

UNITED STATES OLYMPIC COMMITTEE

HIGHTOWER, et al.,)	
)	
Complainants)	
)	DECISION
v.)	AND
)	ORDER
US BOWLING CONGRESS,)	
)	
Respondent.)	December 1, 2016

I. BACKGROUND

1. US Bowling Congress (“USBC”) is the National Governing Body for the sport of bowling in the United States. Wayne Hightower, Donna Hall and Lawrence Digsby (“Complainants”) filed a Complaint on October 29, 2015, against US Bowling Congress (“USBC”) pursuant to Section 220527 of the Ted Stevens Olympic and Amateur Sports Act (the “Act”) and Section 10 of the USOC Bylaws.

2. The Complaint contained five separate Counts alleging that USBC is not fulfilling its requirements as an NGB. Counts I, II and V are based on various sections of the Act and USOC Bylaws. Counts III and IV are based on the USOC’s Good Governance Guidelines and USBC’s Bylaws, respectively.

3. On December 18, 2015, USBC filed a Motion to Dismiss all five Counts of the Complaint. After receiving briefs from both parties and hearing oral argument, the Hearing Panel inquired if the parties were amenable to entering into mediation. After hearing from the parties, the Hearing Panel issued an Order on March 8, 2016, reserving decision on the Motion to Dismiss, but ordering the parties to enter into mediation. The Hearing Panel also ordered that the first mediation session was to be conducted by April

1, 2016, and that mediation efforts were to conclude by June 15, 2016. However, at the request of the mediator and the parties, the mediation period was extended until July 1, 2016, and then extended again until September 30, 2016.

4. On October 3, 2016, and October 5, 2016, Complainants and USBC, respectively, informed the Hearing Panel that mediation had proven unsuccessful.¹

5. Then, prior to the Hearing Panel ruling on USBC's Motion to Dismiss, Complainants, on October 5, 2016, filed a Motion for Summary Judgment.

6. USBC filed a response objecting to the filing of the Motion for Summary Judgment on November 11, 2016. Complainants filed a reply on November 18, 2016.

7. This Decision addresses both the Motion to Dismiss and the Motion for Summary Judgment.

II. RULING

8. USBC's Motion to Dismiss is granted in part and denied in part. Complainants Motion for Summary Judgment is denied. The reasons for the Hearing Panels' rulings are set forth below.

III. MOTION TO DISMISS

9. USBC's Motion to Dismiss requests dismissal of all five Counts of the Complaint.

¹ It is unfortunate that after six months the parties were not able to find an agreeable resolution to their differences. As the Hearing Panel expressed in its Order of March 8, mediation "provides the unique ability to empower the parties to design their own pathway to a positive result, and address concerns that a hearing panel may not be able to address."

10. Each Count is briefly described below:

- Count I – USBC is not in compliance with certain requirements of the Act.
- Count II – USBC is not in compliance with certain requirements of the USOC Bylaws.
- Count III – USBC has failed to comply with the USOC’s Good Governance Guidelines.
- Count IV – USBC has failed to follow its own Bylaws.
- Count V – USBC has failed to set forth certain provisions in its Bylaws or otherwise substantiate compliance with certain NGB obligations and USOC requirements.

11. Each Count will be dealt with in turn.

A. Count I – Violations of the Act

12. USBC asserts that Count I should be dismissed as it does not set forth a valid claim upon which relief can be granted.

13. In support of its position USBC alleges that as plead, Count I is conclusory in nature, sets forth no factual basis to support the alleged grounds of noncompliance and is entirely unfounded.

14. USBC cites *Fogarty v USA Badminton*, USOC Section 10 (Oct. 1, 2004), which states that a Section 10 Complaint “should be focused, on point, clear in its direction and grounded on specific facts.” *Id.*, at 10.

15. In response, Complainants assert that “each and every of the allegations of the Section 10 Complaint are properly before this USOC Hearing Panel.” Complainants contend that they have alleged a factual basis sustaining each of the alleged violations contained in Count I. They further contend that the alleged violations set forth valid claims upon which the Hearing Panel can make findings and render appropriate relief.

