



Report of the Adjudicator

<b>Complaint number</b>	#48942
<b>Cited WASPA members</b>	Akinga Vertical Service Provider (Pty) Ltd Membership number #1944
<b>Notifiable WASPA members</b>	n/a
<b>Source of the complaint</b>	Public
<b>Complaint short description</b>	Illegal subscription
<b>Date complaint lodged</b>	2021-01-28
<b>Date of alleged breach</b>	2021-01-28
<b>Applicable version of the Code</b>	v16.12
<b>Clauses of the Code cited</b>	5.7, 5.8, 5.9, 5.10, 7.5, 15.3, 15.8A, 15.9, 15.18, 15.19, 15.20, 15.25, 15.28, 15.29, 15.30, 24.24
<b>Related complaints considered</b>	n/a
<b>Fines imposed</b>	<p>The Member is fined a sum of R 2 000.00 for its breach of clauses 5.7, 5.8 and 5.9 of the Code of Conduct;</p> <p>The Member is fined a sum of R 2 000.00 for its breach of clause 5.10 of the Code of Conduct;</p> <p>The Member is fined a sum of R 15 000.00 for its breach of clause 7.5;</p>

	<p><b>The Member is fined a sum of R 5 000.00 for its breach of clause 15.3;</b></p> <p><b>The Member is fined a sum of R 10 000.00 for its breach of clause 15.9;</b></p> <p><b>The Member is fined a sum of R 5 000.00 for its breach of clauses 15.19 and 15.20.</b></p>
<b>Other sanctions</b>	n/a
<b>Is this report notable?</b>	n/a
<b>Summary of notability</b>	n/a

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#### **Initial complaint**

1. The Complainant logged an unsubscribe request via the WASPA portal and was unsubscribed from the Member's service and paid a refund.
2. The Member failed to provide complete logs to the WASPA Secretariat and the complaint was escalated as a formal complaint by the WASPA Secretariat.
3. It is alleged that the Member is in breach of clauses 5.7, 5.8, 5.9, 5.10, 7.5, 15.3, 15.8A, 15.9, 15.18, 15.19, 15.20, 15.25, 15.28, 15.29, 15.30, 24.24 of the WASPA Code of Conduct.

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#### **Member's response**

4. In its response to the formal complaint, the Member advised that it had a service agreement with Telkom in respect of the TelkomPlus Platform. After investigating this complaint the Member discovered that Telkom Customer Care also had access to the Member's WASPA portal account and although they were responding to WASPA queries on its behalf, they failed to complete the relevant logs. The Member states that it only became aware of this issue on 28 January 2021.

5. The Member stated that its failure to submit completed logs on the WASPA portal was due to a bona fide error as it was not aware that Telkom Customer Care agents were responding to complaints on its behalf.
  6. The Member requested that it be taken into account as mitigating factors that the Member is in good standing with WASPA and this was the first formal complaint against it.
  7. The Member had made numerous attempts to contact the Complainant and when it did, a full refund was paid to the Complainant.
  8. The Member states that it has also taken immediate steps to investigate and improve the handling of complaints on the WASPA portal.
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#### **Sections of the Code considered**

9. Clauses 5.7, 5.8, 5.9, 5.10, 7.5, 15.3, 15.8A, 15.9, 15.18, 15.19, 15.20, 15.25, 15.28, 15.29, 15.30, 24.24 of the WASPA Code of Conduct were cited in the formal complaint and considered.
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#### **Decision**

10. The Member has admitted that it failed to provide complete logs relating to this particular subscription.
11. I have noted the Member's explanation for why it was not able to do so, but this does not absolve it from responsibility for complying with the relevant requirements of the WASPA Code of Conduct. The Member remains responsible and is liable for the actions of its third party suppliers and service providers in terms of section 3 of the WASPA Code of Conduct.
12. The Member did not provide any evidence that it had taken any steps to ensure that its third party service provider complied with the requirements of the WASPA Code of Conduct.
13. In the absence of any proof to the contrary, I must accept the Complainant's statement that they were illegally subscribed to the Member's subscription service.
14. With reference to each of the clauses that the Member is alleged to have breached:
  - 14.1 In the absence of any proof to the contrary, I find that the Member failed to ensure that the full terms and conditions for the relevant service were made readily available

to the Complainant and, by implication, that those terms and conditions contained the relevant information required in terms of clause 5.9 of the Code of Conduct. The Member is therefore in breach of clause 5.7, 5.8 and 5.9 of the Code of Conduct and the complaint is upheld in this regard.

