Report of the Appeals Panel

Complaint number	#62085
Cited WASPA members	Jam Incorporated (Membership no. 2157)
Notifiable WASPA members	Not applicable.
Appeal lodged by	Jam Incorporated
Type of appeal	Written appeal
Scope of appeal	[X] Review of the sanctions imposed by the adjudicator
Applicable version of the Code	v17.14
Clauses considered by the panel	4.2; 4.11; 5.4; 5.5; 8.9; 12.1; 15.8B; 15.9; 15.10; 23A.5; and 24.63
Related complaints considered	#58648, #61079
Amended sanctions	The fines for the breach of clauses 12.1 read with 8.9, 15.8B, 15.9, 15.10 and 23A.5 are consolidated into a single fine of R30,000.00. The findings of breach of clauses 4.2, 4.11 and 5.5 (and the fines imposed for those breaches) are set aside. The total fine is therefore reduced from R70,000.00 to R30,000.00. The non-financial sanctions imposed by the adjudicator are maintained in full.
Appeal fee	50% of the appeal fee to be refunded to the member.
Is this report notable?	Notable.
Summary of notability	Multiple fines should not be imposed on a member who is found to have breached separate but overlapping or related

	clauses of the Code where such breach arises from the same non-compliant conduct.

Initial complaint

1. On 13 March 2026, the WASPA Compliance Department (the “Complainant”) lodged a formal complaint against the Member after conducting a compliance test on 12 March 2026 on the MTN network.

2. During the test, the tester downloaded a “Now Junk Cleaner” application from the Google Play Store, granted the requested notification and file-access permissions, and started the cleaning function offered. Shortly afterwards, the tester received a welcome message confirming subscription to the Member’s “Edification” service at R7.00 per day. The tester had not viewed or interacted with any promotional material, landing page, pricing information or confirmation step for the service, and had not agreed to subscribe to the service.

3. The Complainant alleged that the service was activated by an auto-subscription that bypassed the acquisition flow required by the WASPA Code of Conduct (the “Code”) and by the MTN network, and cited breaches of clauses 4.2; 4.11; 5.4; 5.5; 12.1 read with 8.9; 15.8B; 15.9; 15.10; and 23A.5 of the Code.

4. The complaint was first handled under the emergency procedure in clauses 24.71 to 24.81 of the Code. After the Member made changes to the service, WASPA cancelled the emergency hearing on 17 March 2026 and the matter proceeded as a formal complaint. The Member filed a formal response, and the Complainant elected to add nothing further.

Adjudicator’s findings

5. The adjudication was published on 15 May 2026. The adjudicator found the Member to be in breach of clauses 4.2; 4.11; 5.5; 12.1 read with 8.9; 15.8B; 15.9; 15.10; and 23A.5 of the Code. The adjudicator noted that the Member did not deny the conduct complained of and had acknowledged the breaches of the Code.

6. The adjudicator declined to find a breach of clause 5.4, holding that clause 5.4 is a general provision that should not be applied where a more specific clause already addresses the conduct, as that would impose a double penalty.

7. The adjudicator imposed the following sanctions:

   7.1 a fine of R10,000.00 for each of the seven breaches found (clauses 4.2; 4.11; 5.5; 12.1 read with 8.9; 15.8B; 15.9; and 15.10 together with 23A.5), resulting in a total fine of R70,000.00;

   7.2 a three-month bar on all networks processing subscription requests emanating from the Member's service, running from the date of publication of the adjudication;

   7.3 immediate termination of the service, with reactivation permitted only after the expiry of that three-month period and only once WASPA was satisfied that the identified breaches have been fully remedied;

   7.4 immediate unsubscription of all affected subscribers;

   7.5 reimbursement of all subscription fees paid by affected subscribers; and

   7.6 written confirmation of the fraud-prevention and compliance measures implemented, and of the unsubscriptions effected.

8. In arriving at the sanctions imposed, the adjudicator treated the Member's clean record (this being its first formal complaint) as a mitigating factor, and treated as aggravating factors both the seriousness of the breach and that the Member had not provided refunds to affected consumers nor taken any remedial action to suspend the service.

