



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Vending for Africa t/a Fantastic1
Information Provider (IP) (if any)	N/A
Service Type	API for Bulk SMS Delivery
Source of Complaints	“Public” or “Competitor”
Complaint Number	#0385
Date	21 September 2006
Code of Conduct version	4.6

Complaint

This Complaint was initiated by the WASPA Secretariat as a direct consequence of the SP's failure to comply with the sanction imposed by the Independent Adjudicator's under Complaint #0353¹, which sanction was itself imposed in respect of the SP's non-compliance with the Independent Adjudicator's sanction under Complaint #0106².

The sanction imposed under Complaint #0353 was as follows:

“The SP is suspended from membership of WASPA with effect from the date of issue of this Report and such suspension will remain in place until such time as the Complainant has complied in full with the Order made under Complaint #0106.

- The Complainant is fined the sum of R10 000.00 in respect of its breach of clause 13.3.15 of the WASPA Code of Conduct. This fine is payable to the WASPA Secretariat within five (5) days of the date of issue of this Report.

¹ <http://www.waspa.org.za/code/download/0353.pdf>

² <http://www.waspa.org.za/code/download/0106.pdf>

- In the event that the SP does not comply with the above Orders within one month of the date of issue of this Report then the WASPA Secretariat is required to lodge a further Complaint in respect of such breach. It is emphasized that such further breach willing all likelihood result in the expulsion of the SP from WASPA together with further sanction to be implemented at a network operator level.
- It appears from the SP's Response to the initial Complaint that the SP has recently completed a merger process. For the avoidance of doubt it is explicitly stated that the sanctions listed above apply directly to such merged entity insofar as this may be distinguishable from the SP as it existed at the time of the lodging of the initial Complaint."

On 13 September 2006 and in accordance with the above a fresh Complaint was lodged and communicated to the SP.

SP Response

The SP responded by stating that it could arrange for the payment of the compensation ordered but could not afford the fine.

Subsequent attempts to correspond with the SP have been fruitless.

Sections of the Code considered

13.3.11. In determining any appropriate sanctions, the adjudicator must take into consideration:

- (a) any previous successful complaints made against the member;
- (b) any previous successful complaints of a similar nature.

13.4. Sanctions

13.4.1. 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;

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- (d) a requirement, in appropriate circumstance, for the member to pay reasonable and valid claims for compensation;
 - (e) suspension of the member from WASPA for a defined period;
 - (f) expulsion of the member from WASPA;
 - (g) a requirement for the member to disclose the identity of any information provider found to be acting in breach of this Code of Conduct;
 - (h) 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;
 - (i) a requirement to withhold a specified amount or portion of money payable by the member to the information provider.

13.4.3. In addition, possible sanctions against a member in breach of the Code include advising the relevant network operators 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.

Decision

No proof of payment of compensation has been provided.

The Adjudication in respect of Complaint #0106 was delivered on 28 March 2006. More than eight months later there has been no attempt by the SP to comply with the sanction imposed. In the excerpt from the Adjudication pertaining to Complaint #353 the SP was explicitly warned of the consequences of further aggravating its non-compliance.

It does not, unfortunately, appear that the Complainant will be able to recover funds other than through civil action.

There are no mitigating circumstances. The appropriate remedy is that under section 13.4.1 (f) of the Code and it is ordered that the SP be expelled from WASPA. This order may be suspended in the event of the lodging of an appeal by the SP.