- 14.2 The Member was also not able to show that the Complainant took any specific action to confirm their consent to the Member's terms and conditions, I find that the Member is in breach of clause 5.10 of the Code of Conduct. The complaint is upheld in this regard.
- 14.3 The Member has admitted its failure to comply with the requirements of clause 7.5 of the Code of Conduct and the complaint is upheld in this regard.
- 14.4 The Member has not provided any records required in terms of clause 15.3 of the Code of Conduct and is therefore in breach of this clause. The complaint is upheld in this regard.
- 14.5 No information was provided to support a finding that the Member is in breach of clause 15.8A of the Code of Conduct. The complaint is dismissed in this regard.
- 14.6 The Member was not able to provide any evidence of the confirmation step taken for this service or any explicit response from the Complainant. The Member is therefore in breach of clause 15.9 of the Code of Conduct and the complaint is upheld in this regard.
- 14.7 It does appear from the information provided that a "welcome message" as required in clause 15.18 of the Code of Conduct was sent to the Complainant's MSISDN, and the message contained the required information. The complaint is dismissed in this regard.
- 14.8 There is no evidence that the reminder message required in terms of clauses 15.19 and 15.20 of the Code of Conduct was sent to the Complainant for each calendar month since the subscription was activated in September 2020. The complaint is upheld in this regard.
- 14.9 There is no evidence to suggest that the Member is in breach of clause 15.25 of the Code of Conduct. The complaint is dismissed in this regard.
- 14.10 There is no evidence to suggest that the Complainant was not able to terminate the subscription in the manner prescribed in clause 15.28 of the Code of Conduct or that there has been a breach of clauses 15.29 or 15.30. The complaint is dismissed in this regard.
- 14.11 Clause 24.24 was cited but bears no relevance to this complaint.

15. To summarise, I find that the Member is in breach of clauses 5.7, 5.8 and 5.9; clause 5.10; clause 7.5; clause 15.3; clause 15.9; clauses 15.19 and 15.20.
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### **Sanctions**

16. In determining appropriate sanctions against the Member for its breach of the WASPA Code of Conduct, the following has been taken into consideration:
- 16.1 any previous successful complaints made against the Member in the past three years;
  - 16.2 any previous successful complaints of a similar nature;
  - 16.3 the nature and severity of the breach; and
  - 16.4 any efforts made by the Member to resolve the matter.
17. No previous complaints, including complaints of a similar nature, have been lodged and/or upheld against the Member.
18. The Member's timeous response to the complaint is also viewed as a mitigating factor.
19. However, the subscription of consumers to subscription services without a valid opt-in is viewed in a serious light and such conduct brings the industry as a whole into disrepute.
20. The Member is in breach of a number of provisions of the WASPA Code of Conduct and each breach must be viewed in a very serious light due to the potential harm to consumers.
21. In determining appropriate sanctions previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions must also be taken into account.
22. Based on the foregoing, the following sanctions are imposed:
- 19.1 The Member is fined a sum of R 2 000.00 for its breach of clauses 5.7, 5.8 and 5.9 of the Code of Conduct;
  - 19.2 The Member is fined a sum of R 2 000.00 for its breach of clause 5.10 of the Code of Conduct;

- 19.3 The Member is fined a sum of R 15 000.00 for its breach of clause 7.5;
- 19.4 The Member is fined a sum of R 5 000.00 for its breach of clause 15.3;
- 19.5 The Member is fined a sum of R 10 000.00 for its breach of clause 15.9; and
- 19.6 The Member is fined a sum of R 5 000.00 for its breach of clauses 15.19 and 15.20.
- 19.7 The Member is fined a sum of R 10 000.00 for its breach of clause 15.10, read together with clause 15.11 of the WASPA Code of Conduct.
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