

Regulatory Oversight Podcast**12 Days of Regulatory Insights: Day 10 – State AGs on Pricing and Renewals****Speakers: Clayton Friedman, Mike Yaghi, and Nam Kang****Aired: December 17, 2025****Nam Kang (00:04):**

Welcome back to the special holiday edition of our *Regulatory Oversight* podcast series, the 12 Days of Regulatory Insights. This 12 episode series is focused on key highlights and trends from this past year in various areas and designed to keep our listeners informed and engaged during the holiday season. I'm Nam King, a member of RC Attorneys General Team and Regulatory Investigation, strategy and Enforcement, or Rise Practice Group. Before we get started today, I wanted to remind all of our listeners to visit and subscribe to our blog [RegulatoryOversight.com](https://www.regulatoryoversight.com) so you can stay up to date on developments and changes in the regulatory landscape. Today I'm joined by my colleagues Clay Friedman and Mike Yaghi to discuss recent regulatory enforcement trends in the advertising and marketing space, focusing on the push toward all in pricing to eliminate junk fees and drip pricing practices. Along with tight next standards for auto renewal subscriptions, we'll share practical guidance on best practices and preview what brands should expect next in enforcement.

Clay co-leads the firm, state attorney's general practice and advertising and marketing practice. As former assistant Deputy Attorney General Clay draws upon decades of experience with CS and other regulatory bodies such as the FTC to assist companies facing matters involving advertising, marketing and unfair or deceptive practices. Mike is also a partner in the state attorney's general practice and a member of our advertising and marketing practice. He represents clients in regulatory enforcement investigations involving all facets of their business, including advertising and sales practices, monthly membership programs, auto renewal programs, and testimonials and endorsements. Thank you, Clay and Mike, for joining me today.

Mike Yaghi (01:48):

It's a pleasure to be here.

Clay Friedman (01:49):

Good morning now, Namrata. It's good to talk to you.

Nam Kang (01:51):

Looking back at the year 2025, what have been the regulatory trends in the marketing and advertising space that you have seen

Clay Friedman (01:59):

A lot of focus on pricing information and whether or not it is being properly given to consumers as well as the related part of that payment information. So we've seen a lot of different efforts related to things called junk pricing and drip pricing or junk fees, which are really basically the same as well as once you are selling something or you're in the middle of the sale, are you giving proper information to consumers both before they make their purchase and after they make their purchase? And it gets a little bit more complicated when you start talking about subscriptions and other sorts of programs or products that autorenew and obviously what we like to do this morning is dive into those different types of issues that focus on pricing and autorenew in general, but then show some of the specifics.

Nam Kang (02:50):

Great. Well, let's dive into it. What changed regarding junk fees enter pricing in 2025 and who has been affected?

Clay Friedman (02:59):

We should talk about, first of all, that in some ways nothing has changed. This isn't a new issue. It's one that's been around that predates my involvement in this space, and that goes back to a whole different century and several decades ago in that century. So I've been doing this work since 1984. It was a very important issue back then. The concept under state and federal unfair deceptive acts and practices, statutes are that consumers should get all their pricing information before they make a purchase. The only difference is now is that we now have some federal legislation on it. We've got a lot of state legislation, and it really became a big issue when it was mentioned by then President Biden in his State of the Union address saying, we need to get rid of these junk fees, we need to get rid of drip pricing. And then in that kind of spike enforcement and it spiked regulatory or state statutes and regulations, and Michael's going to go into some of the details about how you now have a different web network, if you will, of all these different types of pieces companies have to comply with yet then we'll circle back on the underpinning that state unfair and deceptive active practices laws are still there even if there isn't specific legislation.

Mike Yaghi (04:18):

Yeah, no, that's a very good point. And what's changed in 25, I guess specifically are a lot of new state specific laws on price transparency. But like Clay said, we've been dealing with this issue for decades even before these laws came into effect. In fact, we've had in a couple of jurisdictions, Connecticut and Minnesota, we actually have had investigations that predate their laws that address pricing issues and then the law passed and those matters are still ongoing. So you could kind of get a sense that regulators are not, this isn't a new area for them. They just in several states now are armed with specific laws that prevent pricing or junk fees. So what does that mean basically, right? It just means in a complex web flow, for example, and we've all done this, right? You go to a hotel website, you pull up some room rates on dates, you select your dates, it presents to you 399 a night, and in small print somewhere it'll say plus surcharges and taxes or whatever.

