



Is Your Customer Contract Undermining Your Company's Service?

By: Christopher Elliott | April 20, 2011

Beware of the fine print!

I usually say that to consumers who are about to become ensnared by a “gotcha” clause – of which there is more than plenty these days.

Here's one from my colleague David Lazarus at the Los Angeles Times: Last week he reported on third-party “services” that collect magazine renewals at an exorbitant markup.

He cited one hapless National Geographic reader who was asked to shell out four times the going rate for a subscription renewal from a service called Publishers Billing Association, which has nothing to do with National Geographic. Had the subscriber reviewed the fine print in the renewal notice, he would have known.

Puh-leeze.

But today, I'm turning the tables and warning you of the same peril. Beware of the fine print.

Your fine print.

Corporate America, it seems, has fallen in love with silly clauses. And truthfully, their customers have let them. Only 63 percent of people accept end-user licensing agreement (EULA) without first reading them, according to a recent poll by technology firm Lavasoft.

But if you think a restrictive contract or EULA is the best way to gain the upper hand, think again.

“There's a real trend to simpler, shorter and more transparent end-user agreements,” says Jeremy Aber, a software attorney who specializes in contracts, based in Austin, Tex. “But it's still early in the cycle.”

Hear that? The newest agreements are written in plain English and don't have the “gotchas” that I love to report on as a consumer advocate, like forced mediation clauses.

Today's consumer contracts — the good ones, at least — are more likely to be clear, fair and flexible.

“Companies are becoming more responsive to the end users' needs,” says Steven Glassberg, an attorney with Glassberg & Associates, and who also specializes in technology.

A fairer contract isn't just better for your customers. It can also improve your customer service. When the unfair provisions in the fine print are removed, then customers get the service they expect – not the service the fine print entitles (or doesn't entitle) them to.

But what, exactly, should you be doing now to ensure your contracts are meeting that requirement? Here are a few pointers:

Remember why you have a contract. The agreements aren't there to stick it to your customer. “Smart companies realize that their contracts and EULAs are critical to defending against allegations of deception or wrongdoing,” says Benjamin Wright, an attorney and contract expert. Is that contract meeting the current needs of both you and your customers? If it hasn't been updated in a few years, it might not be.

Be clear. That's the advice of W. Scott Harders, chair of the intellectual property department at Brennan, Manna & Diamond in Akron, Ohio. Ambiguities can spell trouble for a company if the contract is ever tested in court. “Since the opportunities for negotiating the provisions are usually non-existent, any ambiguities may be construed against the company, not the user,” he says.

Avoid overly restrictive clauses. Limiting a customer's right to sue, through a forced mediation clause, including other “gotchas” like an acceleration clause that forces the customer to pay off the balance in the event of a default, aren't seen kindly by post-recession courts. “In the past few years, some courts have struck down EULAs as being adhesion contracts [a one-sided agreement] and therefore unenforceable if the end user was not given the right to review the terms of the contract before agreeing to them or if the terms were subject to modification without actual notice to the consumer,” says Kandy Williams, an Irvine, Calif., attorney who is an expert on contracts. “As a result, some companies have revised their EULAs to allow the user to view all the terms before assenting to them, thereby making the EULAs more user friendly.”

By focusing on clarity and customer service – not removing the rights of your customers – you can also improve the service experience.