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Payments Compliance and the FTC's Focus on Subscription Practices

SPEAKERS

Keith J. Barnett

In this episode of *Payments Pros*, host [Keith Barnett](#) examines a recent FTC enforcement action involving alleged violations of the FTC Act and ROSCA. Keith discusses the FTC's continued focus on negative option features, automatic renewals, subscription disclosures, free trial conversions, and cancellation practices, and explains why these issues remain important for companies operating in the payments ecosystem. He walks through the FTC's allegations regarding insufficient disclosure of key subscription terms, including automatic renewal provisions and early cancellation fees, as well as concerns about burdensome cancellation processes for consumers. Keith also highlights how the action reflects a broader enforcement trend, with the FTC remaining active in the payments space despite increased attention on changes at the CFPB. The episode closes with practical takeaways for businesses, including the importance of clear disclosures, simple cancellation mechanisms, and careful internal communications regarding subscription and billing practices.

Transcript

Podcast: *Payments Pros – The Payments Law Podcast*

Episode: Payments Compliance and the FTC's Focus on Subscription Practices

Host: Keith Barnett

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Keith Barnett (00:04):

Welcome to another episode of *Payments Pros*, a Troutman Pepper Locke podcast focusing on the highly regulated and ever-evolving payment processing industry. This podcast features insights from members of our fintech and payments practice, as well as guest commentary from business leaders and regulatory experts in the payments industry. My name is Keith Barnett and I am one of the hosts of the podcast. Before we jump into today's episode, let me remind you to visit and subscribe to our blog, troutmanfinancialservices.com, and don't forget to check out our other podcasts on troutman.com/podcasts. We have episodes that focus on trends that drive enforcement activity, digital assets, consumer financial services, and more. Make sure to subscribe to hear the latest episodes. Today I want to talk about a recent FTC enforcement action against an online retailer. Recent meaning recent as of the time of this recording, which is we are here in June of 2026, and the enforcement action was in May of 2026. And I want to talk about this because this seems to have been a developing trend over the past year and a half now of the Trump administration, and what I mean by that is that the FTC under the Trump administration has initiated several investigations and enforcement actions against online retailers and payment

processors arising out of alleged violations of the FTC Act and ROSCA.

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So I want to spend a lot of time talking about ROSCA, negative options, cancellations, and things of that nature. And I wanted to talk about that because a lot of attention has been paid to the dismantling of the Consumer Financial Protection Bureau, but the Federal Trade Commission has remained active in the payments world. In fact, the FTC has provided advanced notice of proposed rulemaking in payments with respect to negative option features. Another example of advanced rulemaking concerns disclosures about costs when people purchase groceries and cooked food deliveries online. The point here is that the FTC is not waiting for the new rules to be finalized and adopted. Last month, in May of 2026, the FTC filed a lawsuit and concurrently settled that lawsuit against a major online retailer. We have written about these cases before on our blogs, but we are now adding this to the podcast because we believe that we are seeing a trend, as I mentioned earlier. Although this enforcement action was against a major online retailer, it is worth it for both retailers and processors to take note because, as I mentioned before, the FTC has also brought suit against processors making similar allegation.

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In the FTC's proposed order, which actually has been finalized, the retailer will pay \$35 million, which will be used to provide full relief to the consumers harmed by the retailer's alleged unlawful billing and cancellation practices. The order also prohibits the retailer from misrepresenting material terms of its subscription offerings and requires it to disclose material terms of its subscription offerings while obtaining consumers' express informed consent to charges and maintain a simple cancellation mechanism for negative option features. So now that I've told you the end, let me tell you the beginning. Let's get to the facts alleged in the complaint. The defendant in that case maintained one of the world's largest online libraries of stock photos, graphics, videos, and music clips that consumers can pay to license for their own use. And according to the complaint, since at least 2020, the defendant had offered most of its content through a subscription model that consumers enroll in through the internet. And in offering this plan, called an Annual Paid Monthly plan, but I will shorthand and call it APM throughout this just for the ease of discussion. So in offering the APM plan, according to the complaint, this retailer promoted the monthly terms of its plan. For example, during a nine-month period in 2022, according to the complaint, the defendant touted its APM plan as its best value plan or a sweet deal before prompting consumers to choose the number of downloads per month that they wanted.

