



Report of the Adjudicator

Complaint number	#60721
Cited WASPA members	Bubble Bobble Membership no: 1956
Notifiable WASPA members (notified of complaint but not respondents)	Akinga (Aggregator) Membership no: 1944
Source of the complaint	WASPA
Complaint short description	Unsubscribe Request <ul style="list-style-type: none"> - Insufficient procedure and response to customer complaints. - Insufficient or no provision of relevant customer records to WASPA, related to a complaint. - Insufficient provision and/or no provision of relevant customer logs and marketing material, when requested to do so.
Date complaint lodged	2024-09-17
Date of alleged breach	September 2024
Applicable version of the Code	17.9
Clauses of the Code cited	5.14, 7.5, 24.24

Related complaints considered	
Fines imposed	<p>The member breached clauses 5.14, 7.5 and 24.24</p> <p>There are some mitigating factors and, accordingly, the member is fined:</p> <ul style="list-style-type: none"> - R5000 for the breach of clause 5.14 - R5000 for the breach of clause 7.5 - R5000 for the breach of clause 24.24 <p>all payable within 7 (seven) days of receipt of this adjudication</p>
Other sanctions	<p>The member is ordered to refund all the customers the entirety of the amount they have spent on the subscriptions and provide proof of this. The member is also ordered to provide proof that all of the customers have been unsubscribed. This is to be provided to the complainant within 7 (seven) days of receiving notification of this report.</p>
Is this report notable?	Not Notable
Summary of notability	N/A

1. Initial complaint

1.1 This complaint was initially logged by the WASPA Secretariat (“the complainant”) on 17 September 2024 in the form of the escalation of 15 unsubscribe queries where there was failure to respond from the member and/or failure to provide relevant logs and information as requested. The complaint was sent to the member on 18 September 2024 and the aggregator concerned was also notified on the same day. The member responded to the formal complaint on 2 November 2024 and the complainant elected not to add any additional information to the complaint, and the matter has now proceeded to adjudication.

- 1.2 As mentioned, the complaint came in the form of the escalation of 15 unsubscribe queries that have failed to be responded to and/or the requested information provided to the complainant. It appears as though this matter was initially handled through the informal complaints process but has now been escalated due to the informal complaints process not yielding results.
 - 1.3 In summation, the 15 escalations attached as part of the complaint indicate 15 customers requesting to be unsubscribed and refunded. It appears that the member indicated that the services were unsubscribed but never provided any refund offers nor further contacted any of the customers despite further complaints regarding lack of refund and unsubscription. This was despite the customers never having subscribed in the first place.
 - 1.4 Based on the cited clauses alleged to have been breached in this matter, it can be assumed that, in the informal complaint process, the member had been asked for various information to be provided to WASPA that it did not, in fact provide, resulting in the escalation of this matter to the formal adjudication stage.
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2. Member's response

- 2.1 Following receipt of the formal complaint from the complainant on 18 September 2024, the member responded to the complaint on 2 October 2024. The response is summarised as follows:
 - 2.1.1 The member acknowledged that they understood the seriousness of the allegations and offered their sincerest apologies to the customers outlined in the complaint.
 - 2.1.2 The member advised that they had conducted a detailed internal investigation and then provided what they termed "a comprehensive log of subscriptions and unsubscriptions for each customer" and intimated that this provides a clear record of interactions.
 - 2.1.3 The member advised that, in order to rectify the situation, they are willing to compensate each customer for any expenses they may have incurred in relation to their services. Furthermore, they mentioned that they are taking steps to prevent similar incidents from occurring in the future.
 - 2.1.4 The member concluded that they believe that their proposed actions demonstrate their commitment to resolving this matter fairly and regaining the trust of our customers and WASPA.
- 2.2 At no point in their response did they deny nor provide argument against them breaching any of the clauses referred to in this complaint.

3. Complainant's response

N/A

4. Member's further response

N/A

5. Sections of the Code considered

5.1 As the complaint was lodged on 17 September 2024, version 17.9 of the WASPA Code of Conduct applies to this complaint.

5.2 It is alleged that the member has infringed clauses **5.14**, **7.5** and **24.24** of the Code of Conduct ("the Code"). The clauses read as follows:

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.*

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*

24.24. *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.*

6. Decision

6.1 Having reviewed the complaint and responses from the complainant and member, I have reached the conclusions set out below wherein I deal with the relevant clauses of the Code in order.

Clause 5.14

6.3 Based on the complete lack of response to customer complaints evidenced in the 15 escalated unsubscribe queries provided by the complainant, it is clear that the member didn't acknowledge receipt of complaints expeditiously, within a reasonable period of time or, indeed, at all. This shows that there is no proper procedure in place for customers to lodge complaints.

6.4 Accordingly, I find a breach of this clause.

Clause 7.5

6.5 Based on the member's response where they don't deny any of the allegations levelled against them in this formal complaint, it can only be gleaned that the member did not provide the complainant with the relevant customer records relating to this clause.

6.6 Accordingly, I find a breach of this clause.

Clause 24.24

6.7 Despite providing what they describe as "a comprehensive log of subscriptions and unsubscriptions for each customer", this log was only provided along with their response to this formal complaint (too late) and it was also insufficient, not containing a complete log of customer interactions nor all relevant marketing material.

6.9 Accordingly I find that the member has breached clause 24.24

7. Sanctions

7.1. Before I consider the sanctions, it is necessary to consider the prior conduct of the member in the form of any prior contraventions of the code and any mitigating or aggravating circumstances.

7.2. There are no previous formal adjudications lodged or adjudicated upon against the member so this must be considered mitigating in nature.

7.3 When it comes to other mitigating factors in this case, the following is present:

7.3.1 The member showed remorse, apologised and indicated that they are willing to compensate each customer for any expenses they may have incurred in relation to the services. Furthermore, they indicated that they are taking steps to prevent these breaches and issues from happening in the future.

7.4 There are no clear aggravating factors to consider.

7.5 As such, I feel, on the whole, that there are various mitigating factors that need to be taken into account when issuing sanctions in this case.

7.5 I find that the Member breached clauses 5.14, 7.5 and 24.24

7.6 I would have fined the member R10000 for each breach but, due to the mitigating factors I, accordingly, only fined the member R5000 for each breach. The member is accordingly fined R5000 for the breach of clause 5.14, R5000 for the breach of clause 7.5 and R5000 for the breach of clause 24.24, all payable within 7 (seven) days of receipt of this adjudication.

7.7 Furthermore, the member is ordered to, as they have committed to doing, refund all the customers the entirety of the amount they have spent on the subscriptions that they never subscribed for and provide proof of this, along with proof of the unsubscriptions, to the complainant within 7 (seven) days of receiving notification of this report.

8. Matters referred back to WASPA