Appeal submissions

Member's submissions

9. The Member requested an appeal against the adjudicator's determination on 21 May 2026, and delivered its principal appeal submission on 15 June 2026 and its final submission on 20 July 2026.

10. The Member does not dispute that unauthorised subscriptions occurred on its service and accepted responsibility for the breach of the Code. The appeal is confined to the R70,000.00 aggregate fine imposed by the adjudicator.

11. The Member's principal submissions in this regard are as follows:

11.1 The incident was not a failure of internal oversight but a sophisticated, sector-wide fraudulent campaign that circumvented standard security controls across multiple participants in the mobile content ecosystem. During the same WASPA test session, several other providers' services were similarly auto-activated.

11.2 The Member referred to an Evina DCBprotect analysis, which confirmed the activity as fraudulent and described it as designed to evade established detection mechanisms.

11.3 The Member also referred to a technical review conducted on the "Now Junk Cleaner" application, which identified notable indicators of malicious purpose, including extensive advertising and monetisation infrastructure, elevated device permissions, an absence of a verifiable publisher footprint, and the subsequent removal of the application from the Google Play Store.

11.4 The Member operates a compliant authorised subscription flow for the service, with a landing page that shows the R7.00-per-day pricing information and a "Subscribe" call-to-action. In this instance the third party was able to bypass that flow, which resulted in consumers being automatically subscribed to the service.

11.5 The adjudicator's finding that it took no remedial action and provided no refunds is factually wrong. Its activation logs show activations falling from 1,767 on 12 March, to 239 on 13 March, and to zero on 14 March. It stopped the campaigns, blocked the traffic source and unsubscribed affected users within approximately two days of discovery.

11.6 It has a clean record with WASPA. The service suspension, which has been served, has already cost it more than USD 10,000 in lost revenue. There have been no consumer complaints to date arising from the incident.

Complainant's submissions

12. The Complainant requests that the appeal be dismissed and the adjudication be upheld in full.

13. The Complainant's principal submissions are as follows:

13.1 the Member's reliance on external malware does not remove liability;

13.2 members carry a positive, proactive obligation to prevent unauthorised activity before it reaches consumers;

13.3 the Member's remedial steps were reactive; and

13.4 the evidence provided does not show that the service was compliant at the time of testing.

14. The Complainant maintains that the R70,000.00 fine is proportionate.

Deliberations and findings

15. The Member does not appeal the adjudicator's findings on the merits. The appeal is only directed at the sanctions imposed by the adjudicator.

16. The scope of the panel's function is set out in clauses 24.61 and 24.63 of the Code. Under clause 24.61, the panel must consider the evidence provided to the adjudicator, the adjudicator's decision, and any additional information provided by the parties. Under clause 24.63, the panel decides on the basis of that evidence whether there has in fact been a breach of the Code, and where a breach is found, must review the sanctions imposed by the adjudicator and may either maintain those sanctions or determine such other sanctions as it deems appropriate given the nature of the breach and the evidence presented.

17. The panel's function under clauses 24.61 and 24.63 is therefore not confined to the matters expressly appealed by the Member. The panel considers the evidence presented and must satisfy itself that each finding of breach on which the adjudicator's sanctions rest is soundly made. Where an element of a clause said to be breached is not made out on the evidence, the panel cannot allow a sanction imposed for that breach to stand, even where the finding itself has not been challenged.

18. Having considered the evidence, the panel agrees with the adjudicator's findings that the Member breached clauses 12.1 read with 8.9; 15.8B; 15.9; and 15.10 together with 23A.5, but disagrees with the adjudicator's findings that the Member also breached clauses 4.2, 4.11 and 5.5 for the reasons stated below.

Findings and sanction for alleged breach of clause 4.2

19. Clause 4.2 requires members to conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA. It is a general clause, and can be characterised in the same way as clause 5.4.

