

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 4 March 2010
TRIBUNAL SITTING No. 48/ CASE 3
CASE REFERENCE: 805602/JI

Associated Individual: Jaipal Singh
Service Provider: Jay Singh t/a JST Promotions

THIS CASE WAS BROUGHT AGAINST AN ASSOCIATED INDIVIDUAL UNDER PARAGRAPH 8.9.4 OF THE CODE

BACKGROUND

PhonepayPlus had evidence suggesting that Mr Jaipal Singh was involved in a number of companies which had been subject to adjudication in relation to a serious breach, or series of breaches, of the PhonepayPlus Code of Practice (11th Edition Amended April 2008) ('the Code').

The Tribunal considered a report prepared by the Executive in accordance with paragraph 8.9.4 of the Code and was minded to name Mr Jaipal Singh as an associated individual. The Executive commenced the naming procedure under the following paragraph of the Code of Practice:

- Paragraph 8.9.2 f and g - Knowing involvement in a serious breach, or series of breaches, of the Code

The Investigation

The Executive has conducted this investigation in accordance with paragraph 8.9.4 of the Code.

The Executive sent a letter to Jaipal Singh on 7 January 2010, confirming the pursuance of the naming procedure and enclosing documentation referred to in the letter.

Jaipal Singh contacted the Executive by telephone on 8 January 2010. A summary of the call as interpreted by the Executive was sent to Jaipal Singh on 11 January 2010. As Jaipal Singh had informed the Executive that the email address it had used to send correspondence was incorrect, the Executive re-sent the original letter and documentation on the same date.

A formal response to the letter was provided by Jaipal Singh on 19 January 2010, along with a covering statement. Jaipal Singh did not exercise his right to make an Informal Representation to the Tribunal.

The Tribunal made a decision on the proposed sanction on 4 March 2010.

SUBMISSIONS AND CONCLUSIONS

KNOWING INVOLVEMENT IN A SERIOUS BREACH OR SERIES OF BREACHES (Paragraph 8.9.2f and g)

“The Tribunal has a range of sanctions which it may apply according to the seriousness with which it regards any breaches. Having taken all relevant circumstances into account, PhonepayPlus may singularly or in any combination in relation to each breach:

f prohibit a service provider, information provider and/or any associated individual found to have been knowingly involved in a serious breach or series of breaches of the Code from involvement in or contracting for the provision of a particular type or category of service for a defined period.

g prohibit a service provider, information provider and/or any associated individual found to have been knowingly involved in a serious breach or series of breaches of the Code from involvement in or contracting for the provision of any premium rate services for a defined period.”

1. The Executive considered that Mr Jaipal Singh was knowingly involved in a serious breach, or series of breaches, of the Code based on the following grounds:

Ground 1

Case reference 765871 – Speedreview Limited ('Speedreview')

Known addresses:

- 31 Yewhurst Road, Solihull, West Midlands, B91 1PN (Current registered address)
- Euro House, Earlsway Team Valley Trading Estate, Gateshead, NE11 0RQ

The Executive submitted that this adjudication related to a service promoted through missed calls, whereby consumers received unsolicited calls to personal landlines or mobiles from one or more 070 prefixed numbers allocated to the Service Provider. The complainants were consistent in claiming that the call they received terminated after one ring, prompting consumers to return the call whilst being unaware that the number was not a mobile number and would incur higher rate charges. The vast majority of complainants who returned the call indicated that they were connected to a recording of a ringing tone. The Executive's monitoring of the service also identified that some of the numbers were associated with a company called 'Promotions Today'.

The Tribunal, which adjudicated on the case on 2 April 2009, regarded the overall seriousness of the case as 'very serious' and imposed the following sanctions against the service provider:

- A formal reprimand;
- A fine of £150,000; 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.

As the fine and administrative charges issued to Speedreview were not paid, further breaches of the Code were upheld against the Service Provider, pursuant to Code paragraphs 8.9.3b (non-compliance with an imposed fine sanction) and 8.12 (non-payment of an invoiced administrative charge). Speedreview is currently on the PhonepayPlus list of 'Barred SPs for non-payment of fines'.

