

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 28 APRIL 2011 TRIBUNAL SITTING No. 75/ CASE 1
CASE REFERENCE: 851621

Service provider:	Ericsson (IPX) AB, Sweden
Information provider:	Pegasus Blue Inc, USA
Type of service:	Cheats/tips subscription service
Service title:	'Club Penguin Cheats'
Service number:	65105, 80810 and all other shortcodes in relation to this service
Cost:	£4.50 per week
Network operator:	All Mobile Network Operators
Number of complainants:	4

THIS CASE WAS BROUGHT AGAINST THE SERVICE PROVIDER UNDER PARAGRAPH 8.5 OF THE CODE

BACKGROUND

The Executive identified issues with the service during the course of a routine monitoring exercise and simultaneously received complaints in relation to a service called 'Club Penguin Cheats' operating on shortcodes 65105 and 80810, that provided hints, tips and cheats for video games. Some complainants reported that their children were receiving text messages from the service in association with the 'cheats.mynewsalertstoday.com' website.

Complainants stated the text messages were unsolicited, that there had been misunderstanding as to the cost of the service and on some occasions it had not been possible to stop the service.

The Executive monitored the service and promotional material for the service, including the website 'unlockcheatscodes.net'. It considered that the service would be attractive to children and was concerned about the issues raised by the complainants and the lack of information in the promotions.

The Service and Monitoring

The Executive identified, through routine monitoring exercises and investigation, that the 'Club Penguin Cheats' promotion on the website 'unlockcheatscodes.net' operating on shortcodes 65105 and 80810.

The top result of a Google search for 'Club Penguin Cheats' was a sponsored advertisement for the website 'unlockcheatscodes.net'. This subscription-based service offered cheats for 'Club Penguin', a service that was promoted as costing "4.5GBP PER WEEK". In order to subscribe, users were required to send the keyword "CODE" to shortcode 65105. Upon accessing the homepage of the 'unlockcheatscodes.net' website directly, the same 'Club Penguin Cheats' promotion was located by the Executive. However, this subscription service operated on shortcode 80810 and cost "£2 every 4 days".

The Executive noted that 'Club Penguin' is a social gaming site promoted by Disney, and consists of an online community of colourful cartoon penguins attractive to children. The

service called 'Club Penguin Cheats', the subject of the investigation, used the same or, very similar, Disney imagery on the 'unlockcheatscodes.net' website in order to promote its service as was used in relation to Disney's 'Club Penguin' game. The Executive also noted that the 'unlockcheatscodes.net' website also offered a tips and tricks service for the separate social gaming site known 'Webkinz'.

Suspension of the service

Due to the serious issues identified through Executive monitoring and by the message logs, the Executive recommended on 10 December 2010 that the above services and all other similar services be suspended immediately until further notice. Confirmation of the suspension was received from the Information Provider.

On 7 March 2011, the Executive monitored the service again and found it was promoting a subscription service for cheats for various 'Poke Môn' games, also costing £4.50 per week. The Executive considered the 'Poke Môn' cheats services to be aimed at and attractive to children, thus operating in contravention of the Executive's original instructions to suspend all similar services. The Information Provider suspended that and other similar services on 7 March 2011.

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 Service Provider dated 17 March 2011. The Service Provider responded to the breaches in a letter dated 30 March 2011 following the Executive's refusal of an Information Provider pass-through request dated 15 April 2011.

The Tribunal made a decision on the breaches raised by the Executive on 28 April 2011 following an informal representation by the Service Provider and its representative.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

PRICING INFORMATION (COST) (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 made reference to its monitoring exercise and submitted that, at that time, the pricing information displayed on the 'Club Penguin Cheats' promotion on the 'unlockcheatcode.net' website had read "4.5 GBP PER WEEK" and had been presented in small black font on a grey background (Appendix A). It compared the small black font of this pricing information with the request for the user to enter the service by sending the keyword 'CODE' to shortcode 65105 which was presented in a significantly larger, bold, red font on a white background. It submitted that, although the pricing was again presented within the terms and conditions as "£4.5 a week", the user was required to scroll down to view this pricing information.

The Executive made reference to the PhonepayPlus Pricing Information Help Note (1 November 2006) and submitted that, according to this Help Note, loose or unclear descriptions such as '1.50 GBP' are all unlikely to provide sufficient pricing information as consumers may not have a full understanding of how much they are being charged.

The Executive submitted that the use of the wording “4.5 GBP PER WEEK” in the promotion had not fully informed users, clearly and straightforwardly of the cost of using the service prior to incurring a charge.

