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Fashion & Retail Alert

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FTC aims to make it easier to cancel subscriptions

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The proposed provision would make it easier for consumers to cancel subscriptions, partly by placing restrictions on sellers that utilize “negative option” features.



What's the Impact?

Under the proposed rule:

- / All sellers must provide simple subscription cancellation mechanisms
- / All sellers must obtain consent from consumers before pitching new offers when consumers try to cancel their subscriptions
- / All negative option sellers must further provide additional disclosures to consumers

In light of growing consumer complaints that it is overly difficult, or even impossible at times, to cancel a recurring subscription, on March 23, 2023, the Federal Trade Commission (FTC) proposed a new Negative Option Rule, known as a [“click to cancel” provision](#), which would amend 16 C.F.R. Part 425 to require sellers to make cancelling subscriptions as easy as signing up for subscriptions.

The FTC is currently seeking comments on its proposed amendments “to combat unfair or deceptive practices that include recurring charges for products or services consumers do not want and cannot cancel without undue difficulty.” The proposed provision would help consumers by making it easier to cancel subscriptions, partly by placing restrictions on sellers that utilize negative option features. Negative option features are contract provisions that interpret a consumer’s silence or failure to take an affirmative action as acceptance of an offer for renewing a subscription for a good or service.

The proposed rule would require all sellers to:

- / Provide a simple cancellation mechanism; and
- / Obtain consent from consumers attempting to cancel their subscription before pitching additional offers.

What is a simple cancellation mechanism?

Regarding the simple cancellation mechanism, the mechanism must be “at least as simple as the one used to initiate the charge or series of charges.” Sellers must have cancellation mechanisms of the same mediums used to initiate agreements (or simpler mediums). For example, if a subscription was initiated via a phone call, a seller must also allow the consumer to cancel the subscription via a phone call. For subscriptions initiated in-person, there must be a simple cancellation mechanism through the Internet or by telephone.

Under the proposed rule, sellers must also obtain consent from consumers attempting to cancel their subscription before pitching additional offers. If a consumer attempts to cancel a subscription, sellers would not be able to pitch additional offers or modifications to the consumer’s subscription in an attempt to “save” the subscription without first asking the consumer for consent to do so. If the consumer does not consent to receive the additional offers, the seller must not interfere further with the consumer’s cancellation attempt.

The impact on negative option sellers

The proposed rule would further require negative option sellers to provide the following disclosures to consumers:

- / The amount to be charged;
- / The deadline by which the consumer must make an affirmative action to avoid charges;
- / The date the charges will be submitted for payment;
- / The cancellation mechanism (affirmative act) the consumer can use to end the agreement; and
- / (Annual) Reminders for recurring payments involving non-physical goods.

If the proposed FTC “Click to Cancel” rule is passed, sellers must comply with each applicable bullet-pointed requirement. Failure to comply would result in civil penalties under 16 C.F.R. § 1.98(d), which are currently set at \$50,120.

Takeaways

While it is challenging to lose a customer, making it difficult for a customer to cancel a subscription is not the way to try and lure them back. Even if the FTC rules are not implemented, it is always a best practice to have clear and conspicuous links to unsubscribe or cancel a subscription as well as to address how to do so in your FAQs or help section, as well as in your terms of sale.

And, if the new FTC “Click to Cancel” rules are enacted, sellers should:

- / Review, test, and regularly audit their cancellation mechanisms and policies to ensure compliance with the proposed rule.
- / Monitor customer complaints about their cancellation mechanisms and policies to quickly identify ways to simplify their cancellation process. Requesting feedback as to why the cancellation occurred could help the seller regain that customer in the future.

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