As the services operated by Speedreview and JST Promotions both used numbers associated with the company, Promotions Today, and that the scripts for these numbers mimic one another, the Executive asserted that, on a balance of probabilities, Jaipal Singh was the owner of JST Promotions was, and was therefore knowingly, involved in the breaches of the Code for this service.

Ground 2

Case reference 774947 – Jay Singh t/a JST Promotions ('JST Promotions')

Known addresses:

- 19 Kenyon Street, Birmingham, West Midlands, B18 6AR
- 176 Monument Road, Edgbaston, Birmingham B16 SXF (Previous address)

The Executive submitted that this adjudication related to a service promoted through missed calls, whereby consumers received unsolicited calls to personal mobiles from one or more 070 prefixed numbers allocated to the Service Provider. The complainants were consistent in claiming that the call they received terminated after one ring, prompting consumers to return the call whilst being unaware that the number was not a mobile number and would incur higher rate charges. The vast majority of complainants who returned the call indicated that they were connected to a recording of a ringing tone. The Executive's monitoring of the service also identified that some of the numbers were associated with a company called 'Promotions Today'.

The Tribunal, who adjudicated on the case on 2 April 2009, regarded the overall seriousness of the case as 'very serious' and imposed the following sanctions against the service provider:

- A formal reprimand;
- A fine of £110,000; 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.

Jaipal Singh was the primary contact given to the Executive for this investigation by the network operator, Plaza Telecom Limited (formerly Hotchilli Communications Limited) ('Plaza'), and the Executive asserted that he was sole contact who liaised with the Executive by email during the investigation. The Executive asserted that Jaipal Singh had signed a contract on 24 April 2007 for the provision of the 070 numbers used to operate the premium rate service. The revenue generated by the service related to the period commencing 24 April 2007. The Executive would therefore assert that Jaipal Singh was knowingly involved in the serious breaches of the Code by JST Promotions.

Ground 3

Case reference 751193 – Symtek Communications Limited ('Symtek')

Known addresses:

- 8-10 Lower Ford Street, Coventry, CV1 5QJ
- 117 Pottery Road, Old Bury, B68 9HE (Previous address)

The Executive submitted that this adjudication related to a service promoted through missed calls, whereby consumers received unsolicited calls to personal mobiles from

one or more 070 prefixed numbers allocated to the Service Provider. The complainants were consistent in claiming that the call they received terminated after one ring, prompting consumers to return the call whilst being unaware that the number was not a mobile number and would incur higher rate charges. The vast majority of complainants who returned the call indicated that they were connected to a recording of a ringing tone.

The Tribunal, who adjudicated on the case on 2 April 2009, regarded the overall seriousness of the case as 'very serious' and imposed the following sanctions against the Service Provider:

- A formal reprimand;
- A fine of £250,000; 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.

As the fine and administrative charges issued to Symtek were not paid, further breaches of the Code were upheld against the Service Provider, pursuant to Code paragraphs 8.9.3b (non-compliance with an imposed fine sanction) and 8.12 (non-payment of an invoiced administrative charge). Symtek is currently on the PhonepayPlus list of 'Barred SPs for non-payment of fines'.

The revenue generated on the 070 numbers used to operate the service was paid to JST Promotions, which the Executive asserted was owned by Jaipal Singh. Plaza supplied further evidence of Jay Singh's involvement in the form of emails he sent to Plaza requesting the allocation of 070 numbers on behalf of Symtek. The Executive would therefore assert that Jaipal Singh was knowingly involved in the serious breaches of the Code by Symtek.

Ground 4

Case reference 767427 – Enbel Limited ('Enbel')

Known addresses:

- 19 Kenyon Street, Birmingham, West Midlands, B18 6AR

The Executive submitted that this adjudication related to a service promoted through missed calls, whereby consumers received unsolicited calls to personal mobiles from one or more 070 prefixed numbers allocated to the Service Provider. The complainants were consistent in claiming that the call they received terminated after one ring, prompting consumers to return the call whilst being unaware that the number was not a mobile number and would incur higher rate charges. The vast majority of complainants who returned the call indicated that they were connected to a recording of a ringing tone.