2. The Service Provider accepted the breach during the course of its informal representation. It stated, however, that the pricing information had been updated to the satisfaction of PhonepayPlus.
3. The Tribunal considered the evidence, including the Service Provider’s acceptance of the breach, and concluded that the use of the ‘GBP’ acronym in the context of the colour and size of the text in which it was written was not clear and straightforward pricing information. It followed that the pricing information on the ‘unlockcheatcodes.net’ website had not fully informed consumers, clearly and straightforwardly, of the cost of using the service prior to incurring a charge. The Tribunal upheld a breach of paragraph 5.7.1 of the Code.

Decision: UPHELD

ALLEGED BREACH TWO 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 otherwise obvious and easily available to the user’.

1. The Executive submitted that the ‘Club Penguin Cheats’ promotions that it had monitored on the ‘unlockcheatcode.net’ website had not contained the identity and contact details of either the Service Provider or the Information Provider (Appendix A). Furthermore, no customer service phone number had been provided on this website.
2. The Service Provider accepted the breach during the course of its informal representation. It stated, however, that the customer service information had subsequently been updated to the satisfaction of PhonepayPlus.
3. The Tribunal considered the evidence, including the Service Provider’s acceptance of the breach, and concluded that the website ‘unlockcheatcodes.net’ had failed to provide the identity of either the Service Provider or Information Provider and had failed to provide a customer service number. The Tribunal upheld a breach of paragraph 5.8 of the Code.

Decision: UPHELD

ALLEGED BREACH THREE CHILDREN’S SERVICES -SUBSCRIPTION (Paragraph 7.5.4a)

‘Children’s services must not:

- a) *generally cost more than £3, or in the case of subscription services (see paragraph 7.12), more than £3 per month’*

1. The Executive submitted that the social gaming websites known as ‘Club Penguin’ and ‘Webkinz’ are aimed at, attractive to and played by children. The Executive made reference to the ‘unlockcheatcodes.net’ website and submitted that the tips and

cheats that it promoted used the same, or similar, graphics as the games themselves. This included the use of Disney cartoon imagery of 'Club Penguin' (Appendix A). The Executive submitted that the 'unlockcheatcodes.net' website would have been particularly attractive to children and, as such, the service fell within the definition of a 'Children's service', as defined by the Code. It followed that the service was therefore subject to the provisions of the Code relevant to Children's services.

The Executive submitted that all complaints received by PhonepayPlus had been from parents about their children who had all received text messages from shortcode 65105.

The Executive made reference to its monitoring of the service and submitted that the promotion and operation of the service as well as the message logs indicated that the cost of the service(s) operating on shortcode 65105 had been £4.50 per week. It submitted that a subscription service at this price would have a total cost to the user of £18 per month. The cost of using the service(s) operating on shortcode 80810 was £2 every four days and a user could be billed up to seven times in one month, incurring a total cost £14 per month. The Executive submitted that this had been a Children's subscription service that cost more than £3 per month.

2. The Service Provider accepted the breach during the course of its informal representation. It stated, however, that the terms and conditions in all promotions stated as follows: *"If you are not at least 18 years of age you must have full parental consent to access the Service."* The Service Provider argued that the Information Provider had assumed that any minor that signed up for the service already had parental consent and, in the instance that a minor had subscribed to the service without parental consent, the subscription was immediately halted, the mobile phone number was placed on the block list and a refund was offered in full.
3. The Tribunal considered the evidence, including the Service Provider's acceptance of the breach and the message logs referred to by the Executive. The Tribunal considered the Disney cartoon imagery used in the 'unlockcheatcodes.net' website and the fact that the cheats were in relation to a Disney service. It found that the service was either aimed at, or was particularly attractive to, children and therefore a 'Children's service', as defined by the Code. The Tribunal further found that users of this Children's service incurred a cost of £18 or £14 per month (depending on the shortcode), in excess of the £3 per month maximum under the Code and, accordingly, it upheld a breach of paragraph 7.5.4(a) of the Code.

Decision: UPHELD

ALLEGED BREACH FOUR INITIAL SUBSCRIPTION MESSAGE (Paragraph 7.12.4)

'Users must be sent a free initial subscription message containing the following information before receiving the premium rate service:

- a. *name of service,*
- b. *confirmation that the service is subscription-based,*
- c. *what the billing period is (e.g. per day, per week or per month) or, if there is no applicable billing period, the frequency of messages being sent,*
- d. *the charges for the service and how they will or can arise,*
- e. *how to leave the service,*
- f. *service provider contact details.'*

1. The Executive made reference to the messages logs provided by the Service Provider and submitted that the first text message received by several users had cost £4.50 and had not been free, as required by the Code.