By the time you get to the checkout page, it's like 499 or 599 a night, right? Because you had taxes fees, but then you've had all these other things like resort fees and other additional hotel charges. So what these laws are focused on in many ways is what is a mandatory component of the cost. So if I have to pay 299 or 399 a night plus a \$50 a day resort fee, and that \$50 resort fee is unavoidable, meaning I can't decide to tell the hotel, I don't want to pay that, then that has to be part of the upfront. So that whole web flow and the journey even on a phone call or in advertising in general, it's not just online. These laws want companies and retailers to put that all in pricing upfront. And the only thing you don't really have to put in there in what a lot of these laws cover are things like sales tax, government taxes, those sorts of things, maybe shipping fees if it's not clear what your shipping charges are going to be until the consumer puts in their address and zip code, because that varies.

Although I will say if you offer a flat shipping fee, let's say I'm a company that has a flat shipping fee of \$25 on any order anywhere in the country, I would recommend you put that in all in pricing, and it has to be in a real clear, understandable terminology. It has to be something that consumers can see and understand and follow. There are exceptions in some jurisdictions where some certain transactions are not included. I think California has some exceptions for financing type disclosures, TLA disclosures, other types of bank related specific disclosures, as well as other, I think there's other contexts. I mean, they all have certain exclusions, but in general, companies have to be very clear to put their pricing upfront.

Clay Friedman (07:16):

You've got to be careful though, Michael points out the exceptions of the exclusions. That's kind of a dicey issue. We've seen companies try to do some workarounds that really points out some risk, and then you can't forget how we started this conversation. It's that there's still an underpinning in most states of an unfair deceptive act of practices act. If you try to get too cute and say, Hey, we don't have to comply with this because we're excluded. You may find that you might be excluded from that particular statute, but you may not be otherwise excluded. And I can give you an example. There's a lot of different states that have specific laws focusing on event ticketing. They may not talk about drip pricing in other areas, but they talk about it in that specific area. The fact that it doesn't make reference to any other industry doesn't mean any other industry doesn't have to comply with these types of concepts. One other last piece, a warning sign I guess, is that a lot of attention has been focused on where the companies may want to group something into taxes and fees, and they'll make the disclosure, they'll say the hotel room is \$200 a night taxes and other fees are another a hundred dollars total price, \$300, but they lead the consumer to believe that those other additional items by the hotel, but there's some sort of governmental fee.

Nam Kang (08:42):

What are the best practices for businesses when implementing all end pricing across channels and how should they navigate the patchwork of state junk B laws?

Mike Yaghi (08:53):

Yeah, that's a very good question. First of all, you want to understand each state law and the exceptions. So if your product is an exception in a specific state, that's a state you wouldn't have

to worry about. But not all of these states have the same exceptions. So there's a high likelihood that you're probably going to have a triggered law, especially if you're a nationwide company providing products and services nationwide. So I think that you really want to go through all of your marketing channels and reevaluate your pricing and how you're disclosing pricing. So you want to make sure you're upfront price in the initial ad is displaying that total all-in price. So if there's add-on charges that are not avoidable, meaning it's not something the consumer selects and adds, then that's going to have to be a part of your all-in upfront pricing. You don't have to, again, like I said earlier, include taxes, governmental fees and taxes, that sort of thing.

And again, shipping like I noted before, another good practice. But you want to have that upfront, right? So you want to avoid any issues where a regulator could come in and say, Hey, our law says everything upfront has to be disclosed. You failed to do so, and you're now exposed under the new statute, so you don't want to even put it on the next page. You can't put it in a click link with added explanation of what the real price is. It has to be right there in the ad. Then you want to have very clear terms. I think Clay touched on that. You want to make sure that you're making very clear what charges are your charges, the retailer's charges versus government fees or taxes because you don't want to mislead anyone in the marketplace, consumers to think you're fudging the names of certain charges you are imposing, but you want them to sound sort of like a government fee. And then you really want to have a good compliance. You want to maintain copies of your ad flow, your web flow, your marketing material, your ad collateral. It's really good to have all of that preserved and retained because if you've taken the time to become compliant, you want to be able to show regulators down the road that you have been, and you could recreate sort of your ad collateral and campaigns to demonstrate and defend against a claim that you didn't comply with the state law.

Nam Kang (11:13):

Great. I know that FTC passed a junk fee rule last year and had a recent lawsuit against Ticketmaster and White Nation, along with some state AGs. What are the core allegations in that lawsuit?