The Tribunal regarded the overall seriousness of the case as 'very serious' and imposed the following sanctions against the Service Provider:

- A formal reprimand;
- A fine of £110,000; and
- The Tribunal, who adjudicated on the case on 2 April 2009, 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.

As the fine and administrative charges issued to Enbel were not paid, further breaches of the Code were upheld against the Service Provider, pursuant to Code paragraphs 8.9.3b (non-compliance with an imposed fine sanction) and 8.12 (non-payment of an invoiced administrative charge). Enbel is currently on the PhonepayPlus list of 'Barred SPs for non-payment of fines'.

Mr Jit Singh was listed as the contact for both Enbel and JST Promotions on a 'Formal Direction for Service Provider Details' form provided by the network operator, 4D Interactive Limited. Although the name Jit Singh is listed, the address details related to both Enbel and JST Promotions. The Executive asserted that the email address and the contact mobile number related to Jaipal Singh. Furthermore, the revenue generated on the 070 numbers used to operate the service was paid to JST Promotions, which the Executive asserted was owned by Jaipal Singh. Plaza supplied further evidence of Jay Singh's involvement in the form of emails he sent to Plaza requesting the allocation of 070 numbers on behalf of Enbel. The Executive therefore asserted that Jaipal Singh was knowingly involved in the serious breaches of the Code by Enbel.

Ground 5

Case reference 766056 – PCB Telecom Limited ('PCB Telecom')

Known addresses:

- Redfern House, 29 Jury Street, Warwick, CV34 4EH
- 121 High Street, West Bromwich, B70 6NY (Previous address)

The Executive submitted that this adjudication related to a service promoted through missed calls, whereby consumers received unsolicited calls to personal mobiles from one or more 070 prefixed numbers allocated to the Service Provider. The complainants were consistent in claiming that the call they received terminated after one ring, prompting consumers to return the call whilst being unaware that the number was not a mobile number and would incur higher rate charges. The vast majority of complainants who returned the call indicated that they were connected to a recording of a ringing tone.

The Tribunal, who adjudicated on the case on 2 April 2009, regarded the overall seriousness of the case as 'very serious' and imposed the following sanctions against the service provider:

- A formal reprimand;
- A fine of £500,000; 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.

As the fine and administrative charges issued to PCB Telecom were not paid, further breaches of the Code were upheld against the service provider, pursuant to paragraphs 8.9.3b (non-payment of fine) and 8.12 (non-payment of administrative charge) of the Code. PCB Telecom is currently on the PhonepayPlus list of 'Barred SPs for non-payment of fines'.

The Executive asserted that information supplied by Plaza indicated that the bank account details for JST Promotions were the same as those for PCB Telecom, proving that the revenue generated on the 070 numbers used to operate the service

was paid to JST Promotions, which the Executive asserted was owned by Jaipal Singh. Plaza supplied further evidence of Jay Singh's involvement in the form of emails he sent to Plaza requesting the allocation of 070 numbers on behalf of PCB Telecom. The Executive therefore asserted that Jaipal Singh was knowingly involved in the serious breaches of the Code by PCB Telecom.

Ground 6

Case reference 712724 – JJ Trading Limited ('JJ Trading')

Known addresses:

- 725 The Big Peg Vyse Street, Hockley, Birmingham, B18 6NF

The Executive submitted that this adjudication related to a competition information service, whereby consumers received unsolicited reverse-billed text messages containing 'news gossip' content. The messages were charged at 50 pence per text message received and some complainants received multiple messages. The case was pursued against the service provider, Tanla Mobile Limited, but the service was operated by the Information Provider's (Plaza Telecom Limited formerly Hotchilli Communications Limited) client, JJ Trading. The service also involved Airwaves Telecom, who provided Information Provider support, and Erasmus Telecom.

