European Commission

MISLEADING « FREE » TRIALS AND SUBSCRIPTION TRAPS FOR CONSUMERS IN THE EU

Executive Summary

March 2016

1) Introduction

Prior consumer surveys carried out at EU level highlight that 95% of EU28 online consumers already purchased goods and services at least once in the previous year. However, consumers are not very aware of their rights when making these purchases online.

A marketing tool that is used to entice online consumers is the use of free trials. They suggest that the product can be ordered for free, or that consumers can subscribe to a service without any costs (for a period of time). Some free trials involve deceptive commercial practices. These misleading trials trap the consumer into subscriptions to purchase the tested product or services. There are persistent problematic practices, affecting many consumers across Europe despite the available legal framework to protect consumers.

However, it is not known exactly what different problematic practices or patterns of such practices are associated with free trials, to what extent problematic practices are prevalent in Europe and what kinds of issues consumers encounter as a result of these problematic practices.

Therefore, this study provides evidence on these various aspects in order to paint a picture of possible problematic practices associated with online free trials in Europe. While "misleading" unfair commercial practices are a specific category governed by the provisions of the Unfair Commercial Practices Directive, in this report the term "misleading" is used to indicate generally free trials that are associated with one or more problematic practices that may infringe applicable EU law.

2) Free trials as elements of business models

Free trials are not harmful per se. Many business models include free trials, and this is more frequently the case now than ever before due to the digital evolution offering more opportunities to communicate and gather information from consumers. Traders often use this marketing technique to showcase their confidence that their product will satisfy the consumer, many without malicious intent. The study examined free trial product offers and test subscriptions as elements of business models in four sectors: cosmetics and healthcare products, food and health supplements, dating services, and digital services (i.e. cloud-based backup and video/music streaming services). A framework looking at the pricing strategies, sources of revenue, cancellation practices, duration of contracts, etc. of free trials and subscriptions was used to screen 900 websites to identify the main types of business models used within each main product group.

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Justice and Consumers

The results led to three typologies of business models:
Typology 1: Health supplements and cosmetics.
These business models typically involve free samples & club membership, relying on consumers trying their products over a prolonged and sustained period of time. As such, consumers are encouraged to try the product and continue their use for maximum effect. Within this typology, there are three broad types of business models: 1) Free samples as a marketing tool; 2) Free samples in return for product reviews; and 3) Club membership from day zero.

Typology 2: Dating services.
Business models for dating services tend to allow users to avail of a restricted service (either time-restricted or feature-restricted) for free while preserving some key features for paying members. Alternatively, this service can be free as the business model is supported by advertisements: marketers can usually rely on a steady flow of web-traffic to advertise their products or services. This typology uses two types of business models: 1) Advertising-supported free sites; and 2) Freemium.

Typology 3: Cloud-based backup services and video/music streaming services.
The associated models allow consumers to engage with the service and rely on consumers' forgetfulness or propensity to continue the status quo. Another explanation could be linked to the perceived transaction costs of closing an account (e.g. where an individual has already stored a lot of information and would need to retrieve this for storage elsewhere).This typology uses two main business modes: 1) Consumer inertia reliant free trials; and 2) Freemium.

3) Defining problematic practices

Problematic practices regarding online free trials can occur at the point of order/purchase when they incorporate any number of marketing methods which include false or deceptive statements/information, omit material information or the terms and conditions include unfair terms. Moreover free trials which lead to a number of negative consumer problems following the purchase, such as unauthorised credit card charges, spam, etc., can also be considered as problematic and may breach applicable EU law. The literature review, the website screening, the consumer survey, the stakeholder survey and the mystery shopping exercise all led to the identification of what can be considered problematic practices regarding free trials.

Problematic free trials include practices that are breaches of EU law or include 'grey zone' practices that push the boundaries of what is legal or are currently untested by EU law.

Identified problematic practices before, during and after ordering a free trial or a test subscription relate to …	
1. Trader's contacts	14. Clarity information start and end dates
2. Trader's country	15. Clarity information on duration
3. Consumer's personal details	16. Clarity information on terms and conditions
4. Passing on consumer's personal details	17. Framing-in strategies
5. Credit card charges	18. Timing to withdraw trial
6. Content of free trial	19. Procedure to withdraw trial
7. Promoting free trial	20. Timing to withdraw subscription
8. Discounting practices	21. Procedure to withdraw subscription
9. Type of free trial charges	22. Delivery of products or services that were not ordered (i.e. inertia selling)
10. Occurrence free trial charges	23. Aggressive debt collection
11. Paid subscription after free trial	24 Quality or value of products/services
12. Occurrence subscription charges	25. Spamming
13. Clarity information charges	

4) State of play of problematic practices

Across the EU28 66% of the online consumers ordered a free trial online in the previous year. The most popular category that consumers enrol in free trials is cosmetics and healthcare products with 45% of the consumers having ordered a free trial in this product category in the last year. Just over a third of the consumers ordered a free trial of food and health supplements and a similar share ordered a free trial of cloud based backup services in the previous year. Among the categories examined in this study, the least popular are free trials of dating services, with around a fifth of the consumers having ordered a free trial in the last year.