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And based upon the consumer's selection, the defendant in the case then displayed a monthly price. And the FTC went on to allege that the plan selection page of the defendant's desktop APM enrollment flows, according to the FTC, frequently failed to clearly and conspicuously disclose the material terms of the APM plan. For example, the online retailer failed to adequately disclose to consumers on its plan selection page that the plan automatically renewed at the end of each year and that the defendant charged a fee to cancel the plan before the end of the term. In addition, in order to find additional information on the plan selection page related to the automatic renewal and cancellation fee terms, the consumers would have to scroll all the way down to the bottom of the plan selection page where the defendant presented 10 frequently asked questions, and the consumer would need to click expand and then read, according to the complaint, all 10 of the frequently asked questions individually to learn more. The complaint goes on to state that the defendant did not require consumers to view these frequently asked questions before completing the enrollment process. Now, backing up a little bit more about the complaint, it alleged that there were changes made by the defendant a couple of years later. They stated as much that the

defendant changed the enrollment flows that it presented to consumers, but according to the complaint, the defendant nevertheless failed to disclose multiple material terms of its APM offerings.

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And they gave an example, and unfortunately this podcast is oral, but the complaint itself was a picture, so they actually had the example in the complaint. So you'll just have to bear with my description, but on the left side of the screen, the defendant presented what was called its pack offerings, and then on the right side of the screen, the defendant presented its subscribe and save offerings, which included the APM plan. So let's focus on the right side of the screen. According to the complaint, even though the defendant changed the manner in which it enrolled consumers, the defendant's enrollment flows did not differ materially from the before and the after. And more specifically, the complaint goes on to allege that the defendant set the APM plan as the default and prompted consumers to click a brightly colored, Buy Now button. So by pre-selecting the APM plan as the default, that's known as a negative option. The FTC had an issue with that, but the FTC also had an issue because they went on to allege that the defendant did not disclose to consumers that the APM plan would automatically renew at the end of the year if the consumers did not affirmatively cancel it. The defendant also, according to the complaint, did not clearly and conspicuously disclose that it will charge consumers who cancel before the end of the year a cancellation fee or the amount of that fee. And the FTC not only had issues with what was not disclosed, but they had an issue with what was disclosed and how. Because the complaint goes on to say that at the very bottom of the plan selection box.

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So the point here is that the consumers had to scroll all the way down to the plan selection to see what the FTC called an inconspicuous line of text in a less prominent location than the price, number of downloads, and other disclosed terms of the plan that states, cancellation fee applies. See Terms and Conditions. So that was the main disclosure, which the FTC said was inconspicuous, but the FTC went even further in the complaint because they said that the cancellation fee applies. See Terms and Conditions disclosure, the FTC stated that the consumer cannot view the terms and conditions without clicking on a hyperlink. And they went on to say that the display of this hyperlink was in text in more of a light gray font that was easy to miss and less distinct than the bold text and the brightly colored text surrounding the hyperlink. Another issue that the FTC raised was that the consumers were not required to click the hyperlink or acknowledge that they read the hyperlinked document. And so instead, if you are a consumer who actually does click on the link, they were directed to the license agreement, which did include the terms of service, but according to the complaint, the terms of service did not disclose that the APM plan will automatically renew. Also according to the complaint, the terms and conditions did not conspicuously disclose that the APM plan was subject to a cancellation fee or the amount of the fee.

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So the bottom line here was there were changes, but the changes were not fundamental in that there was a lack of automatic renewal disclosure and that there was a cancellation fee for an early cancellation. The complaint just goes on to say for several pages, it's a 34-page complaint. It just goes on to say constantly about how there was no automatic charge that was easily disclosed or cancellation fee that was easily disclosed. And that's with the desktop version, but the FTC also had a separate set of allegations with respect to the mobile website, and it's the same thing, right? Same allegations. This is almost a direct quote. They say, defendant's enrollment practices related to its APM plans also failed to disclose all the material terms through the mobile website. Again, those material terms are the automatic renewal and disclosures regarding cancellation. And also as further evidence, or

at least what the FTC considered to be further evidence, was that the FTC looked at online complaints from subscribers, also including the Better Business Bureau, where people have said, we did not know that the terms automatically renewed. We didn't know there was a cancellation fee. So these are things to also look out for. Other things to look out for that the FTC found important to note in the complaint was that the online retailer's employees also internally acknowledged that their enrollment practices could cause confusion and harm. It appears that the FTC received that information through either emails or internal memos or both.

