

COMPLIANCE UPDATE

Misleading digital marketing of premium rate services

16/02/2012

FOR THE ATTENTION OF ALL THOSE INVOLVED IN PROVIDING PREMIUM RATE SERVICES FOR THE PURPOSES OF SECTION 120 OF THE COMMUNICATIONS ACT 2003

This update is to inform all those who provide premium rate services (PRS) for the purposes of section 120 of the Communications Act 2003, that PhonepayPlus has identified a number of digital marketing practices which are highly likely to be in breach of the PhonepayPlus Code of Practice (12th Edition) (“the Code”).

Those involved in providing PRS should familiarise themselves with the following information:

Background

Recent PhonepayPlus investigations and monitoring have identified a number of practices around digital marketing which are highly likely to breach paragraph 2.3.2 of the Code. Paragraph 2.3.2 states:

‘Premium rate services must not mislead or be likely to mislead in any way’.

These practices can be defined as follows, but all are clearly designed and intended to mislead consumers into responding to digital marketing of a PRS when they would not otherwise have done so:

Typosquatting

The practice of registering internet domain names which are mis-spellings of widely known and trusted internet brands – examples would be “Dacebook” instead of “Facebook”, “Twtter” instead of “Twitter” and “Wikapedia” instead of “Wikipedia”. This is with the intention of redirecting consumers who mistype or click on mistyped links appearing to be well-known sites into their internet browser, leading them to webpages which are designed in such a way as to be confusingly similar to the website for which the consumer was originally searching.

In PRS terms, this is with a view to taking consumers to web pages which invite consumers to accept the purchase of a PRS in the belief that the PRS is associated with a trusted brand. This is compounded where consumers are not made aware of the pricing and other key information.

PhonepayPlus has recently adjudicated on such a practice, which was found to be in breach of paragraph 2.3.2 of the 12th Edition of the Code. The adjudication can be found on [our adjudications database](#) (dated 02/02/2012).

Clickjacking

The practice of using graphics coding on a website to disguise a link as being something else. In PRS terms, the consumer clicks on a link which takes them to a website offering PRS without realising it.

Likejacking

The practice of manipulating social media sites so that consumers believe a link or other advertising has been forwarded or endorsed by one of their contacts, when this is in fact not the case. In PRS terms, a link to a webpage offering PRS may be sent to consumers as if it has been sent, or endorsed, by one of their contacts or friends.

Whilst PhonepayPlus has not adjudicated on *clickjacking* or *likejacking* at the time this Compliance Update was issued, we would stress that these practices are likely to breach paragraph 2.3.2 of the Code.

Next Steps

PhonepayPlus would remind all providers, irrespective of where they sit in the value-chain, of their obligations under the Code. This includes a requirement to ensure consumers are treated fairly and not misled by marketing, whether digital or otherwise.

We are aware that the digital marketing practices that we have outlined above will, in many cases, be directly controlled by digital marketing partners, known as 'affiliate marketers', to whom PRS providers have subcontracted.

Affiliate marketers do not need to be registered with PhonepayPlus as they do not meet the definition of a Level 2 provider set out at paragraph 5.3.8(b) of the Code, and as such are not responsible for compliance with the Code. Therefore responsibility for the actions of affiliate marketers remains with the relevant PRS provider. If PRS providers contract, or enter into arrangements, with affiliate marketers who then act in breach of the Code when promoting their services, the PRS provider can expect to be held responsible by PhonepayPlus for the relevant breach.

Providers can put in place appropriate controls on affiliate marketers with whom they contract which, in the event of a PhonepayPlus investigation into misleading digital marketing, would be regarded as mitigating factors in the provider's favour. These would include, but not necessarily be limited to, the list below:

- Setting clear expectations around compliance with the Code, and obtaining a clear commitment to comply, as part of any contract signed with an affiliate marketer.
- Conducting targeted monitoring in response to consumer complaints, or where there is a sudden, unexplained spike in traffic, or where an affiliate marketer has previously adopted digital marketing techniques which caused a breach of the Code.
- Making it clear to affiliate marketers that any failure to comply with the expectations set will result in a suspension of payment, or a complete revocation of the providers' tracking pixel so that payments cannot be calculated from traffic volume, and taking this action if the affiliate still does not comply.

- Keeping clear records of any activity, and making them available to PhonepayPlus upon request

Where PhonepayPlus upholds breaches of the Code in relation to digital marketing which involves affiliate marketing, we will expect providers to assess this as part of their ongoing compliance processes and take appropriate steps to manage the risk of breaches of the Code in light of this.

PhonepayPlus will continue to monitor digital marketing of PRS, and perform other such checks and/or take enforcement action as is necessary to ensure the Code is complied with.