Online consumers encounter free trials in a variety of ways, but rarely actively look for such offers. Rather, consumers are most likely to find these offers through online pop-up advertisements. Therefore, the consumer may find themselves in a situation that differs significantly from their typical purchasing behaviour online given that they did not actively seek out the offer and may be less aware of what they are signing up for. Even where consumers are aware of what they are signing up for, consumers are systematically overconfident about their ability to remember to cancel the subscription which is likely to contribute to subscription traps.

Unsurprisingly, consumers make the decision to order the free trial primarily because it is something that they can use or want or because they believe it is a good offer. The fact that free trials are limited offers is not a main driver. This result from the consumer survey was supported by the evidence gathered during the behavioural experiment which found that the inclusion of a 'scarcity text' (i.e. indicating limited availability of the product or service) did not affect the response of those taking part.

Over 900 websites were screened to estimate the extent to which free trials might include problematic practices at the point of purchase (i.e. no free trials were ordered during this exercise). The results highlight that only 2.7% of the screened websites did not include a single problematic practice. In general, the screening results of this study show that half of the free trials and subscriptions include five problematic practices. All types of websites include problematic practices – it is a wide scale issue and not something that is more or less prevalent amongst more popular or less popular websites.
Free trial offers are also volatile. For example, this study found that within an eight week period, 25% of websites assessed for the website screening were no longer available. In particular, the 'pop-up' nature of these offers means that they are highly likely to appear and quickly disappear adding to the difficulties consumers may have in unsubscribing or being able to go back to see what the terms of the original offer were.

In terms of the types of problematic practices that are most common, 40% of websites contained unclear information on charges and there is often missing or poor information on the duration of the trial (41%), the subscription (45%), and on how and when the consumer can withdraw or unsubscribe (43%). There are three single practices which were found in more than half of the products and services offered via the screened websites/apps/social media pages, although mystery shoppers experienced problems on these issues to a lesser extent. These are:

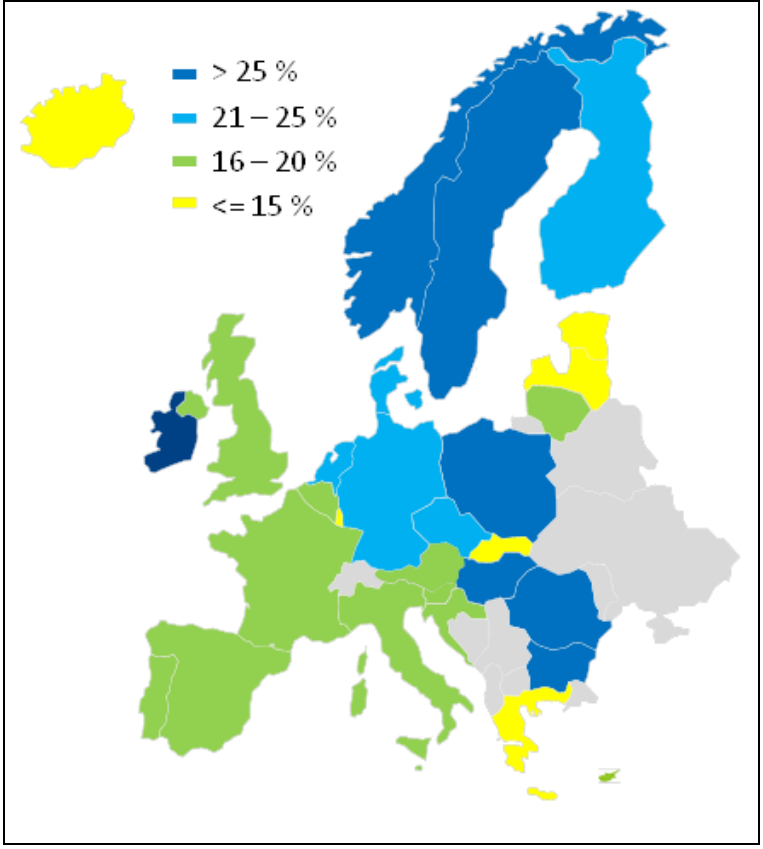
1. In 63% of the screened free trials the trader could pass on details to others without consumers' consent', or it was unclear whether the trader could pass on details to others without consumers' consent'. In the mystery shopping exercise 31% said that it was not clear how their personal details would be treated.
2. In 60% of the screened free trials one or more contact details of the trader could not be found, were false or unclear. This appears to be less of a problem during the mystery shopping exercise as only 7% found it unclear who was offering the trial offer. However, the mystery shoppers were ordinary consumers who may have thought it was clear who was offering the free trial without looking for the

