

## Fabletics | Terms and Conditions in Review

It is important to remember that any contract imposes obligations on *both* parties, not just you as the customer. If you can show that the supplier (Fabletics) failed in any of their obligations you can argue (whether the service is shown to be unlawful inertia selling or not) that they have failed in their obligation to you and the contract is therefore broken. In this circumstance you would be required to receive a refund, and cancellation.

### No obligation to purchase

5.1 Fabletics provides a monthly membership programme that grants you access to style experts and the latest sports and lifestyle trends. To get started, simply take our Lifestyle Quiz. Next, you must register and create a member account through our Site ("Account"). After you have successfully created an Account, you will have the option to purchase your favourite item(s) from the 'My Outfit' section of your Account. There is no registration fee and no obligation to purchase.

This couldn't be clearer, there is *no obligation* to purchase, we come back to this later ...

### Obligation of Fabletics to send eMail on 1st of Month

5.2 To become a Fabletics VIP Member, simply purchase any Product on our Site and select the 'VIP Member' pricing option offered at checkout and you will be automatically enrolled in the Fabletics VIP Membership Programme ("**Fabletics VIP Membership**"), which includes the monthly, automatic style purchase feature ("**Monthly Options**"). As a Fabletics VIP Member, our experts will send you a customised selection of Products on the 1st day of every month ("**Selection**"). You will also receive emails, newsletters, special offers and other updates to maximise your shopping experience.

Clause 5.2 therefore clearly confers an obligation on Fabletics to send you an eMail every month, furthermore that it is on the 1st Day of the month, this is referred to as the ("**Selection**") and it is our view that it is *'of essence of the contract'* - therefore **if Fabletics do not send you this on the 1st of the Month, they have broken the contract.**

### Obligation of you to 'take action' by the 5th day

6. As a Fabletics VIP Member, you will be required to take action by the 5th day of every month by selecting one of the following options. These options can be selected through your online Account:

- (a) 'Make A Purchase.' You may make a purchase of a Product. You may purchase additional Products as well.
- (b) 'Skip This Month'. There is no obligation to select and buy a Product each month. Should you decide not to select a Product for any given month, simply login to your Account and select the 'Skip This Month' option by the 5th day of the month and you will not be charged that month. If you do not select the 'Skip This Month' option by the 5th day of the month, you will be charged the subscription fee and you will receive one Credit.

Arguably you could suggest that if you *don't* take action then you're in breach of the agreement and they should cancel it - but they won't take that... However, what it makes very clear is **If you do not select the 'Skip This Month' option by the 5th day of the month, you will be charged the subscription fee and you will receive one Credit.**

If you are charged something, and you receive something ("**one Credit**") in return then this is a purchase, also if there is a subscription then this is an obligation, so contrary to the 'no obligation' statement.

This document is an informal interpretation only and does not constitute legal advice. If you are considering bringing action against Fabletics t/a JustFab (UK) beyond the basic "small claims" track we would strongly advise you seek professional legal advice.

## Cancellation

There are a couple of clauses which relate to cancellation, the one they will refer you to is this one, which forces you to phone them or contact them in writing.

Note **there is nothing in this section to preclude cancellation by eMail** despite them constantly parroting the line on Twitter and by eMail that cancellation must be 'by phone for security reasons' (which is nonsense) - as we'll find out, there's actually a lot to support this

13.2 You may terminate your Fabletics VIP Membership at any time. If you wish to terminate your Fabletics VIP Membership please inform us in writing at Fabletics UK Ltd. 8-10 Dryden Street, London, WC2E 9NA or by calling our member services number on 020 38241 002 (local rate). There is no termination fee and we will not charge you any further monthly subscription following notification of your cancellation. Please be advised that an Account may only be terminated by the registered Fabletics VIP Member.

However, their own clause 20 defines "written communications"

20. Applicable laws require that some of the information or communications we send to you should be in writing. When using our Site, you accept that we may contact you by email or provide you with information by posting notices on our website. **For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing.** This condition does not affect your statutory rights.

Due to this they are establishing an equivalence between notices by eMail and by post. Consumer contract law requires that no term can be in favour of one party and such things are *bi-lateral* i.e. they apply equally to **both parties**. Therefore, they **must accept a cancellation request by eMail**.

This is further supported later by the following;

### Right of Withdrawal of the Contract for Product Purchase

You have the right to withdraw from this contract within 14 days without giving any reason. The withdrawal period will expire after 14 days from the day on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the goods.

To exercise the right of withdrawal, you must inform us of your **decision to withdraw from this contract by an unequivocal statement (letter sent by post, or email, or phone call)** to the following address:

This clearly shows that they will accept cancellation by eMail within 14 days (as they are legally required to do) which therefore completely invalidates the argument we see on Twitter;



**The real reason, of course, is so they can attempt to trick you into staying.  
There is no lawful reason to refuse cancellation by eMail!**

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## Fabletics | Cancellation by eMail

We would strongly advise you send Fabletics an eMail to cancel to both support@fabletics.co.uk and contact@justfab.com, the following has been used successfully and is provided as a template to guide your own letter to Fabletics.

If Fabletics choose (unlawfully) to ignore it (as it is in writing) then this will unequivocally ensure that your bank will refund any further payments, as you can prove you cancelled the subscription.

If you feel you were 'conned' into "VIP Membership" consider including the paragraphs shown below in [blue](#), and revising them as appropriate to your circumstances. Be sure to add in your personal details so they can verify your identity.

"VIP Membership" Cancellation.

Please consider this a formal request to cancel my "Fabletics VIP Membership". Should you charge my card this month, or on any subsequent occasion without me having ordered goods from you it will be subject to a chargeback instructed immediately to the card issuer.

