

# FTC Action Regarding Violations of the Restore Online Shoppers' Confidence Act and Deceptive Commercial Practices Results in \$10 Million Dollar Settlement

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## The Bottom Line

- *The FTC has made it clear that it will not tolerate deceptive negative option and billing practices and will enforce heavy penalties on companies that do not comply with the law.*
- *Marketing practices for online subscriptions services need to be transparent and truthful. Consumers must be informed about the cost of the subscription, when they will be charged and how they can cancel without hassle. Companies must recognize their obligations to listen to the consumers needs and make changes accordingly.*

Age of Learning, Inc. (Age of Learning), which operates as ABCmouse, a subscription service for young children's educational content, agreed to pay \$10 million dollars to settle claims by the Federal Trade Commission (FTC) regarding its negative option and billing practices, including its failure to clearly tell parents that their subscriptions would automatically renew at the end of the term.

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## The Complaint

The FTC filed a complaint against Age of Learning alleging that the company violated the FTC Act by making misrepresentations about cancellations, failing to clearly disclose the terms of the auto-renewal subscriptions and unfairly charging consumers without their prior consent. In addition to violating the FTC Act, the company was also accused of violating the Restore Online Shoppers' Confidence Act (ROSCA) for illegally charging consumers for products sold through online negative option marketing.

In particular, ROSCA makes it illegal to charge consumers for products sold through online negative option marketing unless the seller:

1. Clearly and conspicuously discloses material terms of the transaction before obtaining the consumer's billing information;
  2. Obtains the consumer's express informed consent before making the charge; and
  3. Provides simple mechanisms to stop recurring charges.
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## Age of Learning's Offers

ABCMouse advertised to parents a "special offer" membership deal at \$59.95 for 12 months and a 30 day "free trial" membership that could extend beyond at a cost of \$39.95 for 12 months or \$29.95 for 6 months, promising "Easy Cancellations" at anytime.

The FTC alleged that ABCmouse failed to clearly disclose that memberships would automatically renew after the 12 month period expired, but rather buried this information in its Terms and Conditions, which were accessible only if users clicked a hyperlink. The FTC also claimed that ABCmouse failed to disclose that consumers would be charged automatically and on a recurring basis after the 30 day “free trial.” Lastly, the FTC found that the promise for “Easy Cancellation” was anything but easy. According to the complaint, consumers who tried to cancel by calling or emailing the company were required to negotiate a difficult process that often prevented many of them from canceling their subscriptions.

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## **The Settlement**

As part of the settlement, Age of Learning agreed to pay \$10 million dollars and change its negative option marketing and billing practices in accordance with the following terms:

1. Barred from making deceptive representations related to negative option marketing. This includes promoting any goods or services as “free,” “trial,” “sample,” “no obligation” or “similar plan.”
  2. Required to disclose negative option terms “clearly and conspicuously, and immediately adjacent to” claims about “free, trial, no obligation, reduced, upgraded or discounted” offers to avoid hidden terms buried in within the fine print.
  3. Required to divulge important information to consumers when it offers negative option plans. The information must include how to cancel the plan, what fees will be incurred if they do not cancel and deadlines by which they must cancel to circumvent unwanted charges.
  4. Required to obtain express informed consent before enrolling consumers into any automatic billing programs and must have simple cancellation protocols in place.
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