

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS

TRIBUNAL DECISION

Thursday 21 January 2010
TRIBUNAL SITTING No. 45/ CASE 1
CASE REFERENCE: 790143/GL

Information provider:	Multiplex Media Limited, Nottingham
Service provider:	MX Telecom Limited, London
Type of service:	Mobile Cash Quiz (promoted under the brands 'Sure to Win' and 'Mobile Candy')
Service title:	'Sure to Win' and 'Mobile Candy')
Service numbers:	66333 and 63666
Cost:	£2 per reverse billed text message. £2-£4 per week
Network operator:	All Mobile Network Operators
Number of complainants:	53

THIS CASE WAS BROUGHT AGAINST THE INFORMATION PROVIDER UNDER PARAGRAPH 8.7 OF THE CODE

BACKGROUND

The PhonepayPlus Executive (the 'Executive') received 53 complaints regarding a text prize competition subscription service operating on shortcodes 66333 and 63666. The service cost £2 per week and gave subscribers the chance to win a weekly prize, typically £500, by answering a general knowledge question sent to them by text. To join the service, consumers registered with one of the Information Provider's promotional partners, selected this service and then opted-in. Originally, the opt-in was effected on-line on the web but by February 2009 the opt-in was by means of text message.

Complainants stated that the service was unsolicited and that they had received unsolicited chargeable messages. During the course of its investigation the Tribunal was also concerned about issues in relation to the service being misleading. In addition, complainants stated that the 'STOP' command had not worked properly.

The Investigation

The Executive conducted this matter as a Standard Procedure investigation in accordance with paragraph 8.5 of the Code.

The Executive issued a breach letter to the Information Provider on 13 October 2009, raising potential breaches of paragraphs 5.2, 5.4.1a, 5.8, 7.6.6c, 7.12.3a-c and 7.12.6a of the PhonepayPlus Code of Practice (11th Edition Amended April 2008) ('the Code'). A formal response was received by the Executive on 6 November 2009.

The Tribunal made a decision on the breach raised by the Executive on 21 January 2010, having heard an Informal Representation from the Information Provider's representatives.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE LEGALITY (Paragraph 5.2)

“Services and promotional material must comply with the law. They must not contain anything which is in breach of the law, nor omit anything which the law requires. Services and promotional material must not facilitate or encourage anything which is in any way unlawful.”

1. The Executive submitted that under Regulation 22 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ('the Regulations'), it is an offence to send unsolicited promotions using electronic mail (including text messages) for direct marketing purposes, unless (1) the recipient has specifically consented to receiving such promotions, or (2) the recipient's details were obtained whilst purchasing a similar or related product or service to that now being promoted and the recipient was given the opportunity, when his details were collected, to opt out (without charge) of receiving further communications, and is given the same opportunity in each subsequent communication (this is known as the “soft opt-in”). Even where such consent or details have been obtained, recipients must be given the opportunity, within each promotion, to opt out (without charge) of using their details for such promotions.

Web Opt-in

The Executive made reference to the following text messages in relation to the web opt in mechanism.

Freemsg>Thanks for joining! Good luck in our Cash Quiz 4 a chance 2 win £500 each week! Please confirm your answer – Reply with ANSWERA, ANSWERB, ANSWERC

Freemsg>Thanks for joining! Good luck in our Cash Quiz. Help 08445 445 438. T&C's suretowin.com. Promoter MML. Cost £2/wk. To end send STOP to 66333

The Executive expressed concern in relation to the web opt-in mechanism in which a consumer would enter a mobile number on the website to receive free initial service text messages (as above) prior to chargeable service text messages (if no STOP command is sent). It submitted that in the event of an incorrect mobile number belonging to someone else being entered into the website, a different individual would receive the premium rate subscription competition service and reverse billed text messages. It submitted that complainants had reported having received unsolicited text messages.

The Executive submitted that registration details in relation to the Information Provider's promotional partner websites (including myoffers.co.uk) provided by the Information Provider had shown that six of the registered mobile phones had not matched the complainants' mobile phone numbers.