16. Section 10.2 of the USOC Bylaws state that a Section 10 Complaint shall set forth factual allegations in numbered paragraphs. Section 10.2 goes on to provide that the complaint shall contain, at a minimum, “the alleged grounds of noncompliance” and “the supporting evidence or documentation forming the basis of the complaint.”

17. The question before the Hearing Panel is whether or not Count I of the Complaint sets forth a factual basis for the claim.

18. In examining this question, some guidance can be taken from the pleading standard set forth by the United States Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). In those two cases the Supreme Court was reviewing the standards set forth in the Federal Rules of Civil Procedure and instructed that a complaint must contain sufficient factual matter to state a claim for relief that is plausible on its face. A claim has “facial plausibility” when “factual content” is plead that allows the trier of fact to draw a reasonable inference that the claim is true.

19. Although the Federal Rules of Civil Procedure do not require “fact” pleading, but adhere to the doctrine of “issue” pleading, a complaint must contain enough factual content to allow the trier of fact to draw a reasonable inference from the information plead that goes beyond a conclusory statement of wrongdoing.

20. As Section 10 provides, a complaint must set forth evidence setting forth the basis of the complaint. As stated by the Hearing Panel in *Fogarty*, a complaint must be grounded on specific facts. A mere allegation that an NGB is in violation of a Section of the Act, unsupported by any factual underpinning, is not enough. An NGB must have

enough information to be able to respond in a meaningful manner to what is being alleged.

21. In Count I, Complainants allege that USBC is not in compliance with four Sections of the Act.

22. Three of those Sections deal with USBC's grievance procedures. They are: (i) Section 220522(a)(13) (USBC does not provide for the prompt and equitable resolution of grievances of its members); (ii) Section 220522(a)(4)(B) (USBC fails to submit to arbitration controversies involving the opportunity of amateur athletes, coaches, trainers, managers, administrators or officials to participate in amateur athletic competition) and (iii) Section 220522(a)(8) (USBC does not provide "fair notice and opportunity for a hearing" to an amateur athlete, coach, trainer, manager, administrator or official before declaring the individual ineligible to participate).

23. Regarding these three claims, the Hearing Panel determines that the Complaint fairly sets forth factual allegations that meet the above requirement. Further, Complainants attached a number of exhibits to their Complaint, including the grievance they filed with USBC to meet their exhaustion requirement,² that provide information supporting the factual allegations of USBC's alleged noncompliance.³

24. The fourth Section cited by Complainants, Section 220522(a)(2), deals with USBC's ability to execute its obligations as an NGB. This claim is not so easily

² Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws require that a complainant exhaust his or her administrative remedies before filing a Section 10 complaint with the USOC.

³ The crux of the Complaint is that USBC's grievance procedures, and USBC's administration of those procedures, do not conform with the requirements of the Act. Instead of focusing on this main issue, Complainants have instead chosen to broaden their attack on USBC, which by necessity diffuses the issues presented to the Hearing Panel.

dealt with. Complainants succinctly state that “for the reasons set forth in the individual violations set forth [in the Complaint] it is apparent that USBC, as an NGB, either lacks the managerial capability to plan and execute its obligations under the Sports Act and USOC Bylaws, or simply does not care.”

25. Although not set forth with specific factual clarity, it is apparent that Complainants’ allegation is that USBC’s failure to execute its other obligations as an NGB is proof of its managerial shortcoming. Thus, this allegation hinges on Complainants ability to prove USBC’s noncompliance in other areas. As those areas are sufficiently set forth factually, at least in claims one, two and three discussed above, the Hearing Panel finds that Count I states a valid claim. The factual allegations upon which Complainants rely on in claims one, two and three, also form the factual basis for claim four.

26. The Hearing Panel finds that relating to Count I, Complainants have sufficiently identified specific Sections of the Act and set forth factual allegations relating to those Sections, which set forth a claim upon which relief can be granted. Accordingly, USBC’s Motion to Dismiss Count I is denied.

B. Count II – Violations of USOC Bylaws

27. USBC requests that Count II be dismissed for the same reason as Count I, that it does not set forth a valid claim upon which relief can be granted.

