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NEW FEDERAL TRADE COMMISSION “CLICK TO CANCEL” RULE IMPACTS A WIDE RANGE OF AUTO-RENEWAL PRODUCTS AND SERVICES

Background

An increasing number of companies offer subscriptions for products or services on terms which provide for automatic renewal, absent affirmative action on the part of the customer. These are sometimes called “negative option offerings” and include offerings to both business users and those for personal use. Most, but not all, of these are offered via the internet, but the new rule described below is broad and also covers other media, including phone, in person and print offerings.

On October 16, 2024, the Federal Trade Commission (“FTC”) announced major amendments to existing rules which will impact a broad range of subscription products and services that include an auto-renewal feature. In addition to standard auto-renewal features, the new rules also cover free or low-cost trials that convert to subscriptions and pre-notification negative option features.



Requirements of New Rule

1. The rule prohibits misrepresentation of any fact that is likely to influence a person’s choice or conduct regarding the offering.
2. The Seller must clearly and conspicuously disclose all material terms of the offering, including that (i) there will be recurring charges if the customer fails to cancel; (ii) the deadlines for cancellation; (iii) the amount and frequency of charges and (iv) information describing the cancellation process.
3. The Seller must obtain “unambiguously affirmative consent” to the auto-renewal feature. This consent must be separate from every other aspect of the transaction.
4. The Seller must provide a simple method for cancellation, e.g. “Click to Cancel”.

Some Practical Takeaways

- The new rules provide Sellers with the right for to petition the FTC for a full or partial exemption from the rules if they can show that the application of the rules is unnecessary to protect the consumer with respect to a particular product/service or a class of products/services.

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- As noted above, the rules apply to online transactions as well as telephone, print and in-person transactions.
- The rules do not preempt state laws or regulations that provide for greater consumer protection.
- The effective dates of the rule vary for different sections. Most sections of the rule become effective 180 days following publication in the Federal Register. However, a few sections, including the prohibition on material misrepresentations, become effective 60 days following such publication.

All companies should determine if and how the FTC's new "Click to Cancel" rule will impact their business.

If you have questions or would like more information, please contact your PLDO attorney or Partner William F. Miller at 508-420-7159 or email wmiller@pdlolaw.com.



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