

# THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 17 MARCH 2011 TRIBUNAL SITTING No. 73/ CASE 1  
CASE REFERENCE: 853856

Service provider:	Mr Fabio Goncalo Ferraz Ricardo Bernardo trading as 'Low Cost Cars', Portugal
Information provider:	N/A
Type of service:	Classified section on the 'Exchange and Mart' website, Local press
Service title:	'Articles for Sale'
Service number:	09830930040 and all other or shortcodes in relation to this service.
Cost:	£1 per minute
Network operator:	Mediatel Limited
Number of complainants:	2

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

### BACKGROUND

PhonepayPlus received two complaints in relation to a service called 'Articles for Sale' which was promoted in the classified section of a 'buy and sell' website. Consumers were directed to call a '0203' geographical number that was presented on various advertisements for popular electronic gadgets, such as an 'Apple Macbook'. On calling the '0203' number, consumers heard a recorded telephone message that stated as follows:

*'Unfortunately I am away for now but you can get me on 0 9 8 3 0 9 3 0 0 4 0. Get a pen, I repeat 0 9 8 3 0 9 3 0 0 4 0'*

On calling this premium rate number, a consumer would have incurred a cost of £1 per minute. The Executive was concerned as to the potential misleading nature of this recorded message.

Upon investigating the service further, the Executive was also concerned that the recorded message did not contain sufficient contact information and that the promotional material did not make consumers sufficiently aware of the charge that would be incurred on calling the '09' number.

### Monitoring

The Executive called the '0983' premium rate number and the person who answered stated to be on an important call and requested that the Executive call back. It noted that there was no mention of pricing at this time.

The Executive also noted that the '0203' number and the '0983' number has since been disconnected.

The Executive found that the '0983' number was promoted on the classified section of the classified website 'wrightads.com'.

## **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 February 2011. The Executive made several attempts to contact the Service Provider and received no response.

The Tribunal made a decision on the breaches raised by the Executive on 17 March 2011.

## **SUBMISSIONS AND CONCLUSIONS**

### **ALLEGED BREACH ONE**

#### **PROVISION OF INFORMATION (Paragraph 3.3.2)**

*“Service providers must provide to PhonepayPlus without delay such information as it may require for any purpose relating to this Code which may include but is not limited to:*

- a. any number ranges (including dialling codes) or other connection arrangements allocated to it by Ofcom or any network operator,*
- b. if the service requires or involves access to any website, the URL of the site,*
- c. the name, address, e-mail address, phone and fax number of the person representing the service provider who is nominated to receive all communications in connection with the application of the Code, enabling contact to be made with that person at all necessary times, and, if that person is not a director of the service provider, the name of the director with primary responsibility for premium rate services,*
- d. the name and home address of each of the directors and their phone and fax numbers and e-mail addresses.”*

1. The Executive submitted that it had requested information from the Service Provider in relation to the investigation of this case and in accordance with paragraph 8.3.3 of the Code. The information requested had been as follows:
  - A summary of the way in which the service was intended to operate, including full details of any terms and conditions.
  - Call volume statistics, providing a breakdown of all calls in connection with this service for all numbers on which the service operated for the entire period of operation.
  - Call revenue statistics for all parties in the value chain, also providing details of the total revenue generated on this service, for all relevant numbers for the entire period of operation.
  - Evidence to substantiate that the gadgets being advertised were available for purchase.
  - Evidence of whether compliance advice was sought from PhonepayPlus in relation to this service, if applicable.
  - An indication of whether pricing information was made available within the promotional material and evidence to demonstrate this.

- An indication of whether a non-premium rate customer service helpline number was made available and evidence to demonstrate this.
- The identity of the Information Provider and details of the UK director(s), UK contact address, and company registration number.

The Executive submitted that the Service Provider failed to provide any of the information requested.

2. The Service Provider did not respond to the Executive's submissions in relation to this breach.
3. The Tribunal considered the evidence and concluded that the Service Provider had failed to provide information that had been expressly requested by the Executive in its letter dated 17 February 2011. The Tribunal upheld a breach of paragraph 3.2.2 of the Code.

**Decision: UPHELD**

**ALLEGED BREACH TWO  
FAIRNESS (MISLEADING) (Paragraph 5.4.1a)**

*"Services and promotional material must not: a mislead, or likely to mislead in any way,"*

1. The Executive submitted that one of the complainants stated to have seen an 'Apple Macbook' advertised for sale on the 'Exchange and Mart' website (Appendix A). The second complainant stated to have seen a 'PS3' games machine advertised in a local paper. The Executive submitted that the second complainant stated that the person who answered the call had prolonged the conversation with her son and stated that he was unsure if the PS3 had been sold or not.

