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Locke Lord QuickStudy: FTC Adopts “Click-to-Cancel” Amendments to Its Negative Option Rule

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On October 16, the Federal Trade Commission announced final “click-to-cancel” amendments to its Negative Option Rule.

Under the FTC’s amended Negative Option Rule:

- Seller information must be truthful, clear and easy to find.
- Consumers and business customers must know exactly what they are agreeing to before they sign up.
- Sellers must be able to show that people knew exactly what they agreed to before they signed up and paid.
- Sellers must provide a simple mechanism to cancel the negative option feature and immediately halt charges.

The amended Negative Option Rule now applies to all Negative Option marketing, including “prenotification and continuity plans, automatic renewals, and free trial offers, whether the offer appears online, on the phone or in person.” The amendment makes clear that it applies to business-to-business as well as consumer marketing programs. It also prohibits material misrepresentations of any material fact made while marketing or using Negative Option features.

The Rule further requires sellers to provide important information prior to obtaining consumers’ billing information and charging customers. It also requires sellers to obtain unambiguously affirmative consent to a Negative Option, prior to charging consumers.

The “click-to-cancel” amendment requires that the customer be provided with a simple way to cancel and requires sellers to provide consumers with simple cancellation options and to immediately halt recurring charges. The amended Rule does not supersede state and local consumer protection laws and regulations.

Rule violations are subject to redress and civil penalties.

The portions of the amended Rule concerning provisions relating to misrepresentations and other procedural requirements go into effect 60 days from the date that the Rule is first published in the Federal Register, with the balance of the Rule going into effect in 180 days after publication.

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