

BETWEEN:

PHONEPAYPLUS LIMITED

Executive

-and-

THE MOBILE GENERATION I BV

Respondent

ADJUDICATION BY CONSENT ("CONSENT ORDER")

Introduction

1. This Consent Order shall relate to the matter under PhonepayPlus case reference 15429, and the oral hearing listed for 24 June 2014, requested by the Respondent.
2. This Consent Order is made following admissions of liability by the Respondent for the breaches set out in the schedule to this Consent Order, with the Respondent for commercial reasons preferring to settle the case by way of agreement rather than protracted adversarial proceedings.
3. This Consent Order further sets out the agreement of the parties in respect of the sanctions to be imposed on the Respondent and the administrative charges to be paid. The agreed sanctions and administrative charges have been approved by a legally qualified member of the Code Compliance Panel pursuant to paragraph 3.16(d) of Annex 2 to the PhonepayPlus Code of Practice (twelfth edition) ("the Code").

Agreed sanctions

4. The sanctions hereby agreed by the parties are:
 - a. a penalty of £150,000;
 - b. a formal reprimand; and
 - c. a requirement that the Respondent refund all consumers affected by any of the admitted breaches and who claim a refund, for the full amount spent by them on the relevant services, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PhonepayPlus that such refunds have been made.

5. The parties have agreed to meet at the Executive's office at a mutually convenient time in order to discuss the compliance of the service(s) with the Code going forward.

Administrative charges

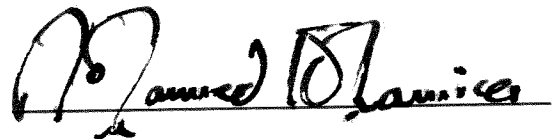
6. The parties have agreed that there shall be no administrative charges payable in respect of this matter.

Payment of fine

7. The fine is to be paid within 28 days of the date of this Consent Order, subject to any alternative payment arrangements which may be agreed between the parties.

Oral hearing date

8. The Oral hearing dates of 24 June 2014 shall be vacated.



Mohammed Khamisa QC (Chair)
On behalf of the Oral Hearing Tribunal
23rd June 2014

SCHEDULE

CASE REF: 15429

BETWEEN:

PhonepayPlus Limited

Executive

-and-

The Mobile Generation I.B.V.

Respondent

SUMMARY OF SERVICES AND ADMITTED BREACHES OF THE CODE

Introduction

1. Between September 2012 and September 2013, the Executive received 490 communications from consumers regarding 4 services (together, the "Services") operating on 2 shortcodes. 3 of the services, named FunForYou, Wixawin and Yamoja, operated at a cost of either £4.00 or £4.50 per week. The fourth service, Yepp-Yepp, operated at a cost of £4.00 per week.
2. All 4 of the Services operated on shortcodes 81121 and 60555.
3. The Services were operated by the Respondent. The Respondent was directly contracted with the Level 1 provider Netsize UK Ltd.
4. Between August 2012 and May 2013 the Executive monitored the 4 Services through various affiliate marketing promotions.

The Admitted Breaches

5. Breaches of Rules 2.3.2, 2.2.5, 2.3.11, 2.3.12(d) and 2.3.1 are admitted by the Respondent in respect of the Services, with the Respondent for commercial reasons preferring to settle the case by way of agreement rather than protracted adversarial proceedings.

Rule 2.3.2

6. In relation to the Yepp-Yepp and Wixawin services, consumers were misled or were likely to have been misled by affiliate marketers into accessing the Services' landing pages as a result of 'free offers' which never materialised. It is acknowledged by the Executive that these misleading promotional actions were undertaken by the affiliate marketers, and not by the Respondent itself; it is accepted by the Respondent that it retains responsibility under the Code for monitoring and ensuring the compliance of the promotion of the Services.

Rule 2.2.5

7. In the Executive's monitoring of all 4 services pricing information was presented in a faint grey colour, and in a small font, at the top and bottom of the Respondent's pages. Some of these pages contained (in bold) the means of access to the Services (i.e. the keyword and shortcode for competition entries). The pricing information presented at the very top of the promotion did not appear to be prominent or proximate to the means of access to each service as it was dominated by the bold text displaying the keyword and shortcode, and the pricing information at the bottom of the Respondent's pages was included as part of other small text containing terms and conditions. It therefore did not appear to the Executive to be presented clearly as standalone information, nor was it prominent or proximate to the means of access to each service.

Rule 2.3.11

8. The Executive's Analysis of complainant logs revealed that in certain cases, a charge was inadvertently made to customers *after* a STOP command had been sent by customers, due to a technical error (a delay between the gateway and operator systems), resulting in a number of the complaints to PhonepayPlus. By way of example, one consumer's log revealed that after sending the STOP command, an acknowledgment of receipt was received, but the consumer later received a further chargeable message. The failure of the STOP command appeared to be as a result of (i) the technical glitch referred to above; and (ii) the Respondent's systems not recognising variations of STOP such as STOPALL.

Rule 2.3.12(d)

9. Message logs relating to complainants revealed that, for the periods of October and November 2012, and due to a technical error, consumers did not receive subscription reminder messages when £20.00 had been spent.

Rule 2.3.1

10. It appeared to the Executive that, in respect of the FunForYou and Wixawin services, consumers were not treated fairly and equitably as the requirements for selection as a winner of the grand prize, and the instructions as to how to compete for the ancillary weekly cash prize, were not made sufficiently clear to the consumer from the outset. It also appeared to the Executive that some complainants who entered the Wixawin service did not receive a free message that contained a multiple choice question and therefore were unable to compete for the weekly prize.

Aggravating and Mitigating Factors

11. The Executive noted the following aggravating factors which are accepted by the Respondent: PhonepayPlus has issued a number of publications relevant to the alleged

breaches of Rules 2.2.5, 2.3.12(d) and 2.3.11 of the Code, including Guidance on pricing; a relevant Notice to Industry prior to the breaches occurring; and at the time of the suspension of the Services in March 2013, a number of relevant adjudications relating to non-compliant affiliate marketing.

12. The Executive accepted the following mitigating factors noted by the Respondent:

- Some of the breaches were caused or contributed to by the activities of Affiliates, with the provider's principal failure under the Code in respect of such breaches being a failure to monitor the Affiliates and ensure their compliance with the Code;
- The provider agreed to the cessation of the services and remedying of the consequences of the breach in a timely fashion, potentially reducing the level of consumer harm;
- The provider proactively refunded consumers in order to prevent consumer harm;
- The provider engaged fully with the Executive and in a responsible manner, taking significant steps to secure a meeting with the Executive to ensure compliance of services going forward;
- The provider cooperated fully in the shutdown of the services complained of to ensure the risks of any breaches reoccurring were minimised, and any detriment remedied.

Seriousness

13. It appeared to the Executive that the case overall was to be regarded as very serious and that appropriate sanctions should be imposed accordingly.