The Tribunal, who adjudicated on the case on 13 March 2008, regarded the overall seriousness of the case as 'serious' and imposed the following sanctions against the Service Provider:

- A formal reprimand;
- A fine of £25,000; and
- In the light of the aggravating factors applicable to this service and its promotion, a bar on the provision of all reverse-billed SMS services for a period of six months suspended for a period of three months from the date of this Adjudication, and thereafter removed if the following conditions were satisfied, namely:

'That during the period of suspension, the service provider demonstrates to the reasonable satisfaction of the Executive that it has in place:

- (a) the systems and processes; and
- (b) the governance structure and resources to maintain such systems and processes,

to ensure compliance with the Code by the services, and promotions for services, offered to consumers through its operations.'

The Panel took the view that given their responsibilities under the Code, service providers dealing with large numbers of information providers should have systems and procedures in place that pay particular attention to compliance. The Panel felt that this case and the breach history suggested that such systems and procedures were not sufficiently present and imposed sanctions accordingly.

Jaipal Singh was appointed Secretary of JJ Trading (dissolved 31 March 2009) from 3 November 2006 to 10 January 2007, and was subsequently appointed Director from 10 January 2007 until 5 August 2007.

Jaipal Singh was also appointed Director of Airwaves Telecom (dissolved 23 June 2009) from 6 February 2007. JJ Trading was registered as a Corporate Director for Airwaves Telecom from 6 February 2007 until 15 January 2008.

In addition to the fact that the service was operating through JJ Trading from July 2007, during the period in which Jaipal Singh held a Directorship with the company, the Executive submitted that he was also in contact with the Executive during investigation into the case via the email address jai@airwavestelecom.co.uk and using the signatory of Operations Manager at Airwaves Telecom. The Executive therefore asserted that Jaipal Singh was knowingly involved in the serious breaches of the Code by JJ Trading.

Ground 7

Case reference 710286 – Airwaves Telecom Limited ('Airwaves Telecom') and JJ Trading

Known addresses:

- Ibic Holt Court South, Aston Science Park, Jennens Road, Birmingham, B7 4EJ (Airwaves Telecom)
- 725 The Big Peg Vyse Street, Hockley, Birmingham, B18 6NF (JJ Trading)

The Executive submitted that this adjudication related to an Emergency Procedure investigation into a mobile product service, whereby consumers received unsolicited reverse-billed text messages charged at 50 pence per message. The messages had been sent to over 28,000 users and a random generator had more than likely been used. The case was pursued against the Service Provider, Opera Telecom Limited, but the service was promoted and operated by the Information Provider, JJ Trading, and was subsequently taken over by Airwaves Telecom.

The Tribunal, who adjudicated on the case on 25 October 2007, regarded the overall seriousness of the case as 'serious' and imposed the following sanctions against the service provider:

- A formal reprimand;
- A fine of £25,000;
- A bar on the service until compliant; and
- The Service Provider is to submit the service and all related promotional material to PhonepayPlus for compliance advice.

The Executive produced evidence that Jaipal Singh was appointed Secretary of JJ Trading (dissolved 31 March 2009) from 3 November 2006 to 10 January 2007, and was subsequently appointed Director from 10 January 2007 until 5 August 2007.

It also showed that Jaipal Singh was appointed Director of Airwaves Telecom from 3 September 2004 until the company dissolved on 23 June 2009. JJ Trading was registered as a Corporate Director for Airwaves Telecom from 6 February 2007 until 15 January 2008.

Further, it showed that "Jai" Singh was in contact with the Executive during investigation into the case and stated that the Information Provider initially contracted with the Service Provider was JJ Trading, and the account was subsequently taken over by Airwaves Telecom. Jaipal Singh was also stated as the contact at Airwaves Telecom on the service provider undertaking form provided by the Service Provider.

The Executive therefore asserted that Jaipal Singh was knowingly involved in the serious breaches of the Code by Airwaves Telecom /JJ Trading.