specific details that were used in the website screening exercise. This issue played out once mystery shoppers tried to cancel their subscription as 27% could not find any contact information on the website and 54% that attempted to contact the supplier did not succeed.

3. In 53% of the screened free trials traders used framing-in strategies to engage consumers in the free trial. However, amongst consumers involved in the mystery shopping exercise this was less obvious to them. Only 5% assessed the free trial as including claims that were unauthorised or were missing evidence.

As previously mentioned, 66% of the online consumers in the EU28 had ordered a free trial online. Of the consumers who had ordered a free trial 21% experienced one or more problems (14% of all online consumers).

Proportion of respondents experiencing one or more problems with online free trials and subscriptions (country results)



Interestingly, there are some sociodemographic characteristics that are associated with encountering problems with free trials. This indicates that there may be some profiles of consumers that are more susceptible to becoming victims of misleading free trials. For example, those experiencing problems with free trials are more likely to be male, younger, living in urban surroundings and those who live in difficult financial situations.

Most striking is that the consumer survey echoes the other research exercises which show that the ability to unsubscribe is a problem for consumers. According to the stakeholders that were familiar with misleading free trials and subscription traps, the main problems were poor awareness of consumers that they had entered into a paid subscription, and consumers experiencing difficulties when they wanted to unsubscribe. A significant share of screened websites had unclear procedures to unsubscribe (43%) and the biggest problem for mystery shoppers (47%) was that they had difficulties finding information about what they were supposed to do if they chose not to purchase the product or service after the free trial.

Similarly, a prominent problem is the inability for consumers to return sample products. The mystery shopping exercise highlights the chain of events that leads to this particular difficulty. The first mechanism is that consumers often experience a delay in receiving the product in the first place. However, the ability to find contact details to highlight that the product had not yet been received, and to cancel the order, was difficult. Therefore, the ability to return the good (or simply cancel the order) is most likely a consequence of not being able to contact the seller.

Consumers are lured into subscription traps because:

- They are caught unaware – they are not actively looking for these kinds of offers. Those from low education backgrounds and in financial difficulties primarily found the free trial offer via a pop-up and younger consumers are more likely to have encountered a free trial offer whilst using their social media account;
- The kinds of issues they are concerned about when shopping online are not the main problems they then encounter after having a problem with a free trial. This demonstrates the mismatch that consumers may not know what to look out for;
- They do not always do their research before taking up an offer (understanding Terms and Conditions, looking up the rules about how to unsubscribe or how to return a product) and even when they do so, this information can be difficult to find;
- In particular, they are overconfident that they will remember to unsubscribe before the trial period ends;
- The free trial offers contain often rich texts, graphic features and framing-in strategies, among which consumer do not easily notice pre-contractual information so that they do not realise they are signing up for a subscription. When the price is salient, more consumers note the subscription and recurrent charges that may apply. On the other hand, consumers do not appear to be lured into traps due to messages about the product or service being a limited offer.

5) Proposed actions

In terms of the consumer, raising awareness and increasing knowledge is the first step to reduce the incidence of problems and detriment related to misleading free trials and subscriptions. Furthermore, consumers should be encouraged to take actions and to involve Alternative Dispute Resolution bodies and other channels to receive valuable information on actions to undertake. Besides monitoring and strict enforcement against cases that violate EU law, actions involving traders could include indicating how traders can alter their marketing strategy to avoid misleading practices can be effective to avoid detriment and problems for consumers. Furthermore, cooperation of enforcement authorities with social media and internet intermediaries can be a means to stop misleading free trials from circulating on internet platforms and to trace the traders behind them. There is also an important role for credit card providers and banks to facilitate refunding consumers for unauthorised payments.

This study recommends that actions targeting traders and intermediaries may be the most effective – tackle the problem at the source (i.e. prevent misleading free trials and subscription traps) rather than investing in changing consumer behaviour through information and education.

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