20. The adjudicator's finding that the Member's conduct fell short of the standard set out in clause 4.2 is not supported by the evidence presented. The Member identified the non-compliant activity itself, took immediate precautionary action, unsubscribed affected consumers, blocked the offending traffic source, cooperated fully with WASPA, and had a recognised anti-fraud solution in place at the time.

21. To the extent that the subscription acquisition flow was not compliant, the panel is satisfied that this was not directly attributed to the Member's own conduct.

22. The adjudicator's finding and sanction in respect of the alleged breach of clause 4.2 is accordingly set aside.

Findings and sanction for alleged breach of clause 4.11

23. Clause 4.11 requires a member to take reasonable steps to prevent its networks and systems from being used fraudulently and to comply with WASPA's published fraud-prevention best practice.

24. The technical evidence before the panel is that a vulnerability arose in the confirmation page hosted by MTN in the redirect-based integration operated by the Member's aggregator, Mobixone. The confirmation page in question does not form part of the Member's networks or systems, and its configuration is not within the Member's direct control.

25. Clause 4.11 requires reasonable steps to be taken, and not that all malicious or unlawful activity must be prevented. The panel is satisfied that the Member took reasonable steps by contracting with a reputable aggregator that had a recognised anti-fraud solution (Evina's DCBprotect) deployed in the acquisition flow. The Member also responded promptly once the non-compliant activity was detected.

26. The technical vulnerability and the possible inadequacy of the security controls that were implemented sat in a layer of the flow outside the Member's own networks and systems.

27. The adjudicator's finding and sanction for the alleged breach of clause 4.11 is accordingly set aside.

Finding and sanction for alleged breach of clause 5.5

28. Clause 5.5 prohibits a member from “knowingly” disseminating information that is false or deceptive, or likely to mislead. A finding under clause 5.5 requires evidence that the member was aware of the false or misleading character of the information at the time it was disseminated.

29. The facts before this panel do not support a finding that the Member acted “knowingly” for the purposes of clause 5.5. Nothing in the record shows that the Member was aware of the unauthorised subscriptions at the time they occurred. The Member had a compliant subscription flow in place for this service, which was bypassed by a third party. There is no other evidence that the Member disseminated any false or misleading information.

30. The adjudicator’s finding and sanction for the alleged breach of clause 5.5 is accordingly set aside.

The sanctions for breach of clauses 12.1 read with 8.9; 15.8B; 15.9; and 15.10 together with 23A.5

31. Having dealt with the merits of certain aspects of the complaint and adjudicator’s findings, we turn now to the sanctions imposed for the breach of clauses 12.1 read with 8.9; 15.8B; 15.9; and 15.10 together with 23A.5.

32. The adjudicator imposed a fine of R10,000.00 for each breach. However, all of these breaches arose from the same instances of non-compliance, i.e. automatic subscription and a non-compliant subscription flow.

33. Previous appeals panels have held that the breach of overlapping clauses of the Code should not each attract a separate sanction where the underlying conduct giving rise to the breach is the same.

34. In appeal #58648, the panel set aside the fines for clauses that overlap with and supplement a lead clause, holding that to sanction the member twice for the same conduct would be unfair.

35. In appeal #61079, the panel applied the same ‘’double-penalty’’ principle to a general descriptive clause where a breach of a more specific clause for the same conduct had already been found.

36. The adjudicator in this complaint appears to have recognised this principle when declining to uphold the complaint in respect of the alleged breach of clause 5.4 of the Code.

However, the same principle was not carried through in their reasoning regarding the appropriate sanctions to impose for the breach of clauses 12.1 read with 8.9; 15.8B; 15.9; and 15.10 together with 23A.5.

37. If carried through consistently, the breach of all the clauses that arose from the same non-compliant subscription flow, and without any additional or distinct wrong being identified, should attract a single fine, and not separate fines tied to each clause that was breached.

38. The panel finds that the fines imposed for the breach of clauses 12.1 read with 8.9; 15.8B; 15.9; 15.10; and 23A.5 should be consolidated into a single fine. We deal with the size of this fine in the next section (Amendment of Sanctions).

