

PART 8 OF THE ENTERPRISE ACT 2002 (THE "EA")

ADAPTIVE AFFINITY LTD ("the Trader")

UNDERTAKING TO THE OFFICE OF FAIR TRADING (PURSUANT TO SECTION 219, EA) RELATING TO THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008, THE UNFAIR TERMS IN CONSUMER CONTRACT REGULATIONS 1999 AND THE UNFAIR CONTRACT TERMS ACT 1977

In this undertaking the following definitions will be used:

'E-retailer': a website retailer with whom Adaptive Affinity Ltd has a commercial partnership agreement to market membership of a discount scheme.

'Corporate affiliate': the Trader is a corporate affiliate of another trader where either trader partly or wholly owns or controls the other, or they are under common ownership.

UNDERTAKING

Adaptive Affinity Ltd, a body corporate (company number: 05493004; registered office: Wisteria Cavendish House, 369 Burnt Oak Broadway, Edgware, Middlesex, HA8 5AW), hereby undertakes to the Office of Fair Trading, pursuant to section 219 of the EA:

- a. that it will not (whether by its officers, employees or agents or otherwise) continue or repeat the conduct described in paragraphs 1-5 below;
- b. that it will not (whether by its officers, employees or agents or otherwise) engage in such conduct in the course of its business or another business; and
- c. that it will not (whether by its officers, employees or agents or otherwise) consent to or connive in the carrying out of such conduct by another body corporate with which it has a special relationship (within the meaning of section 222(3) of the EA),

namely:

The Consumer Protection from Unfair Trading Regulations 2008 ("CPRs")

Misleading omissions

1. Engaging in conduct which constitutes a misleading omission in breach of regulations 3(1), 3(4)(b) and 6 of the CPRs by omitting, hiding or providing in a manner which is unclear, unintelligible, ambiguous or untimely, material information, as described in the conduct below:

- a. Inviting consumers to provide their credit or debit card details or any similar financial details that potentially enable the Trader or a third party to take payments from the consumer ("Financial Details"), without providing the following information in a clear, conspicuous and unambiguous manner:
 - i. an explanation of all the purposes for which the Financial Details will be used, including, where applicable, the identification of an individual (including the circumstances in which this will occur) and/or payment for a service (including an explanation of that service and how and when payment will be taken), and this explanation should appear either: (i) on the same page on which the Financial Details are entered; or (ii) on a page before the page on which the Financial Details are entered, where those pages form an uninterrupted series of not more than 3 pages; and
 - ii. if Financial Details are to be available for payments to be taken, a clear statement, separated from any other information provided, that the provision of the Financial Details is the authorisation for those payments to be taken, and this statement should appear on the same page as that on which the Financial Details are entered.
- b. Entering into any contract with a consumer under which the consumer is obliged (or may become obliged) to pay a single or periodic payment(s) to the Trader or a third party, without providing the following information in a clear, conspicuous and unambiguous manner on the page on which the consumer enters into the legally binding arrangement (contract) (provided always that in respect of (iii) and (vi) below, if the page on which the consumer enters into the legally binding arrangement (contract) is the third page of an uninterrupted series of not more than 3 pages and the respective information in respect of (iii) and (vi) below has already appeared on either the first or second page of such sequence of 3 pages, that the respective information in respect of (iii) and (vi) may appear on the page on which the consumer enters into the legally binding arrangement (contract) less clearly and less conspicuously than it has already appeared on either the first or second such pages; subject to the requirement that where the respective information in respect of (iii) and (vi) below does appear on the third page, it being the page on which the consumer enters into the legally binding arrangement (contract), in a relatively less clear and less conspicuous form than it has appeared on either of the earlier two pages, it will nevertheless still be presented in an objectively clear and conspicuous form):
 - i. The fact that the consumer is entering into a legally binding arrangement (contract) with the Trader (and, where the Trader is not a corporate affiliate of a trader from whom the consumer has just made a purchase, to do so in a manner that clearly differentiates the two traders);

- ii. Which card details will be used for any payments taken in furtherance of that legally binding arrangement (contract);
 - iii. The service to which the payment relates (including a clear explanation of that service and the charge(s) for that service);
 - iv. Where applicable, that the service is a separate service to any previously authorised, in a manner that clearly differentiates the different services;
 - v. That any new separate service may be rejected by the consumer without affecting access to the previously authorised service(s); and
 - vi. An explanation of the main commercial terms, including: (i) the length of any free trial; (ii) any necessity for membership from the start of a free trial; and (iii) the necessity for the consumer to pay for membership (and the amount(s) of any membership fees) at the expiry of any free trial unless cancellation occurs.-
- c. Entering into any contract with a consumer under which the consumer is obliged to pay a single or periodic payment(s) to the Trader or a third party, without first obtaining unambiguous authorisation from the consumer for the payment, or potential future payment(s), for each and every contract.
- d. Failing clearly and conspicuously to state, where the eligibility of the consumer to obtain any reward is contingent upon the consumer signing up to a membership scheme and authorising payments to the Trader or any third party, that this is the case.
- e. Failing clearly and conspicuously to provide full details concerning the nature of any offer claiming to be "free" where in fact this relates to a trial period only, including details of:
 - i. The duration of the trial period for which the offer is valid; and
 - ii. The consequences of non-cancellation within the trial period.

It is acknowledged for the purposes of this undertaking that "clearly" can include a suitably placed asterisk by the word "Free", which refers to relevant notes below on the same page, providing such notes are displayed clearly.

