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FTC Finalizes "Click to Cancel" Rule Governing Subscriptions and Autorenewals

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Companies that offer products or services via negative options — including subscriptions and autorenewals — will soon be required to obtain standalone consumer consent and provide easy cancellation mechanisms.

On October 16, 2024, the Federal Trade Commission (FTC) issued a final rule that imposed a series of new requirements on companies employing subscription services, autorenewals, free-or-fee-to-pay conversion services, and other similar services that obligate consumers to make recurring purchases unless they take affirmative steps to cancel (collectively, "negative options").

Referred to as the "Click to Cancel" rule, the rule requires easy cancellation and recordkeeping of consent, broadly prohibits any material misrepresentations in connection with the sale of a product or service sold through a negative option, and imposes new standalone consent requirements for negative options. The rule builds on the Commission's 2021 enforcement statement regarding negative-option marketing, as well as the Commission's enforcement efforts against so-called "dark patterns." The rule joins state-level automatic renewal laws (most prominently, California's), which can include different or additional requirements.

The FTC will have the authority to seek consumer redress and civil penalties (currently $51,744 per violation).

The prohibition on misrepresentations takes effect 60 days after the rule is published in the Federal Register (expected to occur in the coming weeks), and the rule's provisions related to consent and cancellation take effect 180 days after publication.

It is possible that litigation may delay the rule coming into effect. The two Republican Commissioners voted against the rule, and Commissioner Melissa Holyoak issued a dissent stating her view that proper rulemaking procedures were not followed.

Below we provide a summary of the key provisions in the rule. Please contact any member of our team for additional information or guidance.

Key Provisions:

Simple Cancellation Requirement. The headline portion of the rule — "Click to Cancel" — provides a baseline requirement that the company provide a "simple mechanism" for the consumer to cancel. The rule has several requirements:

- It must be at least as easy to cancel as it is to provide consent;
- Cancellation must be available through the same medium as to sign-up (e.g., sign up via internet, must be able to cancel through internet);
- Cancellation online must be easy to find and cannot require interacting with a live or virtual representative;
- For cancellations by phone, must promptly honor cancellation requests made to a live person or recorded message; and,
- If consumers consented in person, the company must offer either an online or telephonic method of canceling.

Misrepresentation Ban. The final rule prohibits a company offering a product or service sold via a negative option from making misrepresentations.

Affirmative Consent Requirement. The rule requires sellers to obtain express consent to the negative option separate from any other part of the transaction. The rule includes a safe harbor for compliance with this provision — explaining that companies can comply with this provision by means of a click box, separate button or signature that relates solely to the negative option feature itself.

Disclosures. The final rule requires companies to prominently disclose certain information regarding the negative option near the affirmative consent mechanism described above:

- That the consumer will be charged unless they timely act to cancel;
- The deadline (date or frequency) by which the consumer must act to prevent the recurring charge;
- The amount of the charge and, if applicable, frequency of the charges unless the customer cancels; and

- How to find the simple cancellation mechanism.

Recordkeeping. The final rule requires sellers to keep a record of affirmative consent for at least 3 years. But the rule allows companies to avoid this requirement if they can prove (to a court or to the FTC) that their processes make it technologically impossible to complete the transaction without providing consent to the negative option.

Effect on State Laws. The rule does not supersede other state laws unless the state law is inconsistent. In particular, the rule says that state laws that provide greater protection are not inconsistent with the final rule.

Exemptions. The rule provides that companies may petition the Commission for an exemption to any requirement under the rule.

Authors

Christopher B. Leach

Partner / Washington, D.C.

Lucie H. Duvall

Partner / Washington, D.C.

Olivia Adendorff, P.C.

Partner / Dallas / Washington, D.C.

Richard H. Cunningham, P.C.

Partner / Washington, D.C.

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