

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS

TRIBUNAL DECISION

Thursday 18 December 2008 TRIBUNAL SITTING No. 17 / CASE 3

CASE REFERENCE: 784915/GL

Service provider & area:	Ambavox AG, Austria
Information provider & area:	Keyzone Company Ltd, Cyprus
Type of service:	Parcel Delivery Service
Service title:	N/A
Service number:	09066371319
Cost:	£1.50 per minute
Network operator:	Atlas Interactive Group Limited
Number of complainants:	8

BACKGROUND

The PhonepayPlus Executive (“the Executive”) received eight complaints from consumers with South East London postal addresses, regarding a parcel delivery service from ‘JP Couriers’. The complainants had received a parcel delivery mailing to their home, which asked them to call a premium rate number in order to rearrange what the promotion claimed was a ‘missed delivery’. The message on the card stated:

‘For re-delivery please call 09066371319 between the hours of 07:00-23:00’

‘There was no reply when I called to deliver your parcel today. You will now need to re-arrange re-delivery of your item. If you do not collect your parcel within 7 working days it will be returned to sender’

Complainants raised concerns that this was not a genuine delivery service and that the company was not a genuine courier company. When complainants called the premium rate number, they were put on hold, played a repeated call queuing message, and their call was not answered. Complainants were not given any pricing information and subsequently had concerns about the cost of the call.

The Executive called the premium rate number and heard the same continuously repeated call queuing message, as reported by complainants, which stated:

‘Thank you for calling JP Couriers, all of our operators are currently busy, your call is important to us, please hold and one of our operators will assist you as soon as possible, thank you’

Although the service purported to connect callers with a live operator, the Executive was unable to establish whether or not this was the case, as it was been unable to speak to anyone when calling the premium rate number. The Executive’s call was automatically cut off after approximately 3 minutes 24 seconds. The cost of the call was charged at £1.50 per minute.

Based on the preliminary investigation findings on the service and its promotion, the Executive had serious concerns about potential consumer harm. The Executive conducted this matter as an emergency procedure investigation in accordance with paragraph 8.6 of the PhonepayPlus Code Practice 11th Edition (amended April 2008) (“the Code”).

The Executive raised potential breaches of paragraphs 5.4.1a, 5.4.2, 5.7.1, 5.8 and 6.3.1a of the Code in a breach letter to the service provider dated 24 November 2008.

The service provider responded in an email dated 26 November 2008, and initially requested the Executive to deal directly with a third party who had contracted with the information provider. The Executive advised it could not deal directly with the third party but could potentially deal directly with the information provider. In any event, the service provider agreed to continue the matter as a service provider case, supplying a response to the Executive’s enquiries along with a copy of the contract agreement between itself and Atlas Interactive Group (“the network operator”). The service provider also supplied email confirmation from the network operator, in respect of the premium rate number allocated.

The Executive responded on 26 November 2008, advising the service provider that no response had been supplied to each individual breach raised and recommended it provide the same. On 26 November 2008, the service provider alleged that it could not respond to the individual breach paragraphs because it was unaware of the nature of this service.

The Tribunal made a decision on the breaches raised by the Executive on 18 December 2008.

SUBMISSIONS AND CONCLUSIONS

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 noted that some complainants had raised concerns that this was not a genuine parcel delivery service, nor was the company a genuine courier company. Complainants also reported that when they called the premium rate number, they heard a call queuing message which was continuously repeated and their call remained unanswered.

The Executive noted that recipients of the ‘missed delivery card’ were supplied with a reference number to quote when calling the premium rate number. Recipients were further encouraged to call the premium rate number, by the information on the card which advised recipients that they had seven working days in which to collect their ‘parcel’.

The nature of the promotion indicated an intention to mislead the consumers into believing that a courier company had attempted to deliver a parcel to their house, in

their absence. The Executive considered the intention to mislead to be evident through the wording used in the promotional material, which stated: *'There was no reply when I called to deliver your parcel today'*. The Executive also considered the misleading element of the service to be aggravated by the time of year the delivery cards were sent, being close to the Christmas period. The Executive considered it more likely that recipients would be receptive to the suggestion that they had missed delivery of a parcel. This was further compounded by the apparent absence of anyone available to answer the premium rate number. The Executive considered consumer expectation (on the basis of the appearance and content of the promotional material), to be a genuine notification of a parcel delivery, as opposed to a promotion for a premium rate service.