- f. Failing to clearly and conspicuously explain the nature of the service being provided, including what action (if any) the consumer must take in order to take advantage of the service.
- g. Failing to clearly explain to the consumer, prior to their signing up to the service, product or offer, at what stage in the process they will actually receive the service, product or offer, and any circumstances upon which this may be dependent.

Misleading actions

2. Engaging in, or being otherwise concerned with, whether directly or indirectly, any of the following type of misleading action in breach of regulations 3(1), 3(4)(a) and 5 of the CPRs, as described in the conduct below:
 - a. Presenting any website in a manner that suggests that the completion of a survey, questionnaire or similar item will entitle the consumer to a reward, when the receipt of that reward is contingent upon the entry by the consumer into a new contract with the Trader or a third party.
 - b. Presenting any website in a manner that suggests that a reward is provided by an e-retailer from whose website the reward offer page has been accessed and/or from whom a purchase has just been made, when this is not the case.
 - c. Presenting any website in a manner that suggests that the Financial Details provided by a consumer will or may be used for a specified purpose, when they will or may not in fact be used for that purpose.
 - d. Presenting any website in a manner that contributes to the unknowing authorisation by consumers of payments for more than one scheme at one time, including by:
 - i. Inserting sign-up pages for an "offer", "membership" or "service" in the sign-up procedure for a separate service which the consumer is in the process of completing;
 - ii. Failing to ensure that the name and the terms and conditions (or a clear hyperlink to the terms and conditions) of each "offer", "membership" or "service" are clearly and conspicuously displayed at the point at which the consumer may enter into a legally binding arrangement (contract), for example, by the clicking of a button or the taking of a similar action, in respect of each "offer", "membership" or "service";
 - iii. Failing clearly and conspicuously to state, where more than one scheme is presented to the consumer, that the schemes are separate and will require separate payments, in a manner that clearly differentiates the different schemes.
 - e. Indicating that a consumer will be able immediately to access a specific service (such as indicating that a consumer will be able to view their credit report) at the conclusion of the sign-up process when this is not the case (it is accepted for the purposes of this undertaking that the term 'immediate' may not mean instantaneous but may allow for a brief delay). Where access to a specific service is not immediate, clear caveats should be included as to the nature of the immediacy (such as an asterisk referring to the caveats elsewhere on the same page, with such caveats to be displayed clearly).

Professional diligence

3. Engaging in the following conduct which contravenes the requirements of professional diligence and materially distorts or is likely to materially distort the economic behaviour of the consumer with regard to the product, in breach of regulation 3(3) of the CPRs:
 - a. Misleading consumers with regard to the purposes for which their personal data are being obtained, by leading consumers to believe that their Financial Details are obtained for a purpose other than payment (for example, to facilitate a credit check) whereas in fact such Financial Details are obtained as a means of taking payment from the consumer.
 - b. Failing to ensure that adequate procedures are in place to detect misleading advertisements for the Trader's services appearing on the internet.
 - c. Failing, as soon as is reasonably practicable after discovering that a misleading advertisement has been issued, to:
 - i. use all reasonable endeavours to trace all customers who have become customers due to that misleading advertisement;
 - ii. use all reasonable endeavours to communicate directly with the individuals concerned and explain what has happened;
 - iii. cancel the membership of such individuals in respect of the programme or scheme or service ("Inapplicable Programme") to which such individuals have joined by virtue of the misleading advertisement;
 - iv. cease all future billing to those customers in respect of the Inapplicable Programme;
 - v. refund all payments in respect of the Inapplicable Programme that have been made by such customers.

Banned Practice

4. Claiming (or authorising the making of a claim) that the Trader (or its officers, employees or agents), its commercial practices or its products have been approved, endorsed or authorised by a public or private body when the Trader, the commercial practices or the product have not; or so claiming (or authorising the making of such a claim) without complying with the terms of the approval, endorsement or authorisation; in breach of paragraph 4 of Schedule 1 to the CPRs by:
 - a. Claiming (or authorising a claim) that a bank or any other financial institution has approved, endorsed, or authorised the credit score services provided by the Trader when this is not the case; or
 - b. Failing, where such a claim has been made by a third party with whom AA contracts to provide advertising for AA, expeditiously to take

reasonable steps to procure the removal of any such claim, in breach of Paragraph 4 of Schedule 1 to the CPRs, as soon as is reasonably practicable on becoming aware of that breach.

Unfair Terms in Consumer Contract Regulations 1999 ("UTCCRs") and/or Unfair Contract Terms Act 1977 ("UCTA")

5. Including in the Trader's terms and conditions of contract any of the following terms, which are contrary to the requirements of good faith and cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer, and/or are unfair contract terms, as prohibited by the UTCCRs and/or the UCTA:
 - a. Any terms that allows the Trader to increase the periodic fee paid by the consumer without directly notifying the consumer, in an effective manner, of the fee increase.
 - b. Any terms that allow the Trader to increase the periodic fee paid by the consumer without giving the consumer the corresponding right to cancel, without charge, within a reasonable period.
 - c. Any terms that allow the Trader to take an increased fee from the consumer where the consumer has not been directly and individually notified of the fee increase.
 - d. Any term that seeks to exclude liability for the breach of the Trader's contractual obligation to a consumer to carry out any service with reasonable care and skill, save to the extent to which it is reasonable to do so.