It also submitted that that even in those cases in which the complainants details had matched the registration details held by the Information Provider's promotional partners, this was not proof that complainants had entered their mobile number to participate in the specific Mobile Cash Quiz competition. It only proved that complainants had

registered on the promotional partner website. It submitted that complainants had denied consenting to participate in the Mobile Cash Quiz.

Handset MO

The Executive made reference to complainants who received text messages asking them to reply with an answer (see example below) and who were subsequently opted-in to the premium rate service. Complainants had stated that the text messages received were unsolicited. The text messages read as follows:

Message 1: Free to User

Freemsg>Welcome 2 the Mobile Cash Quiz 4 a chance 2 win £500 and an iphone! Your first FREE question is on its way - be sure to answer it to win!!

Message 2: Free to User

What is the capital of Spain? Reply MADRID or PARIS for a chance of winning £500, chance to scoop an iphone + £50 of Lotto lines!

The Executive submitted that the complainants' evidence was that these initial free text messages (including the call to action) were the first time they were made aware of the service and that accordingly they are to be considered as promotional text messages for the purposes of paragraph 11.3.27 of the Code. The promotional text messages sent to complainants were unsolicited and complainants had not directly or indirectly consented to receive any promotion for this service.

2. The Information Provider stated that it was not possible for any consumer to receive the free service text message (Web MO or Handset MO version) without first interacting with one of its promotional partners. It stated that this interaction was key to the process and the catalyst for all future communications to the handset in question. It stated that without it, no messages could have been sent to complainants' handsets. The Information Provider stated that simply registering with myoffers.co.uk, or any of the other promotional websites listed by the Executive in its breach letter, had not caused the receipt of the free service text messages or subscription to its service (for both Web MO and Handset MO versions of the service). It stated that the consumer had to search for its promotional offer, select it to read full details (terms, costs etc, which are all clearly visible) and then input his or her mobile number into the promotion and click the 'enter' button. The entry was then sent via a 'live' URL string to its text message provider. This, in effect, was a request from the promotional website to the Information Provider's text message provider to send the two free service text messages to the mobile phone number provided and was a direct result of a consumer inputting their number onto its promotion. It stated that it was this and only this sequence of events that solicited the receipt of the first two free service text messages and that the process was automated, happened in 'real time' and applied to both the older web user message mechanism and the current handset user message mechanism.

The Information Provider vehemently contested the suggestion that these text messages were 'unsolicited'. It also stated that, given its explanation, it cannot be the case that the consumers 'first awareness' of the subscription service was from the receipt of free service text messages. The Information Provider stated that all entrants were 'date and

time' stamped by its promotional partners, allowing it to determine the exact point that a consumer keyed their mobile number into the site. Furthermore, its promotional partner was able to do the same for the 'live' feed immediately at the point of it being sent. The Information Provider stated that it also captured the user's IP address that was unique to their internet host identification and location address. As such it was the case that any free service text messages sent to handsets were a result of consumer interaction with the relevant website as reflected by the timing of the service text messages i.e.: directly after and in response to a website feed.

The Information Provider stated that (with particular reference to the handset services) it was unsure as to why a consumer would reply to what they have termed an 'unsolicited message'. Furthermore, this was why it also had put the subscription initiation text message (as per the PhonepayPlus Code of Practice) in place to act as further confirmation and reference point as to the consumer's action to join the service.

The Information Provider stated that it did not believe that the text messages could be classified as 'promotional' as they had only been sent to the registered number input into the site by the user and were not 'push marketing' messages.

It stated that it felt it was unreasonable for it to be held responsible if the entrant had inputted either false or incorrect details as even if this was the case and the recipient did not respond then no chargeable text messages would be sent at any point (on the currently live Handset services). It stated that the mechanism was open to misuse as everything in the internet arena.

The Information Provider made specific reference to the non-matching data and stated that one of its promotional partners had carried out some 'back checks' on two of the numbers of the complainants and it appeared that these numbers were transposed by the promotional partner, in error, and the details were, in fact, applied to the incorrect owner. The Information Provider stated that it paid for all leads and did not want 'unsolicited' participants in its services. Furthermore, it stated that it only received the details that had been input by the user into the promotional partner's site at point of registration. It stated that it had no access to the registration data that had been inputted into the promotional partner's site and, therefore, no mechanism to send any text messages that could be deemed 'unsolicited'. It stated that it only received data in the form of a 'paid for' lead and was issued with a 'lead file' (in the form of a spreadsheet) on an agreed weekly or monthly basis.

