FTC Announces Final "Click to Cancel" Rule for Subscriptions, Memberships

The Federal Trade Commission ("FTC") has just announced the final version of its "Click to Cancel" Rule for consumer subscriptions. The Rule will go into effect 180 days after it is published with the Federal Register. This Rule will directly apply to all SaaS, digital health, tech, and non-tech companies selling on a subscription basis to consumers.

Full Text of FTC Rule

The full text of the FTC Rule is linked here, at pages 222-230.

Fact Sheet of FTC Rule

The FTC has also made available a fact sheet which briefly summarizes key provisions of the "Click to Cancel Rule," which is attached here.

Key Provisions of the FTC Rule

According to the FTC announcement, the "Click to Cancel" Rule will apply to "almost all negative option programs in any media." The key provisions of the FTC Rule will prohibit:

- misrepresenting any material fact made while marketing goods or services with a negative option feature;
- failing to "clearly and conspicuously disclose" material terms prior to obtaining a consumer's billing information in connection with a negative option feature;
- failing to obtain a consumer's express informed consent to the negative option feature before charging the consumer; and

- failing to provide a simple mechanism to cancel the negative option feature and immediately stop the charges.

Revisions to Final Version of the FTC Rule

Also according to the FTC announcement, the FTC dropped from its final Rule an annual reminder requirement that would have required vendors to provide annual reminders to consumers advising them of the negative option feature of their subscription, as well as a requirement that vendors had to ask canceling consumers for approval before a vendor could tell a canceling subscriber about reasons to keep the existing agreement or of possible modifications that could be made without canceling the subscription.

Reasons for Adoption of the Rule

Why did the FTC adopt a Click to Cancel Rule? According to the FTC Announcemen**t**, the FTC was receiving 70 consumer complaints per day over negative option programs, and this number was "steadily increasing over the past five years."

The FTC's announcement follows a recent California enactment of a more comprehensive "Click to Cancel" law.

Does the FTC Rule Supersede California Law?

The FTC Rule should not supersede California's more comprehensive law; in fact, the Rule specifically states in its text that the Rule will not be construed to supersede any State statute, regulation or order "except to the extent that it is inconsistent with the provisions of this part, and then only to the extent of the inconsistency." The expected impact of the FTC Rule is primarily to bring federal regulatory law closer to California regulatory law as it pertains to subscriptions and memberships.

What do SaaS, Digital Health, Tech, and other Companies Utilizing the Subscription Model Need to do in Response to this Announcement?

All companies utilizing a subscription model should revise consumer contracts and processes to comply with the FTC Rule over the next 180 days. Companies utilizing the subscription model with a business-focused customer base should similarly consider what changes to make to their contracts and processes as public policy will likely change regarding subscriptions generally along with the new FTC Rule and California law changes.

If you have questions or concerns about how new FTC "Click to Cancel" Rule or the new California "Click to Cancel Law" will impact your digital health company, please schedule a consultation at https://calendly.com/prinzlawoffice.

FTC Seeks to Expand Scope of "Negative Option Rule" to Apply to Subscriptions

The FTC has just filed a complaint against a Silicon Valley software company over its "Annual Paid Monthly" subscription contract. The FTC has separately also sought the expansion of its "Negative Option Rule" to amend the provisions to specifically apply to subscriptions by adding a "Click to Cancel" provision. A copy of the FTC notice of proposal is linked here.

What is the FTC's Negative Option Rule?

The Negative Option Rule was adopted by the FTC in 1973, to address "negative option offers," which the FTC defines as offers containing "a term or condition that allows a seller to interpret a customer's silence, or failure to take an affirmative action, as acceptance of an offer."

According to the FTC, negative option marketing utilizes four types of offers: prenotification plans, continuity plans, automatic renewals, and free trial conversion offers.

However, the FTC's original Negative Option Rule only pertained to prenotification plans, excluding the continuity plans, automatic renewals and free trial offers that have become commonplace in 2024. Also, in the case of the original Negative Option Rule, prenotification plans were limited to the sale of goods, where sellers provided periodic notices to participating customers and then sent and charged for those goods only if the consumers took no action to cancel and decline the offer (i.e. the example of a wine club).

Also, the Negative Option Rule required clear and conspicuous disclosure of certain terms before a subscription agreement was reached. According to the FTC, those terms were as follows:

- how subscribers must notify the seller if they do not wish to purchase the selection;
- any minimum purchase obligations;
- the subscribers' right to cancel;
- whether billing charges include postage and handling;
- that subscribers have at least ten days to reject a selection;
- that if any subscriber is not given ten days to reject a selection, the seller will credit the return of the selection and postage to return the selection, along with shipping and handling; and

- the frequency with which announcements and forms will be sent.’

Finally, under the existing Negative Option Rule, sellers were required to define particular periods for sending merchandise, to give consumers a defined period to respond, to provide instructions for rejecting merchandise, and to promptly honor written cancellation requests.

What is “Click to Cancel’?

What would change with the FTC’s newly proposed “Click to Cancel” amendment?

Under the FTC’s proposed “Click to Cancel” rule change, the scope of the Negative Option Rule would be increased to make it pertain to not only prenotification plans but also to continuity plans, automatic renewals, and free trial conversion offers. Also, the proposed “Click to Cancel” rule provisions would mandate the following:

- Businesses would be required to make cancelling a subscription or membership at least as easy as it was to start it;
- Businesses would have to ask consumers if they want to hear new offers when they ask to cancel before they would be able to pitch new offers;
- Businesses would be required to provide an annual reminder if enrolled in a negative option program involving anything other than physical goods, before they are automatically renewed.

Another “Click to Cancel” change is that the under the new provisions any misrepresentation of a material fact related to any of the four negative option offers, whether expressly or by implication, would constitute a violation of not only the Negative Option Rule but also an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act.

What is the Potential significance of “Click to Cancel” to the SaaS, Tech, and Digital Health Industries?

The potential significance of the “Click to Cancel” change to the average SaaS, tech, and digital health company is that, if this proposed rule is adopted, SaaS, tech, and digital health companies who sell directly to consumers will need to update consumer contracts and terms of service to confirm that they are compliant with the requirements of the Negative Option Rule, as amended.

If your company is concerned about its compliance with “Click to Cancel” please schedule a consultation today at https://calendly.com/prinzlawoffice.