The Executive made reference to its monitoring of the service operating on shortcode 65105 and submitted that, on accessing the service, the monitoring handset instantly receiving three billed text messages at £1.50 each (a total of £4.50) and that this further demonstrated that the first text message had not been free.

2. The Service Provider accepted the breach during the course of its informal representation. It stated, however, that the service had subsequently been amended by the addition a text message, which was sent prior to billing.
3. The Tribunal considered the evidence, including the Service Provider's acceptance of the breach, and concluded that the message log referred to by the Executive and the monitoring exercise both indicated that there had been no free initial text message to provide the service information required by paragraph 7.12.4 Code. The Tribunal upheld a breach of this paragraph of the Code.

ALLEGED BREACH FIVE SUBSCRIPTION REMINDER MESSAGE (Paragraph 7.12.5)

'Once a month, or every time a user has spent £20 if that occurs in less than a month, the information required under paragraph 7.12.4 above must be sent free to subscribers.'

1. The Executive submitted that the message logs supplied by the Service Provider indicated that no free subscription reminder text message had been sent to users. The Executive made reference to one message log that showed that a complainant was billed £58.50 for 13 service text messages (costing £4.50 each), yet received no free subscription reminder text message after spending £20.

The Executive submitted that the message logs had recorded what appeared to be a subscription reminder text message; however, this text message was charged at £4.50 and had not contained any contact details. Furthermore, the Executive considered that the wording *'all info for sub £4,50 per week'* and *"help 2 help, stop 2 stop"*, as used in the text message, had not been sufficient information to clearly identify that the service was subscription-based or how to leave the service.

2. The Service Provider accepted the breach during the course of its informal representation. It stated, however, that the Information Provider had understood that this requirement was only necessary if a user had spent £20 in a period of a month. It stated that, since subscribers had not spent £20 per month on its programs, this requirement had been deemed unnecessary.
3. The Tribunal considered the evidence, including the Service Provider's acceptance of the breach, and concluded that the message log referred to by the Executive indicated that a complainant had been billed £58.50 and not received a free subscription reminder text message service after spending £20. It followed that the user had not received a reminder of the amount already spent as required by paragraph 7.12.4 of the Code. The Tribunal upheld a breach of this paragraph of the Code.

ALLEGED BREACH SIX

‘STOP’ COMMAND (Paragraph 7.12.6)

‘Subscription termination

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

1. The Executive noted that the service was a subscription service costing users £4.50 per week when operating on shortcode 65105, and £2 every four days when operating on shortcode 80810.

It submitted that one of the message logs provided by the Service Provider had indicated that a complainant had sent the ‘STOP’ command on 10 November 2010 and had subsequently received a further three identical chargeable text messages costing £4.50 each, (a total cost of £13.50). The Executive submitted that sending three chargeable text messages to a consumer after that consumer has sent a clear ‘STOP’ command was in contravention of this paragraph of the Code.

2. The Service Provider accepted the breach during the course of its informal representation. It stated, however, that both it and the Information Provider took this new issue seriously and that the cause of the ‘STOP’ command failure was still being investigated. It stated that, following a risk assessment, it was verified that this had been an isolated incident, but that it would continue its investigation until this issue had been resolved. It made reference to the message log referred to by the Executive and stated that the parent of the user in question had contacted its customer service centre on December 1, 2010 to verify that the subscription had ceased. This was confirmed and the parent indicated that their carrier had issued a refund.
3. The Tribunal considered the evidence, including the Service Provider’s acceptance of the breach, and concluded that the message log referred to by the Executive indicated that a complainant had received three charged text messages after having sent a ‘STOP’ command. The Tribunal upheld a breach of paragraph 7.12.6(a) of the Code.

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/Information Provider was reckless in its approach to compliance with the Code.
- The cost of the service to individuals was high. One user was charged £58.50.
- The Service Provider failed to ensure that all services similar to the ‘Club Penguin Cheats’ service were immediately suspended upon receipt of an email from the Executive of 10 December 2010 making that request. It was not until 7 March 2011 that all similar services were suspended.

The Tribunal took into account the following mitigating factors:

- The Service Provider has provided refunds to users.