Clay Friedman (11:26):

The lawsuit's interesting, but you got to step back. As you said, the FTC has been studying drip pricing and junk fees forever. As I mentioned before, the Biden administration had Biden himself had mentioned it in a state of union address several years ago, challenging the enforcement group to pass rules and regulations in this area. The FTC had a very widespread investigation covering drug fees, et cetera, across a wide spectrum. And then they came out with their rule and the rule said, no junk fees or drip pricing in event ticketing issues and hotel or hospitality type issues. And then they kind of punted the rest of the issue down to the states and their own statute and saying that these things are covered by UDAP anyhow. But they did file a lawsuit against Ticketmaster and Live Nation in some ways. There were no surprises there.

They focused on the bait advertising aspect of it, where they argued that someone who's buying in an event ticket from Ticketmaster had no idea the total price until they got down to the buy button, that there were a whole bunch of added fees, and we've all seen that you see a concert for \$99, but by the time you buy the ticket, it's \$199. So your fees, et cetera, are particularly if it's resale, are much higher. What's interesting about this case though, and what makes it more

novel is that the FTC, in addition to just looking at the core issues of drip pricing, they also said that Ticketmaster was guilty of coordinating with its brokers and basically allowing them to harvest better tickets and then being able to resell 'em at significantly high markups. And they said that Ticketmaster was involved in that conspiracy, if you will, and that was something that was very new in the case and different than just traditional drip pricing type argument.

And that's getting the attention of the industry, and it just does mean that the states are focused on that issue. Something else that's worth noting about Ticketmaster and Live Nation, they're also involved in fair enough of antitrust investigations or litigation related to whether or not they're forcing out competition by through their relationship with the talent and their ownership of venues, making sure that people like Taylor Swift, et cetera, only play a lot of dates at their venues and a limited number of dates at competitors venues, and we should pay attention to see how that shakes out too, because that will affect a lot of other practices in this space.

Nam Kang (14:15):

Awesome. And similarly, I know that FTCs also had passed their modern negative option rule called the Click to Cancel rule in late 2024. The rule required clear disclosures, express informed consent and cancellation for easy cancellation for all subscription or auto renewal plans. But many industry groups challenge the rule in court, and I believe the petitioners were consolidated in eighth Circuit. Michael, where does the FTCs click to cancel Rule stand now?

Mike Yaghi (14:49):

Yeah, the amended negative option rule, it was vacated, but on procedural grounds, right? Not on substantive grounds. It was basically vacated for a lack of necessary regulatory analysis. But the FTC, it has signaled its interest in making cancellations of subscriptions easier for consumers and through prior enforcement. That's still a focal point for the FTC, and we anticipate seeing a continuance of the commission really enforcing the Restore Online Shoppers Confidence Act, as well as the FTC Act against any type of deceptive subscription flows, cancellation hurdles, any misrepresentation with respect to an auto renewal. And it's consistent with what a lot of states are focused on. They want to make cancellation as easy as making the purchase. It's always been a hot topic, I think, for many, many years, obviously. And so as all these laws get tinkered with and improved from the state regulator and consumer group standpoint, it becomes sharper risk for companies if they don't follow those rules. But the bottom line is you want to try to make sure you're not exposing yourself under ROSCA or the FTC Act, even though there isn't a specific click to cancel requirement, although states require it like California,

Clay Friedman (16:09):

Well, you have a patchwork of a bunch of different state laws and they're all over the place. You have some that just say, Hey, before you do an autorenew, and if your autorenew period is a year or more or greater than a year, you've got to send a consumer a notice about that. Those are the old laws that are still in the books in some states from the 1970s. Recently, we've seen states really revamp those laws and almost goes hand in hand with the attention on drip pricing. The idea that customers need to know what's coming. And the thing about autorenew laws is that you may have a low-end introductory offer to do something to buy a product, but it has

some sort of autorenew feature. These laws want to make sure that customers understand that in some period of time, whether it's a month, three months, six months or a year, something's going to happen and it's going to happen to their price, and they have a credit card or debit card or something else on file for automatic payment.