3. The Tribunal considered the evidence and noted the Information Provider's acceptance that the registration details of four complainants differed from their subscription details. The Tribunal found that in those cases there had been unsolicited direct marketing. The Tribunal further found that in relation to the other complainants there was a conflict of evidence and on the balance of probabilities the Tribunal accepted the complainants' evidence that they had received unsolicited direct marketing. The Tribunal found that the service had therefore operated in contravention to the Regulations and that there had been a breach of the Code. The Tribunal upheld a breach of paragraph 5.2 of the Code.

Decision: UPHELD

ALLEGED BREACH TWO

FAIRNESS (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 there to be a breach of paragraph 5.4.1a of the Code on the following grounds:

Ground 1

The Executive submitted that the Mobile Cash Quiz Service had been promoted on promotional partner websites including myoffers.co.uk and win4now.co.uk. It submitted that the promotional partner website myoffers.co.uk had stated the following:

‘It’s free to join, and it’s free to enter our competitions and prize draws’.

The Executive submitted that the word ‘free’ had been highlighted in bold on the website to make it prominent and that the promotional partner website win4now.co.uk had also used wording indicating that all competitions on win4now were free to enter. The Mobile Cash Quiz premium rate service was promoted on both of these websites. By promoting the Mobile Cash Quiz premium rate service on myoffers.co.uk and Win4now.co.uk, consumers were potentially misled into thinking that the ‘free to enter’ promotion referred to all the competitions promoted on myoffers.co.uk and win4now.co.uk including the Mobile Cash Quiz.

Ground 2 (Web Opt-in)

The Executive made reference to the following text messages:

Freemsg>Thanks for joining! Good luck in our Cash Quiz 4 a chance 2 win £500 each week! Please confirm your answer – Reply with ANSWERA, ANSWERB, ANSWERC

Freemsg>Thanks for joining! Good luck in our Cash Quiz. Help 08445 445 438. T&C’s suretowin.com. Promoter MML. Cost £2/wk. To end send STOP to 66333

The Executive submitted that for those complainants who had not interacted with the service the initial free text messages (as detailed above) had been the first time these complainants were made aware of the service. The messages were therefore considered to be promotional text messages for the purposes of paragraph 11.3.27 of the Code.

The Executive submitted that these promotional text messages were misleading as they did not make clear that consumers were subscribing to the service and that even if they did not reply, they would still be charged. Complainants were not made aware that they should send STOP immediately if they wished to leave the service and not be charged.

The Executive submitted that the message logs showed that there had been no response to the initial question and no interaction except with the use of the STOP command. It submitted that the lack of interaction and the lack of responses to the weekly questions indicated that complainants had not opted-in to the premium rate service and were unaware that they were being charged for receiving the service text messages.

Ground 3 (Handset MO)

The Executive argued that those complainants who had not wished to subscribe to the service but who had received the two unsolicited free texts may have answered the quiz question and so, unknowingly have opted in to the premium rate service. The Executive quoted the text messages as follows:

Message 1: Free to User

"Freemsg>Welcome 2 the Mobile Cash Quiz 4 a chance 2 win £500 and an iphone! Your first FREE question is on its way - be sure to answer it to win!!"

Message 2: Free to User

"What is the capital of Spain? Reply MADRID or PARIS for a chance of winning £500, chance to scoop an iphone + £50 of Lotto lines!"

The Executive submitted that some message logs showed a response to the quiz question and no further interaction with the service. It submitted that the lack of interaction and lack of responses to the weekly questions indicated that complainants had not knowingly opted-in to the premium rate service and were unaware that they were being charged for receiving the messages.

Ground 4

The Executive made reference to one complainant message log that contained the following text message:

'FreeMsg>Before we send you your £500 and HDTV draw question, would you also like 50 FREE LOTTO LINES THIS SAT? Simply reply IN for yes or OUT for no!'

