

**Thursday 11 NOVEMBER 2010 TRIBUNAL SITTING No. 66 / CASE 2  
CASE REFERENCE: 833323**

Information provider:	SB7 Mobile Limited, London
Service provider:	Wireless Information Network Ltd, High Wycombe
Type of service:	Competition subscription service
Service title:	'Juicywin'
Service number:	88818
Cost:	£4.50 per week (£1.50 X 3)
Network operator:	All Mobile Network Operators
Number of complainants:	n/a

**THIS CASE WAS BROUGHT BEFORE A REVIEW TRIBUNAL FOLLOWING THE  
GRANTING OF AN APPLICATION FOR A REVIEW  
UNDER PARAGRAPH 8.10 OF THE CODE**

**BACKGROUND**

On 24 June 2010, a Tribunal upheld breaches against SB7 Mobile Limited (the Information Provider), in relation to a competition subscription service operating under the name 'Juicywin'. The Tribunal upheld the following breaches of the PhonepayPlus Code of Practice 11<sup>th</sup> Edition (amended April 2008) (the 'Code'):

- Paragraph 3.2.2 – Provision of Information
- Paragraph 5.2 – Legality
- Paragraph 5.4.1a – Misleading

The Tribunal considered the breaches to be **significant**; issued a Formal Reprimand; imposed a £30,000 fine; and, ordered the Information Provider to seek compliance advice in respect of the issues identified by the Executive in relation to the service and its promotion within two weeks from the date of publication of the adjudication, such advice to be implemented to the satisfaction of the Executive within two weeks of receipt. The Tribunal commented that it expected claims for refunds to continue to be paid by the Information Provider for the full amount spent by complainants, except where there was good cause to believe that such claims were not valid.

**REQUEST FOR REVIEW**

On 27 August 2010, the Information Provider submitted an application for a review of the Tribunal's decisions of 24 June 2010. Its application was considered by the Chair of the Code Compliance Panel ('the CCP') and the review was granted on one ground, namely the Information Provider's submission that the level of the financial fine was disproportionate and the presentation of new evidence in relation to revenue.

The Information Provider made an Informal Representation to the Review Tribunal. The Review Tribunal made its decision regarding this case on 11 November 2010.

## **THE INFORMATION PROVIDER'S CASE**

The Information Provider made the following submissions in relation to the fine of £30,000 that was imposed by the original Tribunal:

It stated that it had provided additional and new evidence in relation to the revenue generated by the service and that it was of the opinion that the initial financial sanction of £30,000 imposed by the original Tribunal had been disproportionate to the issues that the breaches covered.

It also stated that the £30,000 fine was not tax deductible to the company and such a fine would attract a further tax burden. It stated that combined with the administration costs awarded by the original Tribunal, the financial implications of these sanctions on a small company were extremely serious. It made reference to the principles of good regulation and that duty required that these should be taken into account.

## **DECISION**

The Review Tribunal noted that it was restricted to the specific ground for review in relation to the proportionality of the sanction and that it was only able to consider the impact of the breaches upheld and how this had affected the original sanctions. The Tribunal had no power to re-open the breaches that had been upheld and alter the conclusions of the original Tribunal.

The Review Tribunal considered that it had received new evidence in the form of specific revenue figures in relation to the 'Juicywin' service and its appearance on the promotional websites 'myoffers.co.uk' and 'uk-prizedraw.co.uk'. The Review Tribunal decided that this new evidence demonstrated the revenue specifically generated by the non-compliant service and therefore superseded the revenue figure that had been supplied in the original Tribunal which included all revenue.

The Review Tribunal considered the impact of the breaches upheld and how this had affected the original sanctions, the Review Tribunal noted as follows:

### **Paragraph 3.2.2**

The Review Tribunal noted that there had been an uphold of paragraph 3.2.2 of the Code that had been regarded as potentially serious given the importance of providing accurate and timely information to the Executive in an open and co-operative manner. Breach of this provision reduces the ability of PhonepayPlus to regulate effectively and the Review Tribunal considered that this had been reflected in the final sanctions of the original Tribunal.

### **Paragraph 5.2**

The Review Tribunal noted the potential weight given to the breach of paragraph 5.2 of the Code by the original Tribunal. The Review Tribunal noted that the original Tribunal decision report had not reflected that; the legality breach had related to one mobile phone number, that there had been relatively little consumer harm resulting from the breach, and that the Information Provider had not intended to use the unsolicited message to market the service. The Review Tribunal decided that whilst the report had not properly covered these issues, proper weight had in fact been ascribed to what had been essentially a technical breach of the Code when assessing the sanction.

### **Paragraph 5.4.1a**

The Review Tribunal noted the breach of paragraph 5.4.1 of the Code and considered that the misleading nature of the service had been the primary cause of the consumer harm.

The Review Tribunal noted that the Information Provider had no breach history and that the original Tribunal had taken this into account and as such the Review Tribunal would do the same.

The Review Tribunal found the case to be **significant**, affirming the decision of the original Tribunal. The Review Tribunal considered the Information Provider's new evidence in relation to the service revenue, and reassessed the impact of the upheld breaches, including the legality breach which could be seen as relatively minor and technical. This, however, had to be set against the original failure to fully co-operate with the regulator. It accordingly reduced the original fine to £15,000. The Review Tribunal did not alter any of the other sanctions imposed by the original Tribunal.