And unless they're paying attention, the concern was they had no notice. So even though these concepts, again, were had the underpinnings of state and federal unfairness after acts and practices, statutes, we now have specific laws. The challenge to a businessman or business is how do you comply with 'em all? There's certain things you could certainly focus on or best practices that come up with a lowest common set of rules, if you will. And Marco touched on the very first one, clear conspicuous disclosure in very bold type of type. Nothing hit it. It's got to stand out. When you look at the state laws, what's going to happen? What are you going to pay at this particular timeframe? Is that price discounted? What's the discount? And most importantly, what's the price going to go to? And because it has an auto renewal aspect to it, you have to obtain the consumer's express consent.

Say, yes, I understand and I agree to the autorenew feature. However, again, you need to make sure the consumer is provided with all the information of what that autorenew feature is, what's going to cause them. And then most of the states now are also saying, send the customer a confirmation letter, which is a good practice in how to protect yourself and insulate yourself once they sign up for something, send in the rules saying again, here's what you're going to pay. Here's what you're going to pay. Once the introductory price goes away, here's when we're going to collect that payment and here's how we're going to collect it. In other words, it'd be, it's your credit card. And then as Michael had mentioned earlier, the emphasis on cancellation is huge. Companies would get into trouble that they would hide how you cancel the auto new feature that would make it difficult.

They would put barriers in place, and that just isn't tolerated anymore. And so the FTC has a different concepts where it says you have to make the cancellation process as easy as it was to sign up. And some state laws mirror that too. But again, basic consumer protection laws says you need to give the consumer an easy out on how to cancel the auto new feature so they don't have to hunt and peck to find it, and they can step away, and it makes good sense anyhow, because you don't want the consumer to be trapped and send complaints in addition to confirmation letters. A best practice would be to send a notice to the consumer that they're about to get hit with their auto renewal tapping in. Now, if it's monthly, state laws don't require it, but if you're in some sort of cycle that's beyond monthly, if you're quarterly or every six months or every year or something like that, state laws are going in.

The trend is saying that you need to send the consumer a letter in advance of that happening or a price increase, same thing. So there are no surprises, and they can make an informed choice. The thing you watch out for here is that the penalties can get quite severe. So if you're engaging in some sort of practice related to an auto that has an auto new feature and you're not doing the right disclosures, and you've made 400,000 solicitations or 400,000 sales across the country, that's a lot of civil penalty exposure in different states. In California, it can range between 2,500 to \$5,000 per penalty depending on the circumstances. In other states, it's similar that penalties tend to range between a thousand dollars and \$5,000. However, and this is a big however, Michael made reference to ROSCA, which is in its own way, an online auto renewal statute. If you violated FTC rule today, and ROSCA's a rule, it's \$50,000 per violation. So if you take that

same scenario, and I'm not going to do the math of 400,000 people, were victimized by inappropriate auto renewal practices under the FVC. If Ross gets triggered, each one is up to \$50,000 per violation, and that's when you start talking about record setting settlements.

Nam Kang (21:26):

Well, that's a great recap for 2025, and also best practices around junk fees and autorenew subscription programs. Looking ahead to 2026, what are your predictions for enforcement trends going into next year?

Mike Yaghi (21:43):

We all know, right, that current administration has pulled back in many ways, right? The CFPB is effectively not doing a whole lot. We haven't seen as much with respect to the FTC, but I think under the current administration, I think the focus will be mostly on actual fraud, protecting consumers from actual fraud and restitution as opposed to civil penalties, that sort of thing. I think we could expect renewed rulemaking on negative options and cancellations informed by the eighth circuits, procedural guidance. And then at the state level, we're going to just see all sorts of individual state and multi-state enforcement on pricing issues, especially those states that have price transparency laws. They're bringing them in. Single enforcement matters, but states aren't waiting for their legislatures to pass similar laws like Clay noted earlier. The UDAP statutes, their consumer protection statutes are being used for that purpose, and they're going to keep going after companies that they feel are deceiving or unfairly or being abusive in the way that they display pricing. And if they're not really clear and transparent, clearing and conspicuous on all the hidden charges and additional charges, they're going to get tripped up under even just a garden variety consumer protection statute. So I think those are all areas that we're going to see continue into the new year.

Nam Kang (23:09):

Awesome. Well, Clay, Mike, I appreciate you joining me today. I know our listeners value your perspective in this multifaceted area of law, and I want to thank our audience for tuning into this special holiday series. Tune in for our next episode as we continue our 12 Days of Regulatory Insight series. Please make sure to subscribe to this podcast via Apple Podcast, Google Play, Stitcher, or whatever platform you use, and we look forward to next time.

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