The Executive submitted that the manner in which the text message was worded was likely to mislead recipients into believing that by replying 'OUT' to the service text message they would be opting-out of the service completely rather than receiving '50 free lotto lines'. It made reference to the complainant's message log and submitted that it showed the complainant trying to opt-out of the service. It submitted that replying 'OUT' had actually had the effect of opting the consumer into the premium rate service.

2. The Information Provider responded to both grounds of the Executive's allegations as follows:

Ground 1

The Information Provider stated that it was free to register with any of its promotional partners and it was equally true that it was free to enter the Mobile Cash Quiz. It stated that at the point of entry no charge was levied to the consumer. In fact, as a condition of entry, the first week's entry was free of charge.

The Information Provider stated that the cost of the service was apparent both from the terms and conditions and on the entry page. Users were informed that, after the first week, continued entry cost £2 or £4 (depending on promotion) each week. This was also stated in the subscription initiation text message, which was sent prior to any premium billed service text messages.

Ground 2

The Information Provider referred to the content of the text messages, which it maintained could only have been sent in response to the number being inputted onto the promotional partner's site. It stated that the text messages clearly informed potential users that the service was a chargeable subscription service.

It stated that the lack of continued user interaction represented consumer inertia. It used the analogy of consumers joining a gymnasium and not participating. The Information Provider did not accept that complainants were unaware of the service given that there was interaction with the website and the receipt by them of free service text messages as a result of this interaction.

The Information Provider further stated that it had always operated a 'no quibble' refund policy.

Ground 3

The Information Provider stated that the only way consumers could have received the initial free service text messages was by entering their mobile number on the website of its promotional partner. It stated that the relevant subscription information had been clearly visible on the webpage.

It also stated that the promotions informed users that they would be sent a text message to their mobiles, which they must answer in order to have a chance of winning the cash prize. It argued that the free service text messages, including the question, were very much related to the site the user had been on. It further argued that users were aware of what they were doing as their responses to the text which contained the quiz question was most often sent in just a matter of moments after receipt of the free text message containing the question, i.e.: users knew exactly what the text messages related to. Furthermore, it stated that the only way these consumers could subscribe to its service (i.e. receive chargeable service message) was to provide such a response. The Information Provider stated that it was also worth reiterating, that after the receipt of the user's reply and before the receipt of any premium service text messages, all consumers received a subscription initiation text message, detailing costs, helpline and how to stop the service.

Ground 4

The Information Provider stated that it did not accept that the use of the keywords 'IN' and 'OUT' was misleading, given that the message clearly stated that it was about entry into a Lotto lines syndicate. The Information Provider stated that if the Executive felt that a 'negative' keyword was misleading, it was willing to address the issue.

3. The Tribunal considered the evidence. In relation Ground 1, the Tribunal concluded that the myoffer.co.uk website had made prominent use of the word 'free' in a manner that was likely to mislead consumers. In relation to Ground 4, the Tribunal concluded that the use of the keyword 'OUT' suggested that user would not continue to interact with the service and, on the balance of probabilities, had misled consumers into thinking that texting 'OUT' would reject the service offering.

In relation to Grounds 2 and 3, the Tribunal found that the initial service text messages had been misleading in relation to those consumers for whom those messages had been unsolicited. For these users, it had not been made clear that they were entering a

subscription service. The Tribunal upheld a breach of paragraph 5.4.1a of the Code on all grounds.

Decision: UPHELD on all grounds

**ALLEGED BREACH THREE
CONTACT DETAILS (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 otherwise obvious and easily available to the user."

1. The Executive considered there to be a breach of 5.8 on the following grounds:

Ground 1

The Executive submitted that the promotional web screenshots as provided by the Information Provider failed to include the required contact details including a customer service phone number.

Ground 2

The Executive made reference to the complainants who claimed to have received unsolicited promotional text messages, asking them to reply with an answer. Examples of such text messages are:

Message 1: Free to User

Freemsg>Welcome 2 the Mobile Cash Quiz 4 a chance 2 win £500 and an iphone! Your first FREE question is on its way - be sure to answer it to win!!

Message 2: Free to User

What is the capital of Spain? Reply MADRID or PARIS for a chance of winning £500, chance to scoop an iphone + £50 of Lotto lines!

