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Locke Lord QuickStudy: FTC Takes Action Against Amazon for Alleged Deceptive Prime Subscriptions

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On June 21, 2023, the Federal Trade Commission (the “FTC” or the “Agency”) filed a complaint against Amazon for multiple violations of the Restore Online Shoppers’ Confidence Act (ROSCA). The focus of the FTC action alleges Amazon Prime subscription program employed methods to make it difficult for consumers to cancel their Amazon Prime subscriptions. In the highly redacted, 150-page complaint the FTC highlights how Amazon’s website was designed to deceptively enroll consumers by offering multiple opportunities to subscribe to Prime while checking out or using Amazon services like Prime video. The FTC alleges the formatting makes it more complicated to reject the offer than to accept, with multiple actions required to reject but only one action to instantly enroll in Prime. These offers typically included language about being a “free trial” without disclosing that accepting the “free trial” would automatically re-enroll the user after the first month at full price. This resulted in a large number of consumers enrolled in Prime without knowledge or intent to be enrolled, a clear violation of ROSCA. The cancellation process for any intentional or unintentional Prime members was purposefully designed to be difficult. Called the “Iliad Flow” by Amazon in reference to Homer’s epic poem, the complex cancellation process implemented in 2016 required users go through a four-page, six-click, fifteen-option process in order to cancel their Prime subscription. The FTC alleges this process was intentionally designed to prevent as many cancellations as possible.

Based on these allegations, the FTC commenced an action against Amazon in the United States District Court, Western District of Washington, alleging violation of ROSCA and obstruction of the agency’s investigation which began in March 2021, when the FTC asked Amazon to turn over relevant documents. According to the notice of the action included in the FTC’s business blog, despite agreeing to provide the FTC with requested documents, Amazon produced only a handful of documents. The FTC alleges it became readily apparent when leaked information was published by Business Insider in March 2022 that Amazon was not forthcoming in responding to the Agency’s requests until October 2022, almost 18 months later. The violations of ROSCA alleged in the FTC’s Complaint include: unfairly charging consumers without consent, inadequate disclosures, nonconsensual enrollment, and a failure to provide a simple cancellation mechanism. The FTC is seeking a permanent injunction, monetary civil penalties for every violation of ROSCA, and any additional relief granted by the court under ROSCA and the Federal Trade Commission Act.

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