My request to cancel is fully compliant with your Terms and Conditions which requires such cancellation is 'in writing' section 20 of your Terms and Conditions establishes equivalence between postal and eMail communication - specifically "that electronic notices comply with any legal requirement that such communications be in writing"

Furthermore at the time of my membership your website displayed a one hour 'countdown' of the 50% off offer on the front page. This is unlawful per The Consumer Protection from Unfair Trading Regulations 2008, Schedule 1. "7. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice." - the small print states "Offer expires after 24 hours and cannot be combined with any other offer". This was the subject of a complaint to the ASA in December 2015 who agreed with this and resulted in your withdrawal of this advertising.

Finally, The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 provide that "no payment is payable in addition to the remuneration agreed for the trader's main obligation unless, before the consumer became bound by the contract, the trader obtained the consumer's express consent", express consent cannot be granted if inferred from not changing a default option, the default option is to join the VIP (indeed the "opt out" option is presented as "No thanks, I don't want to save up to 40%, Checkout as a Regular member")

I did not agree to your "Subscription", and was misled due to your unlawful practices as described above, a view shared by the ASA. I would therefore ask that you refund me with the amount of **£xx.xx** being the full amount taken from my card without my authority between the period of **Start Date** and **End Date**.

Failure to comply with the above may result in a request to my card issuer to issue a chargeback against your company to recover the monies due to me, or a Small Claims action brought against you. Please be advised, any such claim will include a claim for statutory interest and costs.

Best Regards,  
A. Victim

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## Fabletics | Cancellation by eMail

I expect you'll get a response like this, just reply and re-iterate your position, this response is pretty meaningless and they should eventually escalate it to someone who is slightly more useful.

Be sure that, in your reply, you include any information they ask for so they've got no excuse!

Thank you for contacting Fabletics UK.

We truly apologise for all the inconveniences however, we do not have a cancellation option via Email.

If you can not give us a call, you can write us a cancellation letter, with your First and Last name, Email address under your account and Full Delivery address, addressed to :

Fabletics/JustFab UK, Second Floor, 8 - 10 Dryden Street, London, WC2E 9NA.

We can assure you that upon receipt of your letter, your account will be cancelled.

And don't worry, Citizens Advice / Trading Standards are on your side.

CitA - Consumer GAA <ConsumerGAA@citizensadvice.org.uk>

11 February 2015 at 11:17

To: [REDACTED]

Dear [REDACTED]

Thank you for your email to the Citizens Advice consumer service dated 09/02/15. Your reference number for this case is [REDACTED]. It would be helpful if you could quote this reference number in any future contact with our service, regarding this specific issue so we can record all the information and advice offered.

We understand from your email that you made a purchase from Fabletics and were automatically entered into their VIP membership scheme.

### Your rights and obligations:

As you are already aware of your legal rights regarding 'The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013', 'The Consumer Protection from Unfair Trading Regulations' and the chargeback scheme we cannot add much more to what you are already aware of. You are right in saying that boxes are no longer allowed to be pre ticked so this is a breach of 'The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013' and we will inform Trading Standards of this.

### Your next steps:

Bearing in mind the information detailed above; if you wish to pursue a civil claim further, you should consider sending the trader a recorded delivery letter, outlining everything to date, and giving a deadline to resolve the matter within a set period of time (e.g. 14 days). Make it very clear what you expect from the trader; why and what steps you will consider taking should they fail to comply with your request. It is also worth enclosing copies of any documentation that would help you substantiate your claim and retaining copies of everything sent, for your records.

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Twitter @fableticssucks

fableticssucks.co.uk

## Fabletics | Unlawful and Misleading Advertising

The ASA support our belief that the countdown timer was unlawful and designed to mislead therefore **anyone who signed up as a result of this advertising is entitled to a full an unconditional refund.**



Advertising Standards Authority  
Mid City Place, 71 High Holborn  
London WC1V 6QT  
Telephone 020 7492 2222  
Textphone 020 7242 8159  
Email [enquiries@asa.org.uk](mailto:enquiries@asa.org.uk)  
[www.asa.org.uk](http://www.asa.org.uk)

16 December 2015  
By email

Ref: [REDACTED]

Dear [REDACTED]

### Your complaint

Further to my letter of 4 December, we have now received a response from the advertiser. They have given us their assurance that all countdown timers in their future advertising would accurately reflect the time remaining for a customer to take advantage of the relevant promotional offer. Furthermore, they will ensure that their future advertising does not misleading state or suggest that special offers are only available for a limited period of time to deprive consumers of the time or opportunity to make an informed choice.

Please note that the advertiser is currently in the process of implementing the programming required for the above assurance to take effect and that they expect the changes to be made by the New Year.

In a formal investigation, if the ASA Council decides that an ad is in breach of the Code, the advertisers are told to withdraw or amend it. Because JustFab (UK) Ltd t/a Fabletics UK has already assured us that the advertising you complained about will be amended, we consider there is little to be gained from continuing with a formal investigation, which would achieve that same outcome.

Although we will not publish full details of your complaint on our website, [www.asa.org.uk](http://www.asa.org.uk), basic information including the advertisers' name and where the ad appeared will appear on **Wednesday 30 December**.

Chairman Rt Hon Lord Smith of Finsbury Chief Executive Guy Parker  
ASA Council (Non-broadcast) Kate Bee, Alan Bookbinder, Rachel Childs, Roisin Donnelly, Wesley Henderson, David Hepworth, John Mayhead, Suzanne McCarthy, Sir Martin Narey, Shireen Peemohamed, Hamish Pringle and Sam Younger

The Advertising Standards Authority (Non-broadcast) Limited, registered in England No 05130991, Mid City Place, 71 High Holborn, London WC1V 6QT.

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[fableticssucks.co.uk](http://fableticssucks.co.uk)