



REPORT OF THE ADJUDICATOR

WASPA Affiliate Members (SP)	2waytraffic and Invicta Group
Service Type	N/A
Source of Complaints	WASPA Monitor
Complaint Number	#3342
Code of Conduct Version	5.7

Complaint

A complaint was received from the WASPA Secretariat. The complaint states:

The complaint was lodged by the Secretariat, based on this clause:

4.1.7 Any telephonic support must be provided via a South African telephone number and must function effectively.

and a review of the public contact numbers listed for WASPA's members on the WASPA web site.

Initially ... the following 18 members [were identified]: 2Comm, 2waytraffic, AMV Holding Limited, Blink Mobile, Cellcast Media, Dialogue Communications Ltd, GMA, Invicta Group, Jamba/Jamster Group, mbill, MediaDeck SA, mSALES Group, Pitch Entertainment Group, Tanla Mobile Limited, Telemedia InteracTV, Two Screens Ltd, VisionSMS.

Of these:

- One (mbill) had their membership terminated for non-payment of fees while the complaint was in progress.*
- Two confirmed that they are not yet offering services in SA, and thus have no local support number. (We agree that this means they aren't in breach of 4.1.7)*
- The remainder fixed the problem, which mostly involved them updating their information on the WASPA web site.*

Leaving only two seemingly unresolved:

- 1 2waytraffic -- last correspondence indicated that they would take action on the matter, but they still have only an international number listed.*

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- 2 *Invicta Group -- the contacts we have listed for Invicta have not responded, although you'll see a reply from Marketel, who were originally listed as a contact for Invicta on Invicta's application form...*

SP Response

As indicated by the Secretariat in the complaint, 2waytraffic responded as follows:

[previous contact person] no longer works for us. I have changed our company details on the WASPA site today so future emails will arrive.

We will now take action on this matter.

In the case of the Invicta Group, a response was received from another WASPA member [Marketel], whose contact details were also provided for the Invicat Group, as follows:

I am quite certain that this has nothing to do with Marketel. Could you elaborate on the actual issue?

The Secretariat responded:

The complaint was lodged against Invicta Group. According to our information the primary and secondary contacts for Code of Conduct complaints are:

*Primary Code contact: ****

*Secondary Code contact: ****

If these details are incorrect, could you (or the appropriate person for Invicta Group) update as per the instructions below, and also provide a local telephone number. That is all that is needed to resolve this complaint and close it.

A further response was then received from Marketel:

The details are correct since we have done business with Invicta in the past but this particular query has nothing to do with Marketel

No response was received from Invicta Group and no further response was received from Marketel.

Adjudicator's Decision

At the outset, these appear to be trivial matters of little consequence; however the ability of a South African consumer to contact a WASPA member (or in this case an affiliate member) is critical in order to build consumer confidence and SP accountability.

The blatant failure by either party cannot be ignored when the complaint would have been so easy to resolve. All that was required was a local (South African) contact number, which can, in turn, be routed to the SP's primary place of business – if this is not South Africa.

If either SP is not actively providing services in South Africa, this should have been clearly indicated, however it appears 2waytraffic is or was providing some form of

service (refer to complaint #2510) and the Marketel response indicates that some services were provided by the Invicta Group in South Africa, at some stage previously.

However, the Adjudicator cannot deal with evidence not before him or her and faced with a *prima facie* breach of the WASPA Code of Conduct with no explanation, extenuating circumstances or countervailing evidence presented, the Adjudicator must find a breach of the WASPA Code of Conduct.

The Adjudicator's initial preference would be to impose a daily fine, for every day that each of the two SPs remain in breach of the WASPA Code of Conduct. However, this imposes an extremely onerous obligation on the WASPA Secretariat, in regard to two SPs who have continuously ignored previous requests.

Accordingly the Adjudicator imposes the following sanction in respect of 2waytraffic:

1. the SP is ordered to provide a South African contact number in accordance with Clause 4.1.7 of the WASPA Code of Conduct;
2. the SP is ordered to pay a fine of R5 000 in respect of the SP's failure to comply with Clause 4.1.7 of the WASPA Code of Conduct;
3. should the SP fail to comply with sanction 1 and 2 within 10 business days of dispatch of this complaint by the Secretariat, the Secretariat is instructed to institute a further formal complaint against the SP for its continuing breach of Clause 4.1.7 of the WASPA Code of Conduct and in terms of Clause 13.3.16 of the WASPA Code of Conduct, with this Adjudicator's recommendation that the SP's associate membership of WASPA be terminated.

Accordingly the Adjudicator imposes the following sanction in respect of Invicta Group:

1. the SP is ordered to provide a South African contact number in accordance with Clause 4.1.7 of the WASPA Code of Conduct;
2. the SP is ordered to pay a fine of R5 000 in respect of the SP's failure to comply with Clause 4.1.7 of the WASPA Code of Conduct;
3. should the SP fail to comply with sanction 1 and 2 within 10 business days of dispatch of this complaint by the Secretariat, the Secretariat is instructed to institute a further formal complaint against the SP for its continuing breach of Clause 4.1.7 of the WASPA Code of Conduct and in terms of Clause 13.3.16 of the WASPA Code of Conduct, with this Adjudicator's recommendation that the SP's associate membership of WASPA be terminated.