

FTC Settlement Over Charges of Misleading Consumer Reviews and Deceptive Negative Option Marketing Practices

The Bottom Line

- *The FTC continues to take action where it finds that marketers are engaging in misleading incentivized product review practices or enrolling customers in deceptive “free trial” negative option plans without providing the appropriate disclosures and obtaining the consumer’s affirmative consent to the terms of the plan.*
- *Marketers should ensure that they are instructing their customers to adequately disclose any incentives they receive in return for posting product reviews online and that they should not be encouraging any incentivized reviews on websites that prohibit such reviews, including the BBB website. Marketers should also ensure that their “free trial” offers comply with the Restore Online Shoppers Confidence Act and other laws governing “free trial” negative option marketing plans.*

A San Francisco-based company and its principal agreed to settle allegations brought by the Federal Trade Commission (FTC) that they falsely represented positive reviews on the Better Business Bureau and other third-party websites as independent reviews, when in fact they were incentivized, and that they failed to adequately disclose the material terms of the company’s “free trial” negative option marketing plans.

The FTC’s Complaint

Incentives for Reviews

According to the FTC, UrthBox, Inc. (UrthBox) operated an incentive program which gave customers free snack boxes or store credit for posting positive reviews about its products on the Better Business Bureau (BBB) website and on other third party websites. UrthBox asked customers to post incentivized reviews on the BBB website even though the BBB requires customers submitting reviews to confirm that they “have not been offered any incentive or payment originating from the business to write the review.”

As a result of UrthBox’s incentive program, the FTC contended that the ratio of positive to negative reviews about the company on the BBB website jumped from 100% negative to 88% positive. The FTC also claimed that between 2014 and 2017, UrthBox incentivized positive reviews on Twitter, Instagram, Tumblr and Facebook while having no procedures in place to monitor its reviewer’s posts.

The FTC alleged that UrthBox and its principal, Behnam Behrouzi, violated Section 5(a) of the FTC Act by misrepresenting that these positive customer reviews reflected the independent experiences or opinions of impartial customers, and by failing to disclose that some customers received incentives to post these positive reviews.

“Free Offer” Subscription Plan

The FTC claimed that UrthBox’s “free trial” offers of its snack boxes violated the Restore Online Shoppers Confidence Act (ROSCA) because the company failed to adequately disclose the material terms of the offer to customers, including the fact that customers would automatically be enrolled in a subscription plan and charged for six months of shipments when their “free trial” period ended. The FTC further alleged that customers who had ordered a free snack box from Urthbox did not even know that Urthbox had enrolled them in a six month subscription plan until they discovered the charge on their credit card statement.

The Settlement

The proposed order settling the FTC’s charges requires UrthBox to pay \$100,000 to the FTC, which the FTC may use to compensate consumers deceived by the trial offers.

In addition, the proposed consent order provides that UrthBox and Behrouzi are:

- Prohibited from misrepresenting that an endorser of any good or service is an independent user or ordinary consumer of the good or service;
- Prohibited from making misrepresentations in connection with the marketing or sale of any good or service with a negative option feature;
- Prohibited from making any representation about any consumer, reviewer or other endorser of any good or service without adequately disclosing any unexpected material connection between the endorser and UrthBox and Behrouzi;
- Required to take all reasonable steps to remove any demonstration, review or endorsement by any endorser with a material connection to UrthBox and Behrouzi of any good or service currently viewable by the public that does not comply with these requirements;
- Required to monitor their endorsers to ensure they are disclosing their material connections;
- Required to make certain specified disclosures when they market or sell any good or service with a negative option feature, including (i) the extent to which the consumer must take affirmative action to avoid certain charges, (ii) the total cost (or range of costs) the consumer will be charged and, if applicable, the frequency of such charges unless the consumer takes steps to prevent or stop such charges, and (iii) the deadlines by which the consumer must affirmatively act in order to stop all recurring charges;
- Prohibited from using billing information to obtain payment for a good or service with a negative option feature without first obtaining the consumer’s express informed consent to do so; and
- Required to provide consumers with a simple mechanism to cancel any negative option features to avoid being charged for the goods or services.

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