Ground 8

Case reference 266343 – Airwaves Telecom

Known addresses:

- Ibic Holt Court South, Aston Science Park, Jennens Road, Birmingham, B7 4EJ

The Executive submitted that this adjudication related to a competition service, whereby consumers received three different text messages on their mobile phones, two of which were promotional messages offering mobile phone packages, while the third offered recipients the chance to win a mobile phone. Recipients were charged fifty pence for each of the messages received, including the promotional messages. The service was suspended by the Service Provider following communication between it and a mobile operator after concerns about the delivery of the text messages were first identified. The case was pursued against the Service Provider, Dialogue Communications Limited, but the service was promoted and operated by the Information Provider, Airwaves Telecom.

The Tribunal, who adjudicated on the case on 4 May 2006, regarded the overall seriousness of the case as 'serious' and imposed the following sanctions against the Service Provider:

- A formal reprimand;
- A fine of £25,000; and
- A six-month bar on the service for all shortcodes.

The Executive provided evidence that Jaipal Singh was appointed Director of Airwaves Telecom from 3 September 2004 until the company dissolved on 23 June 2009. He was also in contact with the Executive during investigation into the case, as he sent a letter to the Executive using the email address info@air-tel.co.uk. The Executive therefore asserted that Jaipal Singh was knowingly involved in the serious breaches of the Code by Airwaves Telecom.

Ground 9

Case reference 62029 – Airwaves Telecom

Known addresses:

- Ibic Holt Court South, Aston Science Park, Jennens Road, Birmingham, B7 4EJ

The Executive submitted that this adjudication related to an apparent sales enquiry, whereby a complainant received an unsolicited email. The complainant was asked to dial a 'personal number' in order to speak to Sam and told that they would need to hold for a short time while the call was diverted. Based on the complaint made and a monitoring exercise undertaken by the Executive, it was not clear whether the call would be diverted at all. The Service Provider stated verbally that the premium rate number was operated by one of their clients. The case was pursued against the Service Provider, Airwaves Telecom, who was responsible for the promotion and operation of the service.

The Tribunal, who adjudicated on the case on 26 October 2000, regarded the overall seriousness of the case as 'moderately serious' and imposed the following sanctions against the Service Provider:

- A six-month bar on the service; and
- All promotional material to be submitted to the Executive for approval for one year.

The Executive provided evidence that Jaipal Singh was appointed Telecoms Manager of Airwaves Telecom from 1 September 1999 until the company initially dissolved on 3 June 2003 (it dissolved on two more occasions in 2007 and 2009). He was also named as the contact for Airwaves Telecom prior to this appointment following closure of the investigation. The Executive therefore asserted that Jaipal Singh was knowingly involved in the serious breaches of the Code by Airwaves Telecom.

Ground 10

Case reference 59060 – Airwaves Telecom

Known addresses:

- Ibic Holt Courth South, Aston Science Park, Jennens Road, Birmingham, B7 4EJ

The Executive submitted that this adjudication related to a pay-for-product service, which was found to be operating without prior permission on an incorrect prefix. The promotional material was found to mislead callers about the actual cost of the service. Lastly, the Service Provider failed to supply information requested by PhonepayPlus (then ICSTIS). The case was pursued against the Service Provider, Airwaves Telecom, who was responsible for the promotion and operation of the service.

The Tribunal, who adjudicated on the case on 15 June 2000, regarded the overall seriousness of the case as 'moderately serious' and imposed the following sanctions against the Service provider:

- A £500 fine; and
- A bar on all pay-for-product services until permission has been granted from PhonepayPlus (then ICSTIS).

The Executive provided evidence that Jaipal Singh was appointed Telecoms Manager of Airwaves Telecom from 1 September 1999 until the company initially dissolved on 3 June 2003 (it dissolved on two more occasions in 2007 and 2009). He was also named as the contact for Airwaves Telecom prior to this appointment following closure of the investigation. The Executive therefore asserted that Jaipal Singh was knowingly involved in the serious breaches of the Code by Airwaves Telecom.

