



## Report of the Adjudicator

Complaint number	<b>#60711</b>
Cited WASPA members	<b>FLASH MOBILE VENDING (Membership no: 1367)</b>
Notifiable WASPA members	<b>None</b>
Source of the complaint	<b>WASPA</b>
Complaint short description	<b>Unsubscribe Request</b>
Date complaint lodged	<b>2024-09-17</b>
Date of alleged breach	<b>September 2024</b>
Applicable version of the Code	<b>17.9</b>
Clauses of the Code cited	<b>5.14, 7.5, 24.24</b>
Related complaints considered	<b>60652, 60722</b>
Fines imposed	<b>For Breach of Clause 5.14 a fine imposed of R5 000.00 payable to WASPA within 7 days of receipt of this adjudication. For Breach of Clause 7.5 a fine imposed of R5 000.00 suspended for 6 months on condition that there is no further breach of the same clause within this period. For Breach of Clause 24.24 a fine imposed of R5 000.00 suspended for 6 months on condition that there is no further breach of the same clause within this period.</b>

Other sanctions	n/a
Is this report notable?	<b>Not notable</b>
Summary of notability	n/a

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## Initial complaint

1. The initial complaint is a result of a complaint by a consumer whereby the consumer provided WASPA with the interactions with the Member.
  2. An informal complaint was logged by WASPA Complaints department whereafter the complaint was escalated to a formal Complaint as a result of the Member's lack and/or omittance of a response.
  3. The following reason for escalation:
    - 3.1 The Member failed to respond to the unsubscribe query
    - 3.2 Member failed to provide logs as requested and required.
  4. Details of complaint under unsubscribe request #7232211
 

Mobile number	:	REDACTED
Customer name	:	REDACTED
Customer email	:	REDACTED
Actions requested	:	<ul style="list-style-type: none"> <li>- Service Provider requested to unsubscribe customer</li> <li>- Service Provider requested to send an SMS confirming this unsubscribe request</li> <li>- Service Provider requested to provide proof of subscription</li> <li>- Service Provider requested to contact customer regarding a refund.</li> </ul>
  5. All unsubscribe requests attached as substantiation
  6. As such, the Member is alleged to be in breach of clauses 5.14; 7.5 and 24.24 of the WASPA Code of Conduct.
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## Member's response

7. Members response receipted on 27 September 2024.
8. The member introduced him/herself as the legal advisor for Flash Mobile Vending ("Flash")
9. The Member admitted that their team did not respond within a reasonable time to the informal resolution request as submitted as the addressee on the WASPA System fulfil clerical or technical work and did not reach the email timeously and that this error has now been rectified on their WASPA system.
10. The Member has contacted the customer and have conducted an investigation into the matter and found the following:
  - a. We have no record of the complainant being subscribed to any of our marketing databases;
  - b. The complainant is not a direct customer of Flash;
  - c. The complainant does not appear on any of our "unsubscribe me" databases;
  - d. The customer stated that her airtime "disappeared" and she lodged a complaint with her service provider;
  - e. Flash does not offer any subscription services in terms whereof a customer's airtime is used for a subscription;
  - f. Accordingly, the member is of the opinion that the complaint was erroneously lodged against Flash with the WASPA.
11. Flash subsequently have taken the following steps in the matter:
  - a. The member has corresponded with the customer telephonically to clarify the nature of her complaint;
  - b. An explanation was given to the customer that Flash is not the cause of the airtime "disappearing" from her account as we do not offer any subscription services to this extent;
  - c. We reiterated our telephonic conversation with the customer via email to her as well, directing her to the WASPA page <https://waspa.org.za/consumer-support/losing-airtime/>;
  - d. Notwithstanding the fact that the complaint was misdirected to Flash, we have offered her airtime as a token of goodwill.

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## Complainant's response

12. None further noted
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## Member's further response

13. None further noted
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## Sections of the Code considered

14. The Complainant cited the following clauses of the WASPA Code of Conduct as the basis for their complaint

### Customer support

5.14. Members must have a procedure allowing 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

### Provision of information about services

7.5. Members must provide WASPA with any customer records relating to any service which is the subject of a complaint, including, but not limited to:

- (a) where that information is available, a record of the marketing link that the customer followed prior to joining a service;
- (b) all communications sent by or to a customer in the process of joining a service;
- (c) all required reminder messages sent to a customer;
- (d) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
- (e) any record of successful or unsuccessful service termination requests.

### 24. Complaints procedure

#### **Formal complaint procedure**

24.24. Where a complaint involves any interaction with a consumer, when requested to do so, a respondent must provide clear copies of all relevant logs of that interaction and all relevant marketing material.

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## Decision

15. After carefully reviewing the complaint and the response from the Member, and on the basis of the evidence presented by the Complainant, I have made the following findings.
16. The member did not acknowledge receipt of the unsubscribe complaints expeditiously and did not respond to the complaints until the complaints were escalated and made formal.

17. The WASPA Code places a positive obligation on members to ensure that their systems and procedures are properly managed and up to date in order to receive complaints and reminders from WASPA addressed to the correct parties to resolve. The member had access to the portal as well as the WASPA library, which contained several advisories, including one that provided instructions on how to use the portal.
  18. Therefore, the member cannot escape liability by stating that the complaints were addressed to the incorrect staff members. The member is found in breach of clause 5.14 of the Code.
  19. No logs nor provision of customer records as per the procedural requirements expected of a member was submitted either in response to the complaint nor in correspondence to the complainant, due to the motivation given by the Member that they do not offer any subscription services that operate using a person's airtime, and lacked the complete and relevant marketing material in substantiation. Regardless of the explanation the requirements are still clearly set and as a result, the member is found to be in breach of clauses 7.5 and 24.24 of the Code.
  20. The Member is found to be in breach of clauses 5.14; 7.5; and 24.24 of the WASPA Code of Conduct, and the complaint therefore upheld.
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## **Sanctions**

21. In determining appropriate sanctions against the Member, the following factors have been taken into consideration:
  - any previous successful complaints made against the Member in the past three years;
  - any previous successful complaints of a similar nature;
  - the nature and severity of the breach; and
  - any efforts made by the Member to resolve the matter.
22. I have also taken account previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions when determining appropriate sanctions.
23. No previous complaints of this nature have been made against the Member in the preceding 3 years and thus taken into consideration as a mitigating factor.
24. An effort has been presented and or made by the Member to resolve or rectify this matter.

25. Based on the aforementioned, the following sanctions are imposed:
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|------|----------------------------|---|
| 25.1 | For Breach of Clause 5.14  | a fine imposed of R5 000.00<br>payable to WASPA within 7 days of receipt of this adjudication.  |
| 25.2 | For Breach of Clause 7.5   | a fine imposed of R5 000.00<br>suspended for 6 months on condition that there is no further breach of the same clause within this period. |
| 25.3 | For Breach of Clause 24.24 | a fine imposed of R5 000.00<br>suspended for 6 months on condition that there is no further breach of the same clause within this period. |
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### **Matters referred back to WASPA**

26. None noted.
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