

Statement of facts and evidence

Introduction

1. This statement sets out the facts and evidence relating to the Phone-paid Services Authority's ("PSA") investigation into Stripey Giraffe Limited ("**Stripey Giraffe**") carried out between November 2022 – December 2023. This statement also sets out the breaches and sanctions agreed by the parties and has been produced and published in accordance with paragraphs 5.5.4 of the PSA Code of Practice (15th Edition) ("**Code 15**"), together with the Adjudication by Consent Order which disposes of the matter.
2. The investigation into Stripey Giraffe concerned a number of potential breaches of Code 15. The period of the breaches commenced when the 14th Edition of the Code of Practice ("**Code 14**") was in force and continued after Code 15 (collectively the "**Code**") came into force.

The investigation

3. Stripey Giraffe is a Merchant Provider based in the UK and provides the "Stripey Offers" service ("**Service**") to UK consumers using short code 88222. Stripey Giraffe first registered with the PSA on 17 July 2018, and the Service itself was registered with the Executive on 22 October 2018.
4. The "Stripey Offers" service was charged at £1.50 per message received, with a maximum of three messages received per week. The Respondent contracted with SB7 Mobile Ltd (the "**Intermediary Provider**") who in turn, during the period under investigation, contracted with Dynamic Mobile Billing Limited.
5. The Service is promoted predominantly through Google Display Network Advertising, and to a lesser extent through co-registration site partners.
6. The PSA became aware of potential breaches of the Code through complaints received from consumers. Following initial service monitoring the PSA considered it necessary to take Enforcement Action against Stripey Giraffe.
7. During the investigation, the PSA relied on evidence from monitoring the service, information supplied by Stripey Giraffe and its intermediary SB7 and consumer complaints. To date the PSA has received 503 complaints from consumers relating to this service. The issues identified in these complaints were reflected in reviews observed on an external review website.
8. Having considered this evidence, an Enforcement Notice was issued to Stripey Giraffe in December 2023.

9. Stripey Giraffe subsequently submitted a request for an Oral Hearing, which was granted by the Code Adjudication Panel Chair.

Breaches of the Code

10. The parties have agreed that the following breaches have occurred and should accordingly be upheld:

Breach 1 – Failure to comply with Paragraph 3.3.2 of Code 15

11. Paragraph 3.3.2 of Code 15 requires that:

"PRS providers and their services must not mislead or be likely to mislead consumers in any way."

Stripey Giraffe's admissions

12. Stripey Giraffe has admitted the matters set out below.

Reason 1

13. Stripey Giraffe accepts that the design of some banner ads, when placed by Google in particular apps or websites, had the potential to mislead consumers, who may have not appreciated that banner ads were for the Service, as opposed to the original webpage's subject matter.
14. Stripey Giraffe accepts that prior to 2023, it did not include in its banner ads the wording 'Advertisement', which emphasised that the banner ad did not form part of the original webpage's subject matter.

Reason 2

15. Stripey Giraffe accepts that some consumers may have been misled by the scope of what was offered as part of the service, through the omission of wording 'free-to-enter competitions' or 'reward programmes' in its service description on certain of the landing pages. In doing so, Stripey Giraffe, therefore, accepts that the example identified by the Executive, did not fully meet the Fairness standard as set out in Code 15 Guidance.

Reason 3

16. Stripey Giraffe accepts that on one occasion, it had potentially misled consumers in its wording of an SMS alert which stated that recipients of the message could "*enter for your chance to win a PS5*". Stripey Giraffe accepts that it had erroneously given consumers the impression they were entering a competition to win a PS5 when they were in fact required to interact and register with a third-party reward programme which would award a PS5, or a gift card to the value of a PS5, upon completion of a set of tasks.
17. In respect of the three reasons, Stripey Giraffe asserts, amongst other things, its good faith reliance upon compliance advice from third parties in operating the Service.

The Parties' agreement on the breach severity and sanction

18. The PSA would ordinarily consider Breach 1 to be very serious.

19. However, in light of the parties' respective positions the PSA and Stripey Giraffe have agreed that Breach 1 should be classified as "serious" and that a fine of £150,000 should be imposed.

Breach 2 – Failure to comply with paragraph 3.2.1 of Code 15 and paragraph 2.2.7 of Code 14

20. Paragraph 3.2.1 of Code 15 states:

"During any written, spoken or other form of promotion of a PRS, the cost of the service must be provided before any purchase is made. The cost of the PRS must be prominent, clear, legible, visible and proximate to the phone number, shortcode, button or other means by which a charge may be triggered."

21. Paragraph 2.2.7 of Code 14 states:

"In the course of any promotion of a PRS, written or spoken or in any medium, the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number, shortcode or other means of access to the Service."

Stripey Giraffe's admissions

22. Stripey Giraffe has admitted the matters set out below.

Reason 1

23. Stripey Giraffe accepts that the pricing information on the promotional material (inclusive of banner advertisements and service landing pages) observed by the PSA in its enforcement case was not prominent in that it was too small in size, unclear and had the potential to have been missed by some consumers when engaging with the service's subscription journey.
24. Stripey Giraffe asserts, amongst other things, its good faith reliance upon compliance advice from third parties in operating the Service.

The Parties' agreement on the breach severity and sanction

25. The PSA would ordinarily consider Breach 2 to be very serious.
26. However, in light of parties' respective positions the PSA and Stripey Giraffe have agreed that Breach 2 should be classified as "serious" and that a fine of £125,000 should be imposed.

Final agreed breach severity and sanctions

27. The parties agreed that the case severity is overall "serious", and that the following sanctions should be imposed:
- (a) A total fine of £275,000 comprised of the following amounts for each breach:
 - (i) £150,000 for breach 1; and
 - (ii) £125,000 for breach 2.

- (b) Refunds to all consumers who apply, for the full amount spent by them for the service.
 - (c) Compliance advice on future promotions to be sought and implemented to the satisfaction of either the PSA or Ofcom prior to re-starting the service.
28. The Parties also agreed that Stripey Giraffe will pay a fixed amount towards the PSA's administrative charge in the sum of £100,000 inclusive of VAT, and that both the total fine and the administrative charge will be paid within 30 days of publication of the consent order and this statement.