The Executive submitted that these messages were promotional in nature and failed to include the required contact details.

2. The Information Provider responded as follows:

Ground 1

The Information Provider stated that in all cases the Executive appeared to have ignored the link to the terms and conditions in each promotion, which contained all the contact details of the promoter together with the helpline, as well as all other relevant matters concerning the promotion.

It stated that it regarded the provision of a link to a promotion's terms and conditions as standard practice and felt that this was adequate proof of it taking reasonable steps to bring them to the consumer's attention. The Information Provider also made reference to the initiation text message that read as follows:

“Freemsg>Thanks for joining! Good luck in our Cash Quiz. Help 08445 445 438. T&C’s suretowin.com. Promoter MML. Cost £2/wk. To end send STOP to 66333”

It stated that this message acted as a reference point, so that users could go back and get the relevant details should they need to get in contact.

Ground 2

The Information Provider stated that it was untrue that the free service text messages had been the first the complainants had seen of the service. It stated that complainants must have first been a registered user of a promotional partner site, must have sought and found the promotional offer upon the relevant site, must have entered their number onto the relevant page and must have clicked to enter. This was the only way that these messages would be sent to any handset.

It stated that all details were under the main terms and conditions link and all entrants received their subscription initiation message and had received monthly periodic reminders. It provided the following example:

“FreeMsg> in to win £500 every week with suretowin.com, like Mrs Jagger did. Help 08445445438 5p/min. To end chance 2 win £500 for £2/wk txt STOP to 66333”

3. The Tribunal considered the evidence and concluded that paragraph 5.8 of the Code was not satisfied by the inclusion in the promotion in question of a link to more detailed terms and conditions. The Tribunal also found that there had been a breach of paragraph 5.8 as regards those complainants who had received unsolicited text messages and who had not seen the website. The text messages were promotional material and they did not contain all the necessary contact information. The Tribunal upheld a breach of paragraph 5.8 of the Code.

Decision: UPHELD

ALLEGED BREACH FOUR COMPETITION RULES (Paragraph 7.6.6c)

*“Competition services and promotional material must not:
c suggest that winning is a certainty,”*

1. The Executive submitted that the use of the wording ‘Sure to Win’ in the promotional web pages supplied by the Information Provider had suggested that winning was a certainty. It submitted that the wording ‘Sure to Win’ had been prominently displayed in the top left hand corner of the promotional pages of the websites of ‘My Offers’ and ‘Win 4 Now’.
2. The Information Provider stated that Sure to Win Limited had been a registered company in the United Kingdom since July 2003, the company had been ‘active’ in various premium rate services over that time and had had regular contact with PhonepayPlus (previously ICSTIS) regarding copy and compliance advice. It also stated that it held the web domains for both suretowin.com and suretowin.co.uk.

The Information Provider stated that the promotional site had never suggested that winning was a certainty and that the Sure to Win logo was designed as a company logo by MyOffers so members and entrants could see they were dealing with a real company, which they could find out more about, if they so wished, by visiting the website.

3. The Tribunal considered the evidence and concluded that the Sure to Win logo was an established brand name which did not suggest to any reasonable user that winning was a certainty. However, the Tribunal noted that good practice would suggest that the use of such a name should be reconsidered in the context of this type of promotion. The Tribunal decided not to uphold a breach of paragraph 7.6.6c of the Code.

Decision: NOT UPHELD

ALLEGED BREACH FIVE PROMOTIONAL MATERIAL SUBSCRIPTION REQUIREMENTS (Paragraph 7.12.3a-c)

“Promotional material must:

- a clearly indicate that the service is subscription-based. This information should be prominent and plainly visible and/or audible to consumers,
- b ensure that the terms of use of the subscription service (e.g. whole cost pricing, opt-out information) are clearly visible and/or audible,
- c advertise the availability of the ‘STOP’ command.”

1. The Executive made reference to the complainants who had received unsolicited text messages asking them to reply with an answer. The Executive submitted that complainants had stated the text message to be their first interaction with the service and as such the text messages were promotional. These text messages read as follows:

Message 1: Free to User

“Freemsg>Welcome 2 the Mobile Cash Quiz 4 a chance 2 win £500 and an iphone! Your first FREE question is on its way - be sure to answer it to win!!”