Aggravating factors considered

39. The panel agrees with the adjudicator's finding that the breach was serious. Two features of the conduct go to seriousness. The first is scale. The activation data shows that thousands of consumers were auto-subscribed at R7.00 per day (1,718 on 11 March and 1,767 on 12 March). The second is the target audience. The service is marketed for children ("Fun & educational videos for kids"). Unauthorised subscriptions on a service directed at children carry a higher order of consumer-protection concern, because children are least equipped to notice the subscription, understand its cost, or reverse it.

40. The seriousness of the breach is not mitigated by the Member's submission that it was the victim of a sophisticated third-party attack. The Member remains the party that is in the best position to prevent harm to consumers and is ultimately responsible if the fraud prevention measures it has implemented are not adequate.

41. The adjudicator also found that the Member had not taken any remedial action to suspend the service and had failed to provide refunds to affected consumers, and treated both as aggravating factors when considering appropriate sanctions.

42. The first of these findings are contradicted by WASPA's own record. In its initial response to WASPA after the emergency hearing notice was received, the Member stated:

''We would like to inform you that this matter was noticed internally last week during our routine monitoring activities. Upon identifying the potential concern, we immediately took precautionary action by stopping all related promotional activities connected to the service."

43. The Member's activation logs, which are not disputed, show that activations fell from 1,767 on 12 March, to 239 on 13 March, and to zero on 14 March. The emergency hearing was also cancelled on 17 March 2026 precisely because the Member had made changes to the service.

44. The panel is satisfied that the Member did take remedial action to suspend the service and the adjudicator erred in finding otherwise.

45. The adjudicator was correct in finding that the Member had not paid any refunds to affected consumers by the date of the adjudication. That historical failure is capable of weighing as an aggravating factor. However, the adjudicator ordered the Member to reimburse all affected consumers and the Member has not appealed that order. In the panel's view, the refund order itself, and the substantial financial exposure it creates, adequately addresses this element of the conduct. It should not weigh again as an aggravating factor when fixing the size of the consolidated fine.

Mitigating factors considered

46. Three factors have been considered in mitigation. First, this was the Member's first offence. It has no prior complaints lodged or upheld against it. Second, the Member detected the non-compliant activity itself and stopped it quickly. Activations were reduced to zero within approximately two days. Third, the Member used a reputable aggregator, which had a recognised anti-fraud solution in place, even though that solution was bypassed.

47. The Complainant submitted that the Member's remedial steps were reactive and for that reason should not weigh in mitigation. The panel does not accept that argument. Remediation is reactive by definition. The wrong has already occurred. What the Code encourages, and what is considered in mitigation of sanction, is whether the response was timely, comprehensive, and effective. On the evidence presented, it was in this case.

48. The panel has also taken into account that the service in question was suspended for three months and the associated loss of revenue this has caused to the Member. This loss of revenue, together with the substantial refunds that the Member must pay to affected consumers, are relevant factors when considering the size of the fine imposed by the adjudicator.

Amendment of sanctions

49. Weighing up all of these factors and exercising its discretion in terms of clause 24.63 of the Code, the panel finds that the sanctions imposed by the adjudicator should be amended as follows:

    49.1 the fines imposed by the adjudicator for the breach of clauses 12.1 read with 8.9, 15.8B, 15.9, 15.10, and 23A.5 are consolidated into a single fine of R30,000.00;

    49.2 the fines imposed for the breach of clauses 4.2, 4.11, and 5.5 fall away as a consequence of the panel's finding that no breach was made out.

50. The total fine payable by the Member is therefore reduced from R70,000.00 to R30,000.00.

51. The other sanctions imposed by the adjudicator must remain in place. The Member remains obliged to reimburse affected consumers and to provide WASPA with proof of those refunds within 30 days from the date of this report.

Appeal fee

52. The Member's appeal has been partly successful in that the aggregate fine imposed by the adjudicator has been materially reduced. 50% of the appeal fee is to be refunded to the Member and 50% is forfeited.

Date of report: 3 August 2026