28. Seeing that the Motion to Dismiss Count II is based on the same reasoning as Count I, the same standard of review as set forth above shall apply to the analysis of Count II.

29. Count II of the Complaint alleges four violations of the USOC Bylaws. The first three are: (i) Section 8.7(n) (USBC is not operationally and financially transparent in that it has failed to post its IRS Form 990s for the past three years); (ii) Section 8.7(n) (USBC is not accountable to its members as it fails to post its Board minutes on its website or otherwise make minutes of its Board members known to its members) and (iii) Section 8.7(s) (USBC does not post its IRS Form 990s on its website).⁴

30. The fourth, Section 8.7(a) (USBC fails to fulfill its responsibilities as an NGB), is similar to the claim made in Count I of the Complaint that USBC is noncompliant with Section 220522(a)(2) of the Act (USBC's inability to execute its obligations as an NGB).

31. The arguments for dismissal made by USBC relating to Count II and the response of the Complainants are similar to those made relating to Count I above.

32. With regard to the first three claims, the Hearing Panel determines that Count II fairly sets forth specific factual allegations of noncompliance.

33. The fourth claim hinges on Complainants ability to prove USBC's noncompliance in other areas. As the analysis pertaining to claim four of Count II is similar to the analysis of claim four of Count I no detailed discussion is required here. Accordingly, the Hearing Panel finds that Complainants have sufficiently set forth a valid claim in Count four of Count II.

⁴ Section 8.7(n) is incorrectly cited in the Complaint as 8.7(m) and 8.7(s) is incorrectly cited in the complaint as 8.7(r). The USOC Bylaws were amended with the amendments becoming effective on September 25, 2015, prior to the filing of the Complaint. The Complaint fails to account for an amendment made to Section 8.7 of the Bylaws, which necessitated changes to the section references in Section 8.7.

34. The Hearing Panel finds that relating to Count II, Complainants have sufficiently identified specific Sections of the USOC Bylaws and set forth factual allegations relating to those Sections, which set forth a claim upon which relief can be granted. Accordingly, USBC's Motion to Dismiss Count II is denied.

C. Count III – USBC's Non-Adherence with USOC Governance Guidelines

35. For Count III, USBC argues that non-adherence to the USOC Good Governance Guidelines ("Governance Guidelines") do not fall within the province of a Section 10 proceeding, and thus Count III should be dismissed on jurisdictional grounds.

36. Count III of the Complaint alleges that USBC fails to comply with three provisions set forth in the Governance Guidelines. They are: (i) USBC's Board is not between 7 and 12 members and does not have 20% independent directors; (ii) USBC is not financially and operationally transparent and accountable to its membership and the USOC and (iii) USBC fails to comply with the requirements for membership as set forth in the Act, the USOC Bylaws and the policies set forth in the Governance Guidelines.

37. USBC contends that Count III falls outside of the jurisdiction of this Hearing Panel. USBC states that Section 10 complaints pertain to an NGB's failure to fulfill the requirements of Sections 220522 through 220525 of the Act and Section 8 of the USOC Bylaws. USBC contends that the Governance Guidelines do not fall into the category of either a requirement of the Act or of the USOC Bylaws.

38. Also, USBC contends that even if the Governance Guidelines fall within the jurisdiction of a Section 10 proceeding, they are outdated and obsolete having been replaced in 2015 by the NGB Board Member Guidelines ("Board Guidelines"). In support of this USBC points out that certain provisions of the Governance Guidelines are

absent from the Board Guidelines. Thus, USBC's position is that the Governance Guidelines are no longer in effect and USBC cannot be held to their standards.

39. Finally, USBC contends that even if the Governance Guidelines are still in effect, they are only guidelines and thus cannot be enforced against USBC.⁵ USBC states that "a 'guideline' is by definition not a 'requirement' and thus not mandatory."