2. The Respondent responded to the Executive's allegations as follows:

Ground 1

The Respondent stated that he had no knowledge of the Solihull address and had never conducted any services relating to the use of 070 numbers. He stated that a range of 070 numbers were reserved under an Oxygen8 account in the name of Airwaves, but the Service Provider will verify these were never the subject of sanctions or any fines as they were used as intended for personal numbering services. He stated that these have since been ceased in light of the new Code of Practice.

The Respondent stated that this case hinged on JST Promotions being related to Jay Singh and this was not himself.

Ground 2

The Respondent stated that he had no knowledge of the Birmingham and Edgbaston addresses, had never resided outside of Wednesbury and this could be proved through his electoral roll records.

He stated that the Executive had submitted that Jaipal Singh signed the contract – and this was clearly not the case. He stated that the contract had been signed by Jay Singh (not Jaipal Singh). Furthermore, he stated that this was not his signature.

Ground 3

The Respondent stated that this was an address of which he had had no dealings with, or knowledge of, and that the evidence hinged on a signature (not clearly legible) of Jay Singh and not Jaipal Singh.

Ground 4

The Respondent stated that the address was unknown and that Mr Jit Singh was not known to him and there were no known links. He stated that the Executive could not create a link because of a similar surname, one which was shared by the vast majority of Sikh males worldwide.

Ground 5

The Respondent stated that the address and bank details were unknown to him and that he had checked the bank details provided and determined it is a HSBC sort code. He stated that he had never held a HSBC bank account since his student years as he was not allowed to (due to a longstanding debt).

Grounds 6, 7, 8, 9 and 10

The Respondent stated that Airwaves Telecoms acted as telecoms consultancy and provided details of individuals/end users of services to the Executive and the network operator, where required. He submitted that all due diligence was completed in accordance with the Code of Practice and that Jaipal Singh was not personally involved in any of the cases.

Furthermore, he stated that there had been an instance of identity fraud against Jaipal Singh which could be seen on his credit file. He stated that this had led to serious issues being highlighted as a result of his personal information becoming available in the public domain.

3. The Tribunal considered the evidence and concluded that, in relation to Ground 1, there was insufficient evidence to prove, on a balance of probabilities, that Mr Jaipal Singh was the same individual as 'Jay' Singh. There was therefore insufficient evidence to show that Jaipal Singh had been knowingly involved in the breaches of the Code by Jay Singh t/a JST Promotions (Case ref 774947).

In relation to Grounds 2, 3, 4 and 5, on the basis of the Tribunal's finding in relation to Ground 1, the Tribunal said it was not satisfied that Jaipal Singh was knowingly involved in the breaches of the Code by Speedreview Ltd (Case ref 765871), Symtek Communications (Case ref 751193), Enbel Limited (Case ref 767427) and PCB Telecom Ltd (Case ref 766056) as the Executive's case in relation to these providers all hinged on establishing that Jaipal Singh was the same individual as Jay Singh t/a JST Promotions.

In relation to Grounds 6, 7, 8, 9 and 10, the Tribunal considered the evidence and found that Mr Jaipal Singh was an associated individual, who had been knowingly involved in a series of breaches of the Code, in respect of the following matters: JJ Trading Limited (Case ref 712724) and Airwaves Telecom Limited (Case ref. 710286, 266343, 62029, 590060). On each occasion, Mr Jaipal Singh had been an appointed director of the relevant company. The Tribunal dismissed the respondent's argument that he had not been 'personally involved'.

The Tribunal found that Mr Jaipal Singh had been an associated individual involved in a series of breaches of the Code in relation to grounds 6, 7, 8, 9 and 10.

Decision: UPHELD on grounds 6, 7, 8, 9 and 10.

SANCTIONS

The Tribunal decided to prohibit Mr Jaipal Singh from involvement in, or contracting for, the provision of any premium rate service for a period of two years, under paragraph 8.9.2g of the Code.