

Honeyfone Lose Appeal In Unusual Circumstances

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What on earth was the Tribunal thinking?

About Honeyfone:

- Very experienced in the retail and wholesale of mobile phones.
- Regular repayments made until the 03/06 and 04/06 period.
- 29 export transactions resulting in a £5m reclaim.
- All deals were back to back and at the end of month
- All companies in the supply chain, including Honeyfone at times, released the stock to its customer before the goods had even arrived in the UK.
- Credit given to EU customers and received from supplier.
- In November 2005, Lloyds TSB closed the business account, Barclays turned them away as they no longer opened accounts for mobile phone traders and an FCIB account was used from this time.
- None of the stock was insured.
- No IMEI numbers were recorded.

The Tribunal Comments

- 27 out of 28 transactions were connected with fraud.
- Honeyfone knew of fraud in the industry but not the full extent of it.
- Honeyfone undertook many of the checks suggested in Public Notice 726, but the Tribunal believed it was simply to keep Customs happy.
- Honeyfone would rely more on gut instinct than the results of checks.
- Credit reference reports showing 'high risk' might have made Honeyfone question how their supplier could extend credit.
- Written references were obtained but little consideration was given to the strength of the reference given.
- Payments were always made to the supplier, some of the individuals involved were met, supplier declarations were in place and Redhill verifications received.
- The Officer had not criticised the company in any way prior to these periods. This gave Honeyfone the belief that they were doing enough to get repayment. However, the Tribunal felt that it could not have given confidence that their transactions were not connected with fraud.
- All suppliers were relatively new companies (5 were incorporated between 2002 and 2005 – 2 were pre 2000).
- Honeyfone had 3 EU customers and all were verified with Redhill. One was deregistered in May 06, one is being investigated by the French authorities, two were British nationals and all three had home addresses in the UK. The Tribunal did not find this overly suspicious.
- The fact that Honeyfone, as an exporter, made a higher profit was suspicious and "it has the smell of an extra payment for taking on a risk of non-recovery of input VAT".
- Reassuringly, the Tribunal found that having no insurance and not inspecting stock did not point to knowledge of fraud, if there was no question of the goods existing. However, it stated that not recording IMEI numbers pointed to a lack of care as to whether the phones could be part of a fraud.

- The fact that the supplier to Honeyfone on one day was its suppliers' supplier on another, points to Honeyfone, at the very least, being a puppet in a fraud. The Tribunal struggles to understand why their regular supplier would not offer the stock to Honeyfone and instead sell it to another company in the supply chain for less than Honeyfone was prepared to pay.
- Importantly for other companies, the Tribunal seemed unaware that Honeyfone's supplier would have got credit from their supplier. The Tribunal were suspicious by the fact that Honeyfone did not find it strange that new companies could offer it credit on such large amounts.
- The greater availability of stock after the Bondhouse decision, might have suggested that there was a possibility that the deals were potentially tainted with fraud. However, it did not see the increase in activity as a pointer that Honeyfone knew about fraud in the supply chain.
- Honeyfone should have been suspicious of the fact that non-UK phones were being sold in the UK and the Tribunal found it surprising that they never purchased stock from abroad, as the stock they were purchasing must clearly have come from abroad.
- The Tribunal didn't believe the director when he said that the UK operated as a 'hub' into which phones were imported and that he felt more secure dealing with phones held by a trusted freight forwarder.
- The fact that all trading partners used the same bank (FCIB) was deemed suspicious, or that Honeyfone should have thought this unusual. This needs addressing in future appeals.
- The fact that their bank closed down their account should have given Honeyfone more awareness of fraud.
- The Tribunal could not *unanimously* conclude that it was more likely than not that Honeyfone knew that there was fraud.
- The director took the market at face value and didn't think about where the phones came from or where they went.
- It is not sufficient to rely on what Public Notice 726 tells you to do and "If the stink from the transactions was strong enough, he would not find the perfume of HMRC's tests enough to cover it up".
- The Tribunal found that one of the transactions chains did not contain a fraudster. We find this astonishing as the evidence clearly shows it did.

Now the important part

So, taking the Tribunals point that, doing all checks as detailed in Public Notice 726 was not enough, what more checks did the Tribunal think could have been done?

- Honeyfone should have contacted its VAT Officers and said "look, I'm concerned about fraud, can you investigate my supply chains for me".
- More bizarrely, the Tribunal said they should have contacted the freight forwarder and asked if they could give any idea whether the first supplier in the chain was substantial; get them to confirm they are going to pay the VAT and then confirm where the goods were imported from.
- It felt that Honeyfone could have also asked their supplier to go to their supplier and ask them to go to their supplier etc. etc. and report back.
- They could have asked their supplier why EU spec phones were in the UK.

It is because Honeyfone did not conduct such checks that the Tribunal found it had the means of knowledge to find fraud in its supply chains, but chose not to look.

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More decisions

CTM's Thoughts

This is an astonishing decision in many ways. This Tribunal Chairman believes that Honeyfone did not explore other ways to verify their supply chains other than conventional methods. It assumes that the trader should believe that there is a very real possibility that fraud exists in their supply chain, yet it accepts that Customs did not relay the true extent of the fraud.

Even though some answers given by the director were a little odd, shall we say, we do not believe the decision was the right one, or at least we do not believe that the reasons for such a decision can be justified.

Although a very frustrating decision, all companies yet to have their hearing will have the opportunity to evidence how the above additional checks could not possibly be undertaken and, therefore, could not have identified fraud.

CTM's cases do address these issues anyway and the above decision could not apply to our clients, but others with pending hearings must ensure that they deal with these.

It is our belief that this decision will be appealed and that future Chairman will come to the conclusion that these additional checks are simply unworkable.

We still believe that most companies will be successful if detailed cases are prepared.

Turn of the CPU Traders

Up until a month ago, CPU traders were left pretty much alone. However, more and more decisions are being received and, particularly in the last fortnight, many CPU traders have received denial letters from Customs. We now believe that all CPU traders should brace themselves for negative decisions. A large amount of our clients are CPU traders and we have imminent appeals in the Tribunal.

It is vital that the defence, if you like, should be as detailed as possible and that you do not simply address the reasons given by Customs in their Statement of Case. Your case must address every possible situation so that Tribunal Chairmen, such as in Honeyfone, do not have the opportunity to make such ludicrous decisions.

Also, CPU traders operate differently to mobile phone traders and a different approach is required in many areas, particularly regarding Forward Logistics.

Too often, we are hearing from Solicitors that Customs have to prove their case and not the other way around. We have even heard some experienced firms stating that spending time requesting disclosure is an advisors way of extracting more money from the client. Quite simply, if you are trying to prove that you were not given sufficient knowledge of fraud by Customs (which we would argue is a vital part of your case) the first place, we would suggest, you look is the Customs electronic folder, which should detail all records of meetings and telephone conversations and also other notes by Officers for internal purposes. We are finding some invaluable (some might say ill advised) comments made by Officers that show little in the way of advice was given. In one case the Officer actually stated that the due diligence procedures were extensive and it is comments like these that may well help you at your hearing.