40. In further support of its position that the Governance Guidelines are not mandatory, USBC points to language surrounding the adoption of the Board Guidelines, which USBC says is instructive. USBC cites to the March 13, 2015, minutes of the USOC Board of Directors, which state that the Board Guidelines "benefit from the support of the NGB Council, which agrees that they should be promoted to all NGBs for their individual use as best befits their particular structures and governance." USBC contends that the same is true of the Governance Guidelines, which predate the Board Guidelines. USBC states that the "USOC has always afforded NGBs wide latitude to govern themselves according to the unique needs of their sports and organizations," and that this policy is as applicable to the Governance Guidelines as it currently is to the Board Guidelines.

41. Simply put, USBC argues that NGBs are not required to comply with the Governance Guidelines, and therefore the Hearing Panel "lacks jurisdiction as a matter of law over Complainants' various claims in Count III," which allege that USBC has failed to follow them.

⁵ As support for its position USBC points out that the Governance Guidelines provide for NGB Boards of between 7 and 12 members. USBC points to a number of NGBs that have Boards in excess of 12 members, thereby not complying with the Governance Guidelines.

42. Complainants counter by contending that, notwithstanding USBC's arguments, fulfillment of the Governance Guidelines, as they pertain to USBC, are mandatory and must be complied with. Complainants rely on a June 14, 2005, letter from Jim Scherr as support for this position. That letter notified USBC of its acceptance as a member of the USOC and recognition as an NGB, but contained the caveat that "the [USOC] Board conditioned USBC's acceptance as a member and recognition as an NGB on USBC's implementation of the USOC NGB governance guidelines." The letter went on to say that "[t]hese guidelines must be implemented by USBC as soon as possible, but no later than December 31, 2007."⁶

43. The Hearing Panel agrees with USBC that a strict reading of the Act and Section 10 of the USOC Bylaws only allow for claims based on non-compliance with Sections 220522 through 220525 of the Act and Section 8 of the USOC Bylaws.

44. However, the question before the Hearing Panel is can the jurisdiction of a Section 10 Complaint be broadened to also include compliance with the Governance Guidelines as a separate cause of action.

45. In that regard, the positions of USBC and of Complainants relating to the Governance Guidelines and how the Guidelines apply to this Section 10 proceeding require some analysis.

⁶ The USOC Board considered USBC's application for membership in the USOC and recognition as an NGB at its meeting on April 29, 2005. The Resolution that was submitted to the Board made no mention that USBC's acceptance as a member and recognition as an NGB was conditioned on implementation of the Governance Guidelines. However, mention of this requirement is contained in the April 29, 2005, USOC Board minutes.

46. The Governance Guidelines were first considered by the USOC Board in December 4, 2004. Those minutes state:

Management presented a series of NGB governance reform guidelines which were discussed at length and amended during the meeting. The Board then reviewed and unanimously approved the amended NGB governance standards, a final approved copy of which is attached. Management was directed to communicate these standards in appropriate fashion to be approved by Mr. Ueberroth.⁷

47. Then, the USOC Board discussed the Governance Guidelines in a meeting on February 14, 2005. The minutes for that meeting reflect the following:

Mr. Ueberroth requested that the NGB Governance Guidelines previously approved by the Board be described as preliminary, and it was the sense of the Board that the guidelines would likely evolve over time as there is more experience obtained with implementing those guidelines.

48. Further, a May 2, 2005, memorandum from Jim Scherr, which was addressed to USOC NGB Council members and which contained a copy of the Governance Guidelines, stated:

Below is a copy of the preliminary National Governing Bodies (NGB) Governance Guidelines approved by the United States Olympic Committee's (USOC) Board of Directors. The Board has asked management to work with NGBs to apply these guidelines on a case-by-case basis to those NGBs who wish to implement them. We look forward to discussing these guidelines further at our June meeting. Again, the sole objective is to ensure that the USOC and NGBs implement good Governance practices to strengthen the Olympic movement in the U.S.

49. In the following meeting of the USOC Board on December 10, 2005, the Board again discussed the Governance Guidelines. The minutes for that meeting state the following:

The Board requested an update on the NGB governance change process and management's views on the governance guidelines to be provided by email.

⁷ Mr. Ueberroth was the USOC Board Chair at the time.

