

The complaint

Mr J complains that AMERICAN EXPRESS SERVICES EUROPE LIMITED (AESEL) didn't refund a purchase made using his credit card.

What happened

In June 2024, Mr J purchased a bundle of music files from an online retailer. The retailer said the bundle included more than 200+ files.

Mr J told the retailer he had 180 links to download files, so had not received the 200+ advertised. Mr J asked where certain files were, and eventually asked for a refund. The retailer said it wouldn't offer a refund, and explained some links contained a number of "packs" (music files) and if Mr J identified the missing packs, it would look into things further.

Mr J contacted AESEL in July 2024 to dispute his payment to the retailer. AESEL initially raised a chargeback for a 'credit not presented' on the grounds that Mr J said he was due a refund. AESEL later raised a chargeback on the grounds that the goods received were not as described.

The retailer defended the chargeback – it shared a screenshot showing Mr J's order had 200+ files delivered to him, which were to be accessed across several different folders of files. The retailer also shared its refund policy, which said downloaded products cannot be refunded.

AESEL told Mr J his chargeback had not been successful, and noted the merchant had supported Mr J with his issue about the available files to download.

Unhappy with AESEL, Mr J referred his complaint to our service. Mr J said he had to upload documents to AESEL multiple times and had to make an unreasonable number of telephone calls and emails to sort things out.

Our Investigator said AESEL's decision not to pursue Mr J's chargeback was fair as the retailer had provided evidence it had supplied 200+ files to Mr J. Our Investigator explained AESEL hadn't clarified whether it had considered a claim under Section 75 of the Consumer Credit Act 1974. However, our Investigator thought AESEL had no liability to Mr J here. Our Investigator explained the onus was on Mr J to show the goods received were not as described and the retailer had shown 200+ files were downloaded by Mr J.

Our Investigator also explained that even if Mr J hadn't received all the files, he would only be entitled to have the retailer provide the missing files or a partial refund for the missing files. So, our Investigator would not have recommended AESEL pay Mr J the full purchase price even if he had upheld the complaint.

Mr J didn't accept our Investigator's opinion, highlighting the list of files he received was less than 200 items.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I won't be commenting on all the points made by both parties – I'll only comment on what I consider to be crucial to the outcome of this complaint. This isn't intended as a discourtesy to either party but reflects the informal nature of our service.

I'm sorry to hear about Mr J's dispute with the retailer. However, it's important to note that AESEL isn't the supplier of the goods which this dispute centres around. Therefore, my role is to look at whether AESEL acted fairly in light of its more limited role as a provider of financial services.

In considering if AESEL has acted fairly, I've thought about how it could have helped recover Mr J's money. In that respect I consider the relevant chargeback scheme and Section 75 of the Consumer Credit Act 1974 ("Section 75") to be particularly relevant.

Chargeback

Chargebacks are limited by the rules set down by the card scheme (in this case, it's American Express's scheme). Chargebacks aren't guaranteed to succeed – but it's often good practice for a card provider to pursue one where there is a reasonable prospect of success.

Here, AESEL initially raised a chargeback for a 'credit not processed' in response to the information initially provided by Mr J. However, AESEL later changed the chargeback code, which I think was reasonable as there was no evidence to show Mr J was entitled to a refund under the retailer's terms and conditions.

AESEL raised a chargeback for "not as described or defective merchandise". For a chargeback to be successful here, it must be shown Mr J received goods that are different than the written description provided by the retailer at the time of purchase.

Mr J says he received less than the 200+ items advertised on the retailer's website. However, the retailer has provided evidence showing it delivered 200+ files to Mr J – it provided a screenshot of Mr J's order which says the bundle contained 210 files and 233 "deliveries" were made to Mr J. The retailer has also explained some of the links sent to Mr J contain more than one file available to download, which would explain why Mr J had less than 200+ links. I accept Mr J can't identify the files he says are missing, but equally, it is not AESEL's role here to verify the links he says he received do not contain the files he says are missing. I don't think AESEL was unfair in concluding that, on balance, there was insufficient evidence to show Mr J had not received the 200+ files purchased.

It's worth remembering that I'm not determining if the retailer is right and Mr J is wrong here. Instead I'm focusing on whether AESEL acted unfairly in the way it tried to help Mr J get his money back keeping in mind the nature and limitations of the chargeback scheme. With that said, it's also worth remembering the chargeback scheme doesn't have powers like a court to compel witnesses or verify the evidence provided by either party.

Overall, I think it was reasonable for AESEL to conclude there was insufficient evidence to show the goods Mr J received were different to the written description provided by the retailer at the point of sale. It follows that I think it was reasonable for AESEL not to pursue Mr J's chargeback further.

Section 75

Section 75 gives a consumer an equal right to claim against the provider of credit (AESEL) if there has been a breach of contract or misrepresentation by the supplier (the retailer). I'm satisfied the necessary criteria for a claim under Section 75 has been met.

Under the Consumer Rights Act 2015, the digital content supplied must match any description of it given by retailer. There's limited evidence available about the information presented to Mr J at the point of sale, although both parties have provided screenshots to show he should have received more than 200 items. On balance, and for the same reasons as above, I think it was reasonable for AESEL to conclude the evidence shows the retailer made 200+ files available for Mr J to download, so it follows I think it would be reasonable for AESEL to conclude the retailer hadn't breached its contract with Mr J. I note Mr J was unhappy with the ease of navigating the files provided by the retailer. However, I've seen nothing to show the files were provided in a way that is inconsistent with how the product was described to Mr J at the point of sale. Finally, Mr J feels he was entitled to a refund but under the retailer's terms and conditions, downloaded products are non-refundable so I can't see that the retailer breached its terms and conditions by declining to provide a refund.

As I think it was reasonable for AESEL to conclude 200+ files were delivered in line with the information provided to Mr J at the point of sale, I think it would be reasonable for AESEL to conclude there was no misrepresentation here.

Mr J is unhappy he spent a lot of time calling and emailing AESEL and submitting evidence to AESEL on multiple occasions, which he didn't think had been properly considered by AESEL. However, I've not seen that the evidence Mr J submitted was not taken into consideration by AESEL or that AESEL was the cause of any unnecessary inconvenience. AESEL kept Mr J updated on the progress of his claim. Overall, I don't think AESEL's handling of Mr J's claim, or its decision to decline it, was unreasonable so I have not awarded any compensation.

My decision will likely disappoint Mr J but as I said above, my role is to look at matters informally. Mr J doesn't have to accept my decision and may choose to pursue the matter by alternative means if he chooses to do so.

My final decision

For the reasons explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 24 June 2025.

Victoria Blackwood
Ombudsman