

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 4 March 2010
TRIBUNAL SITTING No. 48/ CASE 4
CASE REFERENCE: 805605/JI

Associated Individual: Parvinder Singh
Service Provider: Enbel Limited

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

BACKGROUND

PhonepayPlus had evidence suggesting that Mr Parvinder Singh was involved in a company 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 Parvinder Singh as an associated individual. The Executive notified Mr Parvinder Singh of the procedure by way of letter dated 7 January 2010, confirming it was pursuing the naming procedure under the Code of Practice:

- Paragraph 8.9.2f 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 Parvinder Singh on 7 January 2010, confirming the pursuance of the naming procedure and enclosing documentation referred to in the letter.

A formal response to the letter was provided by Parvinder Singh on 14 January 2010, along with a covering statement.

The Executive sent an email to Parvinder Singh on 21 January 2010, clarifying the resignation date of his directorship of Enbel Limited.

Parvinder Singh sent a response email to the Executive on 27 January 2010, attaching call logs for the period October 2007 to January 2008 for Enbel Limited.

On 29 January 2010, the Executive sent an email to Parvinder Singh acknowledging that the majority of the calls made to the service in breach of the Code in relation to Enbel Limited were made after Parvinder Singh's resignation as Director of the company.

Parvinder Singh did not exercise his right to make an Informal Representation to the Tribunal.

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

SUBMISSIONS AND CONCLUSIONS

KNOWING INVOLVEMENT IN A SERIOUS BREACH OR SERIES OF BREACHES (Paragraph 8.9.2(f) 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 Parvinder Singh was knowingly involved in a serious breach, or series of breaches, of the Code based on the following:

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’.

The Executive provided evidence to show that Parvinder Singh was appointed Director of Enbel from 2 January 2007 until 31 January 2008 and signed a contract on 20 October 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 20 October 2007. The Executive therefore asserted that Parvinder Singh was knowingly involved in the serious breaches of the Code by Enbel.

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

The Respondent stated that the information contained in the Executive's submission evidence showed him being a director from 2 January 2007 to 19 May 2008, which was incorrect.

He stated that he was Director of Enbel Ltd from 2 January 2007 to 31 January 2008.

He stated that the Executive evidence indicated that revenue was generated on numbers owned/operated by Enbel from 20 January 2007, which was incorrect.

He also stated that during his time as a director of Enbel Ltd, none of the numbers directly owned by Enbel or supplied by Hotchilli or any other company were used. He stated that as he was no longer a Director he did not have access to this data, but this data can be obtained from both Enbel Ltd and Hotchilli Communications Ltd.

He stated that if the Executive did have data demonstrating that these numbers were used whilst he had been a Director, could it please supply it to him so that he could take it up directly with Hotchilli Communications Ltd and therefore demonstrate to the Executive that no traffic was running whilst he was a Director.

3. The Tribunal considered the evidence and found that there was insufficient evidence to find that Mr Parvinder Singh had been knowingly involved in the breaches of the Code by Enbel Limited (Case ref. 767427).

The Tribunal did not find that Mr Parvinder Singh had been knowingly involved in a series of breaches of the Code in relation to the grounds presented by the Executive.

Decision: NOT UPHELD

SANCTIONS

The Tribunal imposed no sanction.