50. There is no indication that the Governance Guidelines were further discussed by the USOC Board, as no mention is made of them in subsequent USOC Board minutes.

51. It appears to the Hearing Panel that the Governance Guidelines were part of the USOC's effort in 2004 and 2005 to reform many NGBs so that they had a more effective governance structure. This effort followed the USOC's own governance reform that took place in 2003 and 2004.

52. There is no evidence, as USBC contends, that the Board Guidelines were intended to replace the Governance Guidelines, thereby annulling the Governance Guidelines. It appears that the two documents were implemented for different purposes. The Board Guidelines promote "governance best practices for [NGB] board members." The Governance Guidelines relate to the NGB's governance. Both coexist, for what they are. They have different purposes. The Governance Guidelines are aimed at improving NGB governance functions. The Board Guidelines are aimed at improving NGB Board effectiveness.

53. Further, from a review of the USOC Board minutes and Jim Scherr's May 2 memo it does not appear to the Hearing Panel that the Governance Guidelines were intended to be mandatory. As their title indicates, they were guidelines. Although NGBs may utilize them in evaluating their effectiveness and functionality, and the USOC may refer to them in attempting to bring about good governance reform, they are not requirements. They may be best practices and something that NGBs should strive to accomplish, but NGBs are not required to follow them. There is no connection between a

request to follow guidelines and to the fulfillment of mandatory requirements under the Act or Section 8 of the USOC Bylaws.

54. However, another question remains. Even if the Governance Guidelines are not mandatory on their face, if they were made mandatory as to USBC, as Complainants contend, can Complainants bring a Section 10 Complaint based on USBC's noncompliance? Put another way, can Complainants place themselves in the position of the USOC and enforce a requirement placed on USBC by the USOC?

55. An application for membership in the USOC and recognition as an NGB is a USOC matter. If the USOC places certain conditions on acceptance as a member and recognition as an NGB, those are issues under the jurisdiction of the USOC.

56. Ten years have passed since USBC was accepted as a member of the USOC and recognized as an NGB. Complainants provide no evidence, nor is any allegation made, that since then the USOC has threatened to take away USBC's membership or recognition as an NGB based on non-implementation of the Governance Guidelines.

57. Further, if Complainants sought to have USBC comply with the Governance Guidelines, they should have made a request to the USOC to do something in 2008, shortly after the December 2007 deadline. Waiting seven years to bring up a condition placed on USBC's membership and NGB status does not help Complainants' position.

58. The Hearing Panel is not convinced that a member of an NGB gets to assume the role of the USOC and enforce a condition of membership and recognition imposed by the USOC. Those are matters for the USOC to deal with, or not.

59. It is the determination of the Hearing Panel that USBC cannot be found to be in noncompliance under Section 10 merely because it has not implemented the Governance Guidelines. Nor can Complainants bring an action on behalf of the USOC forcing implementation of the Governance Guidelines.⁸

60. Accordingly, the Hearing Panel finds that Count III falls outside of the jurisdiction of the Hearing Panel. Thus, USBC's Motion to Dismiss is granted relating to Count III. Count III is dismissed.

D. Count IV – Violations by USBC of Its Own Bylaws

61. USBC asserts that Count IV also falls outside of the jurisdiction of this Hearing Panel.

62. USBC states that Section 10 Complaints pertain to an NGB's failure to fulfill the requirements of Sections 220522 through 220525 of the Act and Section 8 of the USOC Bylaws. USBC contends that non-adherence to its own Bylaws does not fall into the category of either a requirement of the Act or the USOC Bylaws.

⁸ Notwithstanding the above, whether or not an NGB has good governance practices and is effective in the governance and management of its sport, is something that may fall within the scope of Section 220522(a)(2) of the Act and Section 8.7(a) of the USOC Bylaws. Complainants make no allegation, however, that the size of USBC's Board or its lack of independent members has prevented it from fulfilling its governance responsibilities. As to Complainants' contention that USBC is not financially and operationally transparent and accountable to its membership, Complainants state that nonadherence to this guideline allows "USBC to operate under a cloak of secrecy, with no real financial and/or governance accountability to its members." Those are matters that may relate to Section 220522(a)(2) of the Act and Section 8.7(a) of the USOC Bylaws. If that is Complainants' claim, then Complainants should bring them as factual allegations pertinent to Count I. Further, Complainants contention that USBC fails to comply with the requirements for membership as set forth in the Ted Stevens Olympic and Amateur Sports Act, the USOC Bylaws and the policies set forth in the Governance Guidelines is little more than a recitation that USBC is acting in contradiction of the Governance Guidelines, without any other supporting factual basis.