Message 2: Free to User

“What is the capital of Spain? Reply MADRID or PARIS for a chance of winning £500, chance to scoop an iphone + £50 of Lotto lines!”

The Executive submitted that the promotional text messages had failed to include the required information for subscription services.

2. The Information Provider referred to its previous response and stated that it could not be the case that the free service text messages were the complainants’ first interaction with the service and that accordingly the messages were not promotional.

It stated that the consumer had to be a registered user of a promotional partner site and had to have actively sought and found its promotional offer and duly entered their details onto the offer. The text messages also made reference to the information supplied on the website, in terms of the ‘theme’ and prize(s) available.

3. The Tribunal considered the evidence and concluded that, for those complainants who had received unsolicited text messages and who had not seen the website, the text messages themselves had not contained the information required for subscription

services under the Code. Furthermore the general promotional material on the website had lacked clarity as to the subscription nature of the service. The Tribunal upheld a breach of paragraph 7.12.3a-c of the Code.

Decision: UPHELD

**ALLEGED BREACH SIX
SUBSCRIPTION TERMINATION (Paragraph 7.12.6a)**

“a After a user has sent a ‘STOP’ command to a service, the service providers must make no further charge for messages.”

1. The Executive made reference to a complainant message log supplied by the Information Provider which showed that a ‘STOP’ text message had been sent but the user had continued to be charged.

The Executive also made reference to two other complainant message logs provided by the Information Provider that showed that complainants had sent back a number of blank text messages with no STOP command. However, the Executive believed it to be highly unlikely that two users both stated that they had sent back the STOP command a number of times. The Executive submitted that these two complainants had sent the STOP command but had continued to be charged.

2. The Information Provider stated that the first complainant in question had been the victim of a technical error. The Information Provider stated that upon receipt of a free-to-user service text message, the complainant had sent the service text message back to the shortcode, which recognised the first word of this message as the keyword in relation to a different subscription service. It stated that this had since been corrected and could not reoccur.

In relation to the other two complainants, the Information Provider made reference to ‘real time’ screenshots from its text message provider’s platform, clearly showing the receipt of blank user messages from these complainants. It stated that it had no way of recognising these replies as STOP commands, which was why the users had carried on receiving chargeable text messages.

It stated that after careful and constant monitoring of its statistics, over 40% of all leads made use of the stop command before any chargeable texts were received, thus demonstrating that the service was completely understandable to the consumer and that the STOP command had worked. Furthermore, it stated that these users had all received monthly subscription text messages, containing the Helpline number and could have made contact to stop the service if they thought the stop was not working correctly.

3. The Tribunal considered the evidence and accepted the message logs supplied by the Information Provider. It found that on the balance of probabilities the response text messages in question had not stated the word STOP and that there was insufficient complainant evidence to prove otherwise. The Tribunal decided not to uphold a breach of paragraph 7.6.6c of the Code.

Decision: NOT 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 behaviour of the Information Provider was reckless as to the breaches found.
- The cost paid by individuals was high. One consumer incurred a £78 charge. The service also continuously billed consumers in the absence of any consumer interaction.
- Non-compliant subscription services have been singled out for criticism by PhonepayPlus.

In mitigation, the Tribunal noted the following factor:

- The Information Provider asserted that it had made refunds.

The revenue in relation to this service was in the lower range of Band 2 (£250,000-£500,000). Having taken into account the aggravating and mitigating factors, the Tribunal concluded that the seriousness of the case should be regarded overall as **significant**. Having regard to all the circumstances of the case, including the revenue of the service, the Tribunal decided to impose the following sanctions:

- A Formal Reprimand;
- A £50,000 fine;
- The Tribunal ordered the Information Provider to seek compliance advice in respect of the issues identified by the Executive in relation to this service and its promotion within two weeks from the date of publication of this adjudication, such advice to be implemented to the satisfaction of the Executive within two weeks of receipt.
- The Tribunal also ordered that claims for refunds are to be paid by the Information Provider for the full amount spent by complainants, except where there is good cause to believe that such claims are not valid.