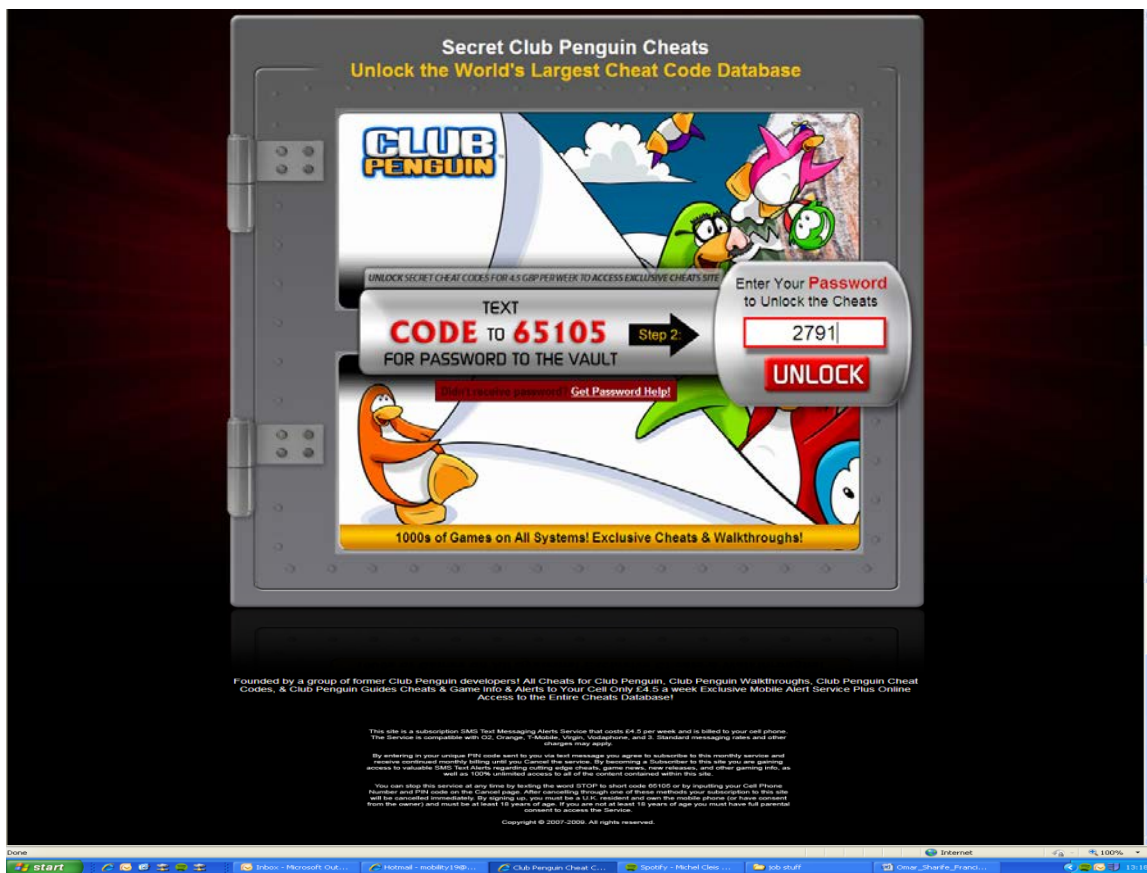
The revenue in relation to this service was in the range of Band 4 (£50,000-£100,000).

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

Having regard to all the circumstances of the case, including the breach history of the Service Provider and the revenue of the service, the Tribunal decided to impose the following sanctions:

- A Formal Reprimand;
- A fine of £50,000.
- The Tribunal ordered that the Service Provider remedy the breaches by seeking and implementing compliance advice to the satisfaction of the Executive prior to the services being resumed.
- The Tribunal ordered refunds to be paid by the Service Provider for the full amount spent by complainants, except where there is good cause to believe that such claims are not valid.

Appendix A – Screenshot of the service website



Close up of the text above

This site is a subscription SMS Text Messaging Alerts Service that costs £4.5 per week and is billed to your cell phone. The Service is compatible with O2, Orange, T-Mobile, Virgin, Vodafone, and 3. Standard messaging rates and other charges may apply.

By entering in your unique PIN code sent to you via text message you agree to subscribe to this monthly service and receive continued monthly billing until you Cancel the service. By becoming a Subscriber to this site you are gaining access to valuable SMS Text Alerts regarding cutting edge cheats, game news, new releases, and other gaming info, as well as 100% unlimited access to all of the content contained within this site.

You can stop this service at any time by texting the word STOP to short code 65105 or by inputting your Cell Phone Number and PIN code on the Cancel page. After cancelling through one of these methods your subscription to this site will be cancelled immediately. By signing up, you must be a U.K. resident and own the mobile phone (or have consent from the owner) and must be at least 18 years of age. If you are not at least 18 years of age you must have full parental consent to access the service.

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