

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS (FORMERLY ICSTIS)

TRIBUNAL DECISION

Thursday 9 October 2008
TRIBUNAL SITTING No. 12 / CASE 2
CASE REFERENCE: 773838/DL

Service provider & area:	PremTel Limited, Derby
Information provider & area:	Daniel Clifford, London
Network operator:	Switchconnect Limited
Type of service:	Customer care line
Service title:	Laptops Online Inc "customer care" service
Service number:	07045501170 and 07099800149
Cost:	07045501170 – 50p per call 07099800149 – 50p per minute
Network operator:	All Mobile Networks
Number of complainants:	33

BACKGROUND

PhonepayPlus received 33 consumer complaints in respect of emails received from a company using the name 'Laptops Online Inc'. The email appeared as an order confirmation for a laptop and gave the recipient the impression that he or she had ordered a laptop and that delivery was underway. The complainants stated that they had not placed any such order. The email provided a "customer care" service number, which was an '070' prefixed number charged at a premium rate. Complainants who rang the service numbers, anxious to cancel the fictitious order and stop payments, were charged for the call. They were allegedly connected to a recorded message which encouraged them to call back at a later time, which many did. No complainant spoke to an actual person.

The emails appeared to have been sent from various different originating server addresses. It is unknown how many e-mails were sent, but those that were complained about were dated either 9 or 10 September 2008. The email stated that the consumer could not reply to the email, but ought to call the 070 number provided, in order to amend the order or discuss any matters relating to the "Technical Support" or simply contact the "UK office".

The Executive's Monitoring of the Service

When a call was made by the Executive to 07099800149 on 10 September 2008, (charged at 50 pence per minute) a recorded message was heard, which appeared to start with a recording of a ringing tone followed by:

“This is our voicemail. Our officers are busy right now. You may want to try again later or when you leave your contact details, message and location after the beep, we will call you at the soonest possible time.”

The complainants reported a similar scenario, which was further supported by the service provider’s correspondence dated 19 September 2008, that both 070 numbers were routed to the same ‘0203’ London business number. The Executive considered that the service appeared to be an unstaffed helpline, with a voicemail message which encouraged consumers to leave a message or call back (resulting in a further charge). Whilst it appeared possible to leave a message, there was no evidence of consumers’ calls ever being returned.

The service provider informed the Executive that the service had been voluntarily terminated on 10 September 2008 at 11:39am “due to abuse”.

The Executive conducted the matter as an emergency procedure investigation in accordance with paragraph 8.6 of the PhonepayPlus Code of Practice (“the Code”), 11th Edition (amended April 2008). The Executive, having received a significant number of complaints on 10 September 2008, sought approval to use the emergency procedure from three members of the Code Compliance Panel on 12 September 2008, which was granted on the same date.

At that time there had been no evidence of any other party’s involvement with the ‘070’ prefixed numbers other than the network operator responsible, Switch Services Limited, which was therefore considered to be both network operator and service provider. In its dual capacity, it was issued with formal directions on 12 September 2008, to terminate the two known 070 numbers along with any other numbers used for the service, together with a request for information under paragraph 8.3.3 of the Code.

The Executive raised potential breaches of paragraphs 5.4.1a, 5.3.1b, 5.7.1 and 5.8 of the Code in a letter dated 17 September 2008. On 17 September 2008, Switch Services Limited informed the Executive of the existence of a “reseller” PremTel Limited and supplied a contract signed by the parties. Consequently, for the purposes of the Code of Practice, PremTel Limited was then deemed to be the service provider and the Executive thereby issued the breach letter to PremTel Limited on 18 September 2008. The Executive received a response from this service provider on 19 September 2008.

The Tribunal made a decision on the breaches raised by the Executive on 9 October 2008.

SUBMISSIONS AND CONCLUSIONS

PRELIMINARY ISSUE

The Tribunal considered the preliminary issue as to whether the service fell within the definition of Premium Rate Services in the Communications Act 2003.

The Tribunal concluded that the service satisfied all the elements of sections 120(7) and 120(8)(a) of the Act and that it was accordingly a premium rate service. The Tribunal found that the 070 facility had been improperly used for the following reasons: i) there was evidence of intended revenue share between the service provider and the information provider and ii) the fact that there was no evidence of any legitimate use of the 070 numbers. This was supported by the evidence suggesting that the name Laptops Online Inc was not legitimately used by the sender of the emails, and the lack of evidence of any other valid end-users. The Tribunal noted that the service provider did not dispute that the service was a 'premium rate service'.

ALLEGED BREACH ONE

MISLEADING (Paragraph 5.4.1a)

"Services and promotional material must not:

a mislead, or be likely to mislead in any way..."

1. The Executive considered that the email was sent with the purpose of misleading recipients into thinking that an order for a lap top had been made in their name, without their knowledge or consent. Complainants therefore felt the need to act urgently, in order to cancel the order. The only contact details for Laptop Online Inc's UK office was a premium rate 070 number, which recipients called in an attempt to discover information about who had made the order and when it was made, and to cancel the order and purported authorised payment. The Executive considered that i) the company responsible for issuing the email was not a seller (or an associate of a seller) of laptops or other electronic items; ii) the company had sent the emails to recipients who had not ordered laptops or other electronic items from them at any time; and, iii) the 070 number provided within the email was not a fully staffed "customer care" service line. The misleading emails amounted to an inducement to engage with the premium rate "customer care" service number. The Executive received no evidence to suggest that the emails were sent legitimately by Laptops Online Inc.
2. The service provider commented that it did not contest any of the breaches raised by the Executive and as such, had not responded specifically to the breaches raised. The service provider wished to provide as much information as possible and supplied the following overview of events in respect of all breaches raised. On 3 September 2008, the information provider opened an account. On 9 September 2008, the two 070 numbers in question were issued to the information provider, both of which were connected to the same 0203 London area code landline number. On 10 September 2008, the service provider received an email which showed one of the numbers was not being promoted for legitimate purposes. On 10 September 2008, the service provider acted immediately to disconnect the numbers. It advised the information provider that its numbers and account had been terminated with immediate effect, due to abuse. The service provider stated that numbers were disconnected on 10 September at 11:39am and it had not heard from its client since.
3. Having considered the evidence the Tribunal concluded that the emails in question were a clear attempt to mislead recipients into believing that an order for a laptop had been made in their name, and that payment had been

authorised. Recipients were misled into calling the premium rate number, which was their only means of investigating the matter further. The Tribunal upheld a breach of paragraph 5.4.1a of the Code.

