



Report of the Appeals Panel

Complaint number	#60733
Cited WASPA members	Thumbtribe (Membership no: 1110)
Notifiable WASPA members	None.
Appeal lodged by	The Member
Type of appeal	Written appeal
Scope of appeal	<input checked="" type="checkbox"/> Review of sanctions imposed
Applicable version of the Code	17.9
Clauses considered by the panel	5.14; 7.5; 24.24
Related complaints considered	60652; 60722; 60735;
Amended sanctions	<ul style="list-style-type: none"> • For Breach of Clause 5.14 a fine imposed of R5 000.00 of which R2500 is suspended on condition that the Member is not found guilty of breaching this clause within 6 months of the date of publication of this appeal panel result. • For Breach of Clause 7.5 a fine imposed of R5 000.00 of which R2500 is suspended on condition that the Member is not found guilty of breaching this clause within 6 months of the date of publication of this appeal panel result. • For Breach of Clause 24.24 a fine imposed of R5 000.00 of which R2500 is suspended on condition that the Member is not found guilty of breaching this clause within 6

	months of the date of publication of this appeal panel result.
Appeal fee	50% of the appeal fee is refunded to the appellant
Is this report notable?	Not notable.
Summary of notability	Not applicable.

Initial complaint

1. The complaint was lodged by the WASPA Secretariat and stemmed from the member's failure to respond to the two customers' unsubscribe requests, which led to the matter being escalated to WASPA, resulting in the submission of a formal complaint by WASPA on 18-09-2024.
2. The following reasons for the formal complaint were put forward by WASPA:
 - 2.1 The member failed to respond to the unsubscribe queries;
 - 2.2 The member failed to provide customer logs as requested and required.
3. The Member responded on the same day and indicated that neither of the customers had any active subscriptions.
4. This was disputed by the customer who provided information of both numbers being subscribed to services.
5. The Member then considered the documentation provided by the customer and indicated that not all the services mentioned were provided by the Member. Of those subscriptions where the customer had been subscribed, a subscription service history was provided. The Member further clarified that while both customers had been subscribed at some point to various services all those services had been terminated or cancelled before the complaint was lodged.

6. The WASPA Secretariat then escalated the matter to a formal complaint as a result of the Member failing to provide proof of the original subscription for both complainants.
 7. The Member responded that it was unwilling to send the personal information in an unencrypted form, but was happy to provide it, providing the communications method was encrypted.
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Adjudicator's findings

8. The Adjudicator reviewed the matter and found that:
 - 8.1. The Member had failed to respond expeditiously to the request to unsubscribe and so was found guilty of breaching clause 5.14,
 - 8.2. The Member had failed to provide the logs are required by clause 7.5 of the Code before the complaint was escalated,
 - 8.3. The Member failed to provide clear copies of relevant marketing material before the matter was escalated.
 9. As a result the Member was found guilty of breaching each of the above clauses and fined an amount of R5000 per clause that was breached (R15 000 in total).
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Sections of the Code considered

10. The following sections of the Code are considered, and read as follows:

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.

Complaints 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”.

Appeal submissions

11. The Member appealed the sanctions imposed by the adjudicator on the following grounds:
- 11.1. It was the Member’s first offence,
 - 11.2. The Member has had a clean track record with only 2 complaints since becoming an affiliate Member in 2008 (and a full Member in 2021),
 - 11.3. The Member has a commitment to quality,
 - 11.4. The Member had various business challenges in the latter part of 2024,
 - 11.5. The necessary information was ultimately provided, although it was not provided timeously.
 - 11.6. There was some confusion as to whether the records were due by the Member (as opposed to being due by other Members who were also providing services to the complainants).
12. The WASPA Secretariat did not provide any further submission.
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Deliberations and findings

13. While the Member did appeal the fines imposed by the Adjudicator, the Member appeared not to be appealing the merits of the matter. This is borne out by the Member addressing the appeal communication thus: “I am writing to formally appeal the sanctions imposed on...” and, “we respectfully request reconsideration of the penalties based on the following mitigating factors...”. However, despite this, the Member then provided a timeline which reads as follows:

Other timelines:

3rd July 2024, 08:00: First WASPA notification for an unsubscribe request.

