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Unsubscribe: What the FTC's "Click-to-Cancel" Rule Means for Retailers and Consumers

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A curated seasonal wardrobe delivered directly to your door, the return to a jam-packed gym, personally proportioned fresh weekly meals, a coffeemaker and a new pair of sneakers shipped within an hour, or a trial run on the latest streaming platform — a new year is often seen as the perfect time for a fresh start … and a new subscription. At the same time, the Federal Trade Commission (FTC) is seeking to ensure that eager consumers know exactly what they are signing up for and can cancel with ease if and when it's no longer wanted.

After five years of drafting and public comment, the FTC's final "Click-to-Cancel" Rule (Rule) recently went into effect, which amended the 1973 Negative Option Rule to target unfair or deceptive practices linked to "subscriptions, memberships, and other recurring-payment programs in an increasingly digital economy where it's easier than ever for businesses to sign up consumers for their products and services." Citing an average of 70 daily complaints in 2024 (up noticeably from 42 per day in 2021)[1] regarding recurring subscriptions and other negative option practices in a world that prioritizes e-commerce, the FTC modernized the Rule to "protect people from misleading enrollment tactics, billing practices, and cancellation policies, and provide businesses with clear rules of the road, all consolidated in one place, to help them build customer trust and avoid enforcement action."[2]

Application and Scope

The Rule applies to any person or business who sells, offers, charges or otherwise markets any good or service with a negative option feature in any media (e.g., via internet, phone, print or in person). Negative option programs generally fall into four categories: 1) prenotification plans (e.g., beauty box-of-the-month clubs); 2) continuity plans (e.g., meal delivery); 3) automatic renewals (e.g., memberships or streaming services and programming); and 4) free trial conversion offers (i.e., free-to-pay or nominal-fee-to-pay). Notably, the Rule applies to both business-to-consumer and business-to-business transactions, such that it applies across varied industries and touches relationships with a plethora of consumers. Indeed, the Consumer Technology Association reports that a 2022 study found that the global subscription e-commerce market is expected to reach $904.2 billion by 2026, and that between 2021 and 2022, existing subscription brands grew their customer bases by 31 percent.[3]

Key Requirements

The FTC estimates that at least 106,000 companies currently utilize negative options. Those that do should note that the Rule broadly prohibits:

- misrepresenting (whether express or implied) any material fact in the marketing, promoting or offering of the product or service that is likely to affect the consumer's decision-making;
- failing to clearly and conspicuously disclose material terms such as the price, frequency of charges or duration of a trial, prior to obtaining a consumer's billing information;
- failing to obtain and maintain a record of a consumer's express affirmative informed consent before charging the consumer; and
- failing to provide a simple and straightforward mechanism to cancel and immediately stop charges that is as simple as it was to sign up initially.

Although the Rule's prohibition on misrepresentations went into effect on January 14, sellers are expected to comply with the majority of the Rule's requirements by May 14. Violations can result in not only having to refund consumers' fees but also civil penalties of up to $51,744 per violation (with multiple violations potentially occurring in one transaction).

Looming Challenges and Practical Takeaways

Although certain opponents of the Rule are seeking to challenge its lawfulness and modify, delay or derail its enforcement, with petitions in various courts across the country[4], businesses with negative option programs should begin to audit their current practices to determine whether they comply with the Rule. Proactive measures can best position such businesses to navigate evolving regulations with minimal disruptions. By making real-world changes, such as ensuring that canceling a subscription is as easy as signing up for one, enhancing transparency and streamlining the user experience, businesses can mitigate legal risks and improve customer trust and retention in one click.

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1 https://www.ftc.gov/news-events/news/press-releases/2024/10/federal-trade-commission-announces-final-click-cancel-rule-making-it-easier-consumers-end-recurring

2 https://www.ftc.gov/business-guidance/blog/2024/10/click-cancel-ftcs-amended-negative-option-rule-what-it-means-your-business

3 Rule at 175; CTA, FTC-2023-0033-0997.

4 Electronic Security Ass'n et al v. Federal Trade Comm'n, Case No. 24-60542 (Fifth Circuit), Custom Communications, Inc v. Fed. Trade Comm'n, Case No. 24-3137 (Eighth Circuit), Michigan Press Ass'n et al v. Fed. Trade Comm'n, Case No. 24-3912 (Sixth Circuit), and Chamber of Commerce of the United States v. Fed'l Trade Comm'n, Case No. 24-13436 (Eleventh Circuit); consolidated pursuant to 28 U.S.C. 2112(a)(3) in the United States Court of Appeal for the Eighth Circuit on January 17, 2025.

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