therewith thereby averting the need for the investment of further time and resources.
9. It is also worth noting that an SP which fails to respond to communications from an industry body to which it belongs does not inspire confidence in its ability to handle complaints from its customers in accordance with the requirements of the Code.

¹ <http://www.waspa.org.za/code/download/1982.pdf>

² <http://www.waspa.org.za/code/download/2399.pdf>

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10. The adjudicator regards the failure to respond as being in breach of section 3.1 of the Code of Conduct, insofar as the SP has clearly evidenced a failure to act professionally in its dealings with WASPA.

Sanction

11. The SP is ordered to ensure that the unsubscribe request which is the subject of each complaint is actioned within five (5) days of notification of this adjudication. This order is not appealable.
12. The SP is ordered to verify the identity and contact details of its nominated representatives in writing to the WASPA Secretariat within five (5) days of notification of this adjudication. This order is not appealable.
13. The SP is fined the sum of R15 000 in respect of its breaches of section 5.1.2 alternatively section 11.2.2 read with 11.2.4 of the Code of Conduct. This sanction applies as a global amount for all three complaints.
14. The SP is fined the sum of R20 000 in respect of its breach of section 3.1., which fine covers all three complaints.
15. The amounts specified as fines are payable within five (5) days of notification of this adjudication.
16. The Secretariat is requested to verify compliance with the order in 11. above and to lodge a further formal complaint in the event that the SP does not comply therewith.

The Secretariat is requested to take reasonable steps to ensure that this adjudication is brought to the attention of senior management at the SP.