Decision: UPHELD

ALLEGED BREACH TWO

HARM AND OFFENCE (Paragraph 5.3.1b)

“Services and promotional material must not, or must not be likely to:

b induce an unacceptable sense of fear, anxiety or distress

1. Upon reviewing the emails supplied by complainants and the complaint logs, the Executive considered that the receipt of the email had caused an unacceptable sense of anxiety to recipients. The anxiety resulted from the fact that the recipients had never previously engaged with the service, had very reasonable concerns of fraud and wished to cancel the order as soon as possible. The recipients were induced to call the premium rate number because it was the only way to access the company.
2. The service provider did not contest the breach raised and did not provide a response to the Executive’s allegation other than that set out in paragraph 5.4.1a above.
3. The Tribunal considered the evidence and found that the emails had caused an unacceptable sense of anxiety in recipients, who had never previously contacted the service and had good reason to fear fraud or other wrongdoings. The Tribunal also noted that the service provider did not contest the breach raised. The Tribunal upheld a breach of paragraph 5.3.1b of the Code.

Decision: UPHELD

ALLEGED BREACH THREE

PRICING INFORMATION (Paragraph 5.7.1)

“Service providers must ensure that all users of premium rate services are fully informed, clearly and straightforwardly, of the cost of using a service prior to incurring any charge.”

1. The Executive noted that users who had not previously placed any orders with the company or had any other contact with it, received no pricing information in respect of the cost of calling the 070 numbers stated in the emails. Users who called the “customer care” service number upon receipt of the email, did incur premium rate charges without prior knowledge of the cost.
2. The service provider did not contest the breach raised and did not provide a response to the Executive’s allegation other than that set out in paragraph 5.4.1a above.

3. The Tribunal found that the email failed to provide any pricing information in respect of the costs of the 070 numbers. The Tribunal also noted that the service provider did not contest the breach raised. The Tribunal upheld a breach of paragraph 5.7.1 of the Code.

Decision: UPHELD

ALLEGED BREACH FOUR

CONTACT INFORMATION (Paragraph 5.8)

“For any promotion, the identity and contact details in the UK of either the service provider or information provider, where not otherwise obvious, must be clearly stated. The customer service phone number required in paragraph 3.3.5 must also be clearly stated unless reasonable steps have previously been taken to bring it to the attention of the user or it is obvious and easily available to the user.”

1. In view of the fact that the emails introduced the consumer to the 070 prefixed numbers and encouraged use of the premium rate service, the Executive considered that the email amounted to promotional material under paragraph 11.3.27 of the Code. The only name stated in the email and made known to the user of the premium rate service was ‘Laptops Online Inc’. The Executive noted that the email failed to contain either the names of the service provider or information provider, and also failed to provide an alternative free UK customer care number.
2. The service provider did not contest the breach raised and did not provide a response to the Executive’s allegation other than that set out in paragraph 5.4.1a above.
3. The Tribunal considered the evidence and found that the email failed to state the identity and contact details in the UK, of either the service provider or information provider, and failed to provide a UK customer services number. The Tribunal also noted that the service provider did not contest the breach raised. The Tribunal upheld a breach of paragraph 5.8 of the Code.

Decision: UPHELD

SANCTIONS

The Tribunal’s initial assessment was that, overall, the breaches taken together were **serious**.

In determining the sanctions appropriate for the case the Tribunal took into account the following aggravating factors:

- The service was valueless to consumers;
- The service provider was reckless in respect of its lack of due diligence regarding the information provider’s illegitimate use of the 070 numbers provided;

- There was material consumer harm, namely the unacceptable sense of anxiety caused by the emails; and
- The service invited repeated calls from users, 309 of which made multiple calls with one particular user calling 13 times.

The Tribunal also took into consideration the following mitigating factors:

- The service provider had co-operated with the Executive when notified of the breaches; and
- The service provider acted in a manner to minimise consumer harm following the apparent breach. The service provider in conjunction with the network operator, made every effort speedily to terminate the service and disconnect the numbers.

Taking into account the aggravating and mitigating factors, the Tribunal concluded that the seriousness of the case should be regarded overall as **serious**.

The Tribunal decided to impose the following sanctions against the service provider:

- A formal reprimand in respect of the service provider's lack of due diligence and significant absence of documentation to evidence its relationship with the information provider;
- A fine of £15,000 which it stated was punitive but would have been higher had the service generated more revenue and not been caught by the service provider so quickly;
- The Tribunal also imposed a bar on the service and the numbers providing access to the service until the service provider seeks and implements compliance advice from PhonepayPlus. The Tribunal doubted whether the service which had been the subject of the present complaints could be made compliant with the Code, but required the service provider to seek compliance advice regarding the future use or allocation of the numbers which provide access to the service in question; and
- The Tribunal also ordered that claims for refunds are to be paid by the service provider for the full amount spent by users, except where there is good cause to believe that such claims are not valid.