63. Count IV of the Complaint alleges that USBC fails to comply with two provisions of its Bylaws. They are: (i) Article IV, Section A (USBC's Board exceeds the size designated under its Bylaws) and (ii) Article II, Section D.3.e (USBC shall provide fair notice and an opportunity for a hearing).

64. In support of its position USBC cites *Smith v USA Dance*, USOC Section 10, (Nov. 16, 2009). In that case Smith alleged that his removal from USA Dance's Board of Directors and the subsequent handling of his grievance pertaining to his removal was not in compliance with USA Dance's Bylaws or Florida statutes. The Hearing Panel found that "these claims do not fall within the compliance requirements as set forth in Sections 220522-220525 of the Act or Section 8.12 of the USOC Bylaws." *Id.*, 5.

65. Complainants counter that NGBs "must comply with all of the requirements for membership as an NGB" and that "[o]ne way to do that is to examine the NGB's bylaws, including whether the NGB actually follows its own bylaws."

66. That may be so, but whether or not an NGB is in compliance with its bylaws does not in and of itself give rise to a cause of action pursuant to Section 10. USBC's nonadherence to its Bylaws may be evidence of a violation of the Act or the USOC Bylaws (matters subject to Section 10 complaints), but it does not serve as a separate cause of action on its own.⁹

⁹ Here again, USBC's noncompliance with its Bylaws in terms of its board size may be relevant to whether it is in compliance with Section 220522(a)(2) of the Act and Section 8.7(a) of the USOC Bylaws. Further, USBC's noncompliance with its Bylaws relating to its grievance procedures may be relevant to Sections 220522(a)(4)(B), 220522(a)(8) and 220522(a)(13) of the Act. If those are Complainants' claims, then Complainants should bring them as factual allegations pertinent to Count I.

67. The Hearing Panel finds that Count IV falls outside of the jurisdiction of the Hearing Panel. Accordingly, USBC's Motion to Dismiss as to Count IV is granted. Complainants' Count IV is dismissed.

E. Count V – Additional Requirements

68. USBC alleges that Count V must be dismissed if the Hearing Panel finds no factual basis to support the claim.

69. Count V asserts that certain NGB requirements are not "mentioned as responsibilities of USBC in its Bylaws; and it is unknown to what extent, if any, USBC carries out those responsibilities."

70. Specifically, Complainants mention the following USOC Bylaw requirements that USBC must adhere to: (i) Section 8.7(c) (develop a strategic plan); (ii) Section 8.7(g) (establish written procedures for selection of athletes to the Pan Am Games); (iii) Section 8.7(h) (conduct a process for selection of athletes to the Pan Am Games); (iv) Section 8.7(i) (recommend athletes to the USOC for participation in the Pan Am Games); (v) Section 8.7(j) (establish a plan for successfully training Pan Am athletes); (vi) Section 8.7(k) (comply with anti-doping policies); (vii) Section 8.7(l) (comply with safe sport procedures) and (viii) Section 14.6 (elect athletes to the USOC Athletes Advisory Council).

71. USBC states that no factual basis is provided to support any claim of noncompliance. USBC's position is that Complainants merely list a number of NGB responsibilities without any factual underpinning. USBC maintains that such allegations are "too conclusory to merit response" and that USBC "is left to guess what Complainants' [factual] allegations are."

72. Complainants themselves admit that they have no evidence as to USBC's failure to carry out the above cited responsibilities.

73. Complainant's assert that "it is only fair to require that USBC actually come out from behind the curtain and show, upon inquiry...that it does in fact comply with" the USOC Bylaw requirements listed in Count V.