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So again, for those of you who are out there who are retailers or payment processors, you need to be careful about what you are writing in your emails and internal memos in case they are subpoenaed at some point. The next topic that the FTC addressed in the complaint was the free trial period, and the FTC labeled this as, Defendant's Deceptive Free Trial Advertising and Enrollment. And so let's find out what it is they meant by deceptive free trial advertising and enrollment. The FTC alleged that for a three-year period, the defendant offered a one-month free trial of its subscriptions, but again, according to the complaint, they go back to what they were saying earlier. Specifically that the defendant did not disclose that it would automatically convert the free trial into an annual recurring subscription that came with a cancellation fee if the consumer did not cancel their subscription before the trial period ended. It's interesting to me that the FTC brings up this point enough times in the complaint to a point where you do think that this is an important issue to the FTC, but you also got to think about this as a consumer. You would think that if you're asked to provide credit card or debit card information, you should know that that free trial is going to end and your card is going to be charged at some point. But in any event, the FTC made a deal out of that issue not being disclosed at the end of a free trial.

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Then next I wanted to more particularly discuss the cancellation practices because we've been seeing several enforcement actions that do discuss how hard either a merchant, in some cases a processor, has made it to actually cancel for consumers and how that's a cause of action under ROSCA and the FTC Act. In this particular case, the FTC labeled it as, Defendant's Unlawful Cancellation Practices. And so let's look at the particulars of that so those of you who are merchants or processors can see an example of what the FTC means by that. In particular, the FTC alleged that when a consumer enrolls in a free trial or paid subscription. So either way, the defendant had instituted a cancellation process that the FTC described as difficult, burdensome, and time-consuming. And according to the complaint, the defendant in some instances made online cancellation available to APM plan subscribers who wish to cancel early, only made it available to them. But prior to that, the defendant did not allow online cancellation and instead required consumers to either submit a request through the cancellation flow or wait for a follow-up email from the defendant or contact customer support by phone, email, or chat to begin the process of canceling their APM plans.

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So bottom line here is that according to the FTC's complaint, the defendant made it too difficult to cancel, but let's go on with more examples provided by the FTC. The FTC goes on to allege that the defendant's phone and chat cancellation options were not simple. For phone cancellation, consumers could not reach the defendant, according to the complaint, because in some instances the defendant had listed the wrong customer service phone number multiple times on its website. Also, consumers who did manage to reach the defendant by phone or chat had reported long wait times or frequent disconnections. The FTC did not specify what is considered to be a long wait time, but it would have been helpful to have that allegation, but it just was not there. The FTC also alleged that if a

consumer reached a customer service representative, they would encounter a process they called, rife with tactics that impeded their attempt to cancel. And they went on to say that the tactics resulted in a multi-step cancellation process that was just not simple. And the FTC alleged that the defendant did not honor cancellation requests by email and... Just from one simple email, but instead required consumers to navigate through multiple follow-up emails, and a consumer who emailed to cancel was required to wait for an email response from the defendant. Other times, the defendant had provided a link in a responsive email which the customer had to click to consent to the early cancellation fee. And if they did not click to consent to the early cancellation fee, they could not cancel.

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The link required, even after that, the consumers to take more steps. The FTC listed as an example that the defendant had required consumers to click on the link within three days. And the FTC said that this is difficult because customers could easily miss the deadline because the email could have been routed to junk mail or the consumers were not expecting a reply that would have required additional steps to cancel. The FTC went in great detail to allege that there was, I believe, a seven- or eight-step process for cancellation in connection for the APM plan for some of the consumers. So I'm not going to go through great detail on that, but the allegations were that the consumers would have to click, cancel plan, a multitude of eight times before the plan was actually canceled. So the first time they click, cancel plan, it would lead to another page pretty much saying, are you sure you want to do this? You click on that, and then it would have some other statement to try to stick the consumer in without allowing them to cancel before finally they were able to hit that eighth page that allowed them to cancel.

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And the FTC alleged that... They're saying, of course, if you don't click the right cancellation button through that eight-step process, then it starts you back at the beginning or cancels your ability to cancel. So to sum all this up, the FTC is still active and alive in the payments world. They have consistently been performing investigations and enforcement actions on particular areas that include negative options, disclosures related to auto-renewals, and the difficulties that consumers may encounter when attempting to cancel a subscription. And this message is for both online retailers and for the payment processors as well, because the FTC has initiated at least one enforcement action where they believed that the processor was aiding and abetting with respect to the negative option features and the difficulties of cancellation. That's all I have for today. I'd like to thank our audience for listening to today's episode, and don't forget to visit our blog, troutmanfinancialservices.com, and subscribe so you can get the latest updates. Also, please make sure to subscribe to this podcast through Apple Podcasts, Google Play, Stitcher, or whatever platform you use, and we look forward to the next time.

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