The Executive submitted that it had requested that the Service Provider provide evidence to substantiate that these products had been available for sale and had been sold at the suggested price. It submitted that the Service Provider had failed to demonstrate these points and there had, in fact, been an intention to mislead consumers into calling a premium rate number and incur a charge while inquiring about products that had not existed.

2. The Service Provider did not respond to the Executive's submissions in relation to this breach.
3. The Tribunal considered the evidence and noted that, in the absence of any evidence to the contrary and taking into account the general context of the service, on the balance of probabilities, the products advertised for sale had not existed (Appendix A). It found therefore that consumers had been misled into calling the premium rate number on the reasonable assumption that they would be able to buy or discuss the advertised products when, in fact, this was not the case. The Tribunal upheld a breach of paragraph 5.4.1(a) of the Code.

**Decision: UPHELD**

### **ALLEGED BREACH THREE**

#### **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 submitted that a consumer who was interested in purchasing one of the products advertised was directed to call the ‘0203’ geographical number contained within the advertisement. It submitted that, on calling the number, an automated recorded message stated as follows:

*“Unfortunately I am away for now but you can get me on 0 9 8 3 0 9 3 0 0 4 0. Get a pen, I repeat 0 9 8 3 0 9 3 0 0 4 0.”*

The Executive submitted that this recording had prompted users to use a premium rate number and failed to inform the consumer of the full cost of the service, prior to incurring a charge.

The Executive made reference to its monitoring and submitted that, on calling the ‘0983’ number, it was still not informed of the cost of the service. It submitted that one of the complainants had stated to have been unaware of the cost of the service.

The Executive made reference to its monitoring and stated that the ‘0983’ number had appeared in other classified advertisements in the website and without any pricing information.

2. The Service Provider did not respond to the Executive’s submissions in relation to this breach.
3. The Tribunal considered the evidence and concluded that the automated recorded message, as monitored by the Executive, had failed to inform consumers of the £1 per minute cost of the service, prior to incurring this charge. 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 otherwise obvious and easily available to the user.”*

1. The Executive submitted that the automated recorded message had acted as a ‘call to action’ and therefore acted as a promotion for the service within the definition of paragraph 11.3.27 of the Code. As such, the promotion had failed to give the identity of the Service Provider or Information Provider. The Executive submitted that the ‘Exchange and Mart’ website had also failed to provide information regarding identity.

The Executive made reference to its monitoring and stated that the ‘0983’ number had appeared in other classified advertisements in the website and without a customer service number, as required by paragraph 3.3.5 of the Code.

2. The Service Provider did not respond to the Executive's submissions in relation to this breach.
3. The Tribunal considered the evidence and concluded that both the automated recorded message and the featured advertisements had been promotions of the service that failed to provide the identity of the Service Provider or the Information Provider. The Tribunal upheld a breach of paragraph 5.8 of the Code.

**Decision: UPHELD**

## **SANCTIONS**

The Tribunal's initial assessment was that, overall, the breaches taken together were **significant**.

In determining the sanctions appropriate for the case, the Tribunal took into account the following aggravating factors:

- The service demonstrated no value as consumers received nothing of value for their call to the premium rate number.
- The Service Provider's behaviour was deliberate in its operation of the service.
- The Service Provider failed to co-operate with the Executive in its failure to respond to the Executive's correspondence.

The Tribunal considered various potential mitigating factors and concluded that none were applicable to this case.

The revenue in relation to this service was in the low range of Band 5 (£5,000-£50,000).

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 fine of £12,000.
- 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 advertisement featured on the web.

**Exchange and Mart**

BUY MOTORS | SELL MOTORS | BUY ITEMS | SELL ITEMS

BUY AN ITEM | WANTED | GIVEAWAYS

Home Advice

MY SHORTLIST

To create or view your shortlist, please [Log In](#)

Back to search results

### APPLE MACBOOK



PRICE: **£80.00**

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**Advice for Buyers!**

Before you contact the seller, please be aware of the following advice:

- Don't part with any money until you have either received the goods (or service), or are absolutely sure of the legitimacy of the seller.
- If the item is overseas and will cost a significant amount to ship, ensure the seller ships it to the UK at their own expense before viewing it.
- Be careful [how you pay](#) for the item - and beware of sites posing as well known payment providers or third parties (e.g. eBay, PayPal, MSN).
- Beware of anyone [claiming to be affiliated](#) with Exchange and Mart - we do not get involved in the buying and selling process or accept money on behalf of advertisers.
- Read our [advice on buying an item privately](#).
- Please report any suspicious activity to [customersupport@exchangeandmart.co.uk](mailto:customersupport@exchangeandmart.co.uk) or [click here](#) to

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