74. Complainants' lone assertion of noncompliance is that the cited responsibilities are not set out in USBC's Bylaws. However, Complainants make no claim that such responsibilities are required to be set out in USBC's Bylaws.

75. The same legal analysis that applied to Count I, applies to Count V. The difference here, however, is that Complainants set forth no factual basis to support the alleged grounds of noncompliance.

76. Complainants' allegations are no more than conjecture, if even that. Complainants merely list a number of Sections of the USOC Bylaws that USBC is obligated to comply with. This does not satisfy the standards for stating a valid claim upon which relief can be granted.

77. Accordingly, USBC's Motion to Dismiss is granted as to Count V. Count V is dismissed.

IV. MOTION FOR SUMMARY JUDGMENT

78. Complainants contend that this Hearing Panel should grant its Motion for Summary Judgment as there are no genuine and material issues of fact that need to be the subject of an evidentiary hearing. Complainants then proceed to outline the allegations contained in their Complaint, as if those allegations are without dispute.

79. USBC disagrees with Complainants' statement that there are no genuine and material issues of fact.

80. Also, USBC states that if its "Motion to Dismiss is denied, whether in whole or in part" then it has "the right to file a written answer responding to any allegations of the Complaint that may survive." The inference is that USBC deserves to have its day in court, to present its case and to counter any evidence presented by Complainants.

81. Additionally, USBC contends that Complainants' Motion for Summary Judgment is not proper under Section 10 of the USOC Bylaws. USBC points out that there is no specific provision in Section 10 providing for the submission of a motion for summary judgement.

82. Finally, USBC argues that even if the Motion for Summary Judgment is proper, it is premature. USBC contends that its pending Motion to Dismiss must be decided, and if not granted, it must have an opportunity to file an answer, before Complainants are allowed to file a motion for summary judgment.

83. It is well accepted that a motion for summary judgment can only be granted if there is there is no genuine dispute as to any material fact and in applying the law to the undisputed facts, the movant is clearly entitled to judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

84. Complainants do not meet that burden in this case. The Hearing Panel finds that there are facts in dispute and that evidence needs to be presented in order for a determination to be made as to the alleged noncompliance asserted by Complainants.

85. Because of the Hearing Panel's determination, it is not necessary for the Hearing Panel to rule on whether a motion for summary judgment is proper in Section 10 proceedings or whether the Motion was prematurely filed in this proceeding.

86. Accordingly, the Hearing Panel denies Complainant's Motion for Summary Judgment.

V. ANSWER

87. USOC Bylaw Section 10.13 provides that after the denial of a motion to dismiss an NGB shall have thirty (30) days to file an answer to the complaint. If no answer is filed, the NGB shall be deemed to have denied the claim.

88. As USBC's Motion to Dismiss was denied as to Counts I and II, USBC shall file an answer as to those two Counts within thirty days of this Decision and Order. If no answer is filed, Counts I and II will be considered denied.

VI. SCHEDULING ORDER

89. The Hearing Panel is intent on moving this case forward in an expeditious manner. USBC and Complainants shall each inform the Hearing Panel by December 12, 2016, of their availability in January and February 2017 for a hearing on the merits to be held in Colorado Springs, Colorado.

90. Prior to the hearing, the Hearing Panel may schedule a prehearing conference. It will also issue a further order or orders setting forth pre-hearing briefing requirements, hearing procedures and other matters that may be pertinent to bringing this proceeding to conclusion.

VII. ORDER

91. USBC's Motion to Dismiss is denied as to Counts I and II.

92. USBC's Motion to Dismiss is granted as to Counts III, IV and V and those Counts are dismissed.

93. Complainants' Motion for Summary Judgment is denied.

94. USBC shall have 30 days from the date of this Decision and Order to file an answer to Counts I and II.

95. By December 12, 2016, USBC and Complainants shall each provide their availability in January and February 2017 for a hearing on the merits to be held in Colorado Springs, Colorado.

Dated this 1st day of December, 2016.



Bill Marolt, Chair

Glen Schorr, Panel Member
Han Xiao, Panel Member