5th July 2024: WASPA requested proof of subscription.

12th July 2024, 10:47: Proof sent to WASPA by XXXX after calling YYYYY for clarification of

the proof of subscription required.

15th July 2024, 13:08: XXXXX sent further marketing proof in the form of logs from Onepin (LOGS.xlsx).

18th September 2024: Formal complaint escalated (#60733), complaints did not pertain to

Thumbtribe. (incorporating #60639 and #60712)

(Note: Names redacted by appeal panel)

14. The reason this is relevant is that it would appear – from the above timeline – that there was a delay of approximately 12 calendar days from when the Member was first requested to unsubscribe the complainants and provide the logs and marketing material, to when it was ultimately provided.
15. Thus, there appeared to be a tacit or implied request to reconsider the merits of the matter based on this timeline.
16. The matter was not assisted by the fact that while the Adjudicator had found the Member guilty of not providing the necessary information (in the case of all three clauses of the Code), the Adjudicator had not in fact indicated what the actual delay was that was experienced in this matter. This puts this appeal panel in the invidious position of trying to determine whether the delay by the Member was unreasonable, while at the same time not knowing precisely what the timeline of the submissions by the Member were.
17. In order to remedy this, the WASPA Secretariat was requested to provide the log of interactions with the Member in order to establish what the delay was in this matter. After receiving the logs from the WASPA Secretariat It was clear that in the case of complainant #1:
 - 17.1. The Member was notified on the 03 September 2024,
 - 17.2. The matter was escalated on the 16 September 2024 due to the Member not providing the necessary information,
 - 17.3. The Member ultimately provided the information on the 02 October 2024.

18. in the case of complainant #2:
- 18.1. The Member was notified on the 05 September 2024,
 - 18.2. The matter was escalated on the 17 September 2024 due to the Member not providing the necessary information,
 - 18.3. The Member ultimately provided the information on the 02 October 2024.
19. It is also common cause that the necessary information was ultimately provided by the Member, but only after the matter had been formally escalated by WASPA.
20. It is also clear from past complaints that a fine of R5000 is the average amount for the breach of the above clauses.
21. Thus, the ultimate question before this appeal panel is ultimately very simple: The Member has been fined an amount of R15 000 and has further paid an Appeal Fee of R10 000. Based on the above factors should the size of the sanctions be amended?
22. After consideration of all these factors – and in particular the mitigating fact that the Member ultimately did comply, but only after the formal complaint was lodged - this appeal panel has elected to maintain the total quantum of the fine, but to suspend R7500 of the fine on condition that the Member is not found guilty of breaching the same clause within 6 months of the date of publication of this appeal panel result.
23. As a result of the partial success of the appellant in that a portion of the fine was suspended, 50% of the appeal fee is to be refunded to the Appellant.

Amendment of sanctions

24. Consequently, the sanctions are hereby amended to read:
25. 21.1 For Breach of Clause 5.14 a fine imposed of R5 000.00 of which R2500 is suspended on condition that the Member is not found guilty of breaching this clause within 6 months of the date of publication of this appeal panel result.

26. 21.2 For Breach of Clause 7.5 a fine imposed of R5 000.00 of which R2500 is suspended on condition that the Member is not found guilty of breaching this clause within 6 months of the date of publication of this appeal panel result.

27. 21.3 For Breach of Clause 24.24 a fine imposed of R5 000.00 of which R2500 is suspended on condition that the Member is not found guilty of breaching this clause within 6 months of the date of publication of this appeal panel result.

28. All fines set out above are payable within 7 days of the publication of this appeal panel result.

Appeal fee

29. 50 percent of the appeal fee to be refunded to the appellant.