2. The service provider commented generally in respect of all of the breaches raised, that it could not supply the Executive with specific responses because it was completely unaware of the nature of the service. It acknowledged its fault in indirectly allow the third party to obtain a service number, which he was then able to use for an 'apparently bad purpose'.
3. The Tribunal considered the evidence and determined that the promotional card had flagrantly misled consumers into believing they had missed a delivery of a parcel in the period leading up to Christmas, from an apparently reputable delivery company. The wording on the card encouraged consumers to unwittingly call a premium rate telephone number, which was never answered. The Tribunal upheld a breach of paragraph 5.4.1a of the Code.

Decision: UPHELD

ALLEGED BREACH TWO

DELAY (Paragraph 5.4.2)

"Services must not be unreasonably prolonged or delayed."

1. The service purported to be a live service answered by an operator, however complainants were kept on hold and did not appear able to speak to anyone. The Executive called the premium rate number and heard the same continuously repeated call queuing message as the complainants, until being automatically cut off after approximately 3 minutes 24 seconds. The repeated message stated:

'Thank you for calling JP Couriers, all of our operators are currently busy, your call is important to us, please hold and one of our operators will assist you as soon as possible, thank you'

The Executive considered call queuing for more than 15 seconds to be unreasonable. The Executive expected that if there were no available free operators, customers should have been played a short message asking them to call back later. In other words, callers should not have been given the option to remain in a queue.

2. The service provider did not respond to the breach raised.

3. The Tribunal considered the evidence and determined that the service had been deliberately designed to cause delay, demonstrated by the recorded message which falsely informed consumers that their call would be answered in due course. It was apparent to the Tribunal that the longer consumers unwittingly stayed on the line, the more money the service generated. The Tribunal upheld a breach of paragraph 5.4.2 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 the cost of calling the premium rate number was £1.50 per minute. However, no pricing information was provided in the promotional card.
2. The service provider did not respond to the breach raised.
3. The Tribunal considered the evidence and determined that the pricing information as required by paragraph 5.7.1 had not been included in the promotional material. The Tribunal concluded that due to the apparent fraudulent nature of the service, the omission was deliberate. 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. The Executive noted that no contact details were provided in the promotional material.
2. The service provider did not respond to the breach raised.
3. The Tribunal considered the evidence and noted that the required contact information in paragraph 5.8 of the Code had not been supplied to consumers. The Tribunal concluded that due to the apparent fraudulent nature of the service, the omission was deliberate. The Tribunal upheld a breach of paragraph 5.8 of the Code.

Decision: UPHELD

ALLEGED BREACH FIVE

LIVE SERVICES (Paragraph 6.3.1a)

“Unless PhonepayPlus grants permission to do otherwise:

a all providers of live services must ensure that on connection each service user receives a brief introductory message giving details of the call costs and the name of the service provider providing the live service....”

1. The Executive noted that although the service purported to be a live service, it failed to provide the requisite introductory message for live services. When the Executive monitored the service, it found that neither pricing information nor the name of the service provider was stated in the introductory message.
2. The service provider did not respond to the breach raised.
3. The Tribunal considered the evidence and noted that an introductory message containing the content required by paragraph 6.3.1a had not been provided. The Tribunal upheld a breach of paragraph 6.3.1a 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 parcel service was operated in a manner that deliberately enticed consumers to call the premium rate number, for the sole purpose of generating revenue;
- There was material consumer harm; namely 8 consumer complaints;
- The cost paid by individual consumers was high; £1.50 per minute; and
- The parcel delivery service model has been seen repeatedly, PhonepayPlus having previously issued repeated warnings to the industry.

In mitigation, the Tribunal considered the following factors:

- The service provider stated that the service and its promotion were operated by a third party who had contracted with the information provider; and
- The service provider co-operated with PhonepayPlus when notified of the breaches and stopped the service on 24 November 2008.

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 therefore decided to impose the following sanctions:

- A formal reprimand;

- A £30,000 fine.
- The Tribunal also imposed a bar on the service until compliant. The Tribunal commented that it doubted whether the service which had been the subject of the complaints could be made compliant with the Code. The Tribunal 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.