

ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

AMAZON, FTC WITHDRAW APPEAL OF DECISION HOLDING AMAZON LIABLE FOR BILLING PARENTS FOR CHILDREN'S UNAUTHORIZED IN-APP CHARGES

Nearly three years after the Federal Trade Commission (FTC) first charged that Amazon had unlawfully billed parents for millions of dollars in children's unauthorized in-app charges – and about one year after a federal district court in Washington agreed with the FTC, but denied its request for an injunction – the case is over. As a result, Amazon soon will refund up to \$70 million in in-app charges to injured consumers.

BACKGROUND

In 2014, the FTC sued Amazon, Apple and Google, claiming that the billing of parents for in-app purchases incurred by their children without the parents' express informed consent violated Section 5 of the FTC Act. Apple settled with the FTC and agreed to refund \$32.5 million to consumers; Google also settled and agreed to refund up to \$19 million to consumers. Amazon refused to settle, and the FTC moved for summary judgment against it.

THE DISTRICT COURT'S DECISION

As discussed in a previous D&G [Alert](#), the Washington district court ruled that Amazon had unlawfully billed parents for in-app purchases incurred by their children without the parents' express informed consent. According to the district court, when Amazon's Appstore first implemented in-app purchases in November 2011, the default setting did not require the customer's

THE BOTTOM LINE

The district court's decision, no longer subject to appeal, is a clear statement that the unauthorized billing of parents for in-app purchases made by their children without informed parental consent violates the FTC Act. This case serves as a reminder that companies need to ensure that they clearly and conspicuously disclose their billing practices and obtain customer's consent before charging them, especially when the charges are incurred by children.

approval prior to completion of an in-app purchase, such as entering a PIN code or a password. Only if a customer previously had enabled parental controls would the in-app purchase require entry of a PIN code or password. The district court found that Amazon had received complaints from parents who were surprised to find themselves charged for in-app purchases made by their children.

Moreover, the district court noted, when Amazon introduced a password prompt feature for in-app charges of \$20 or more in March 2012, the

prompt did not include charges below \$20. Even after Amazon added a password requirement in May 2013 for all first-time in-app purchases on Kindle Fire tablets, and even after it refined its password prompt in June 2014 for those purchases, customers who continued to use Kindle's "first-generation" devices (for which software updates were no longer available) could still make in-app purchases of \$1 or less without a password.

The district court ruled that Amazon's conduct amounted to an unfair practice under Section 5 of the FTC

>> continues on next page

ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

Act. Among other things, the district court pointed out that a “clear and conspicuous disclaimer” regarding in-app purchases and request