

<b>WASPA Member (SP)</b>	Vodacom Service Provider (previously known as Cointel)
<b>Information Provider (IP)</b>	N/A
<b>Service Type</b>	Failure imposing sanctions
<b>Source of Complaint</b>	WASPA Secretariat
<b>Complaint Number</b>	#3560
<b>Code of Conduct Version</b>	5.7
<b>Date of Adjudication</b>	11/03/2008

---

## **Complaint**

The WASPA Secretariat initiated the following complaint:

“Vodacom Service Provider has indicated that it does not wish to appeal the reports for complaints #3017 and #3020, but requested that it not be required to withdraw the adverts immediately because they were pre-booked until 2008-01-31.

Clause 13.3.16 of the WASPA Code states that "the failure of any member to comply with any sanction imposed upon it will itself amount to a breach of the Code". Thus after consultation with the relevant adjudicator, the WASPA Secretariat is lodging a complaint in terms of section 13.1.5 of the Code.

Vodacom Service Provider is encouraged to provide the reasons for its decision not to comply fully with the sanctions in response to this complaint, so that an independent adjudicator can assess if this constitutes a further breach of the WASPA Code.”

---

## **SP Response**

In its response the SP indicated that it is not disputing its failure to comply, but offered the following explanation:

“The Adjudicator ordered the SP "to amend its advertising ... before further placement and ... to with draw any current advertisements...”

The adverts in question were pre-booked, that is placement had already taken place and was effective until the end of the month. The adverts were amended before the next placement and in that sense were therefore in fact amended "before any further placement".

If it had withdrawn the current adverts, the SP would have forfeited all monies already paid in respect of those adverts. It was felt that given the relative minor nature of the transgression that if the money paid for all the adverts had been lost the "punishment would not have fitted the crime".

In the circumstances the SP requests leniency in regard to any further sanctions that the Adjudicator may impose."

---

### **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**

It is regretful that the SP in this particular instance has not made any effort in appealing the decision made by the Adjudicator in both complaints #3017 and #3020.

In reviewing these particular complaints, it would be applicable to make reference to certain of the statements made by the Adjudicator in his decision:

"The Adjudicator is therefore satisfied that the SP had more than enough time to file a response as is required by section 13.3.4 of the WASPA Code of Conduct. In the absence of the SP raising such a response, the Adjudicator has to assume that the SP, as is indicated in section 13.3.5 of the WASPA Code of Conduct, does not wish to respond to the claim. In light of these circumstances the Adjudicator has no alternative but to accept the uncontested version of the Complainant."

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 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.

As for the reasons uttered by the SP in its response;

- the Adjudicator is not in agreement with the reasoning of the SP that the transgression was relatively minor in nature, in fact, not being able to read the costs due to its small font is as good as not having ANY costs displayed, which is VERY serious in nature;
- the Adjudicator is of the opinion that without the then immediate withdrawal, consumers were further subjected to wrongful advertising which might have misled them into making irregular decisions due to their inability to read the costs.

The SP by following its own assumptions had the wrongful benefit of screening its advertisements for a further 17 days from the date of adjudication. This was in stark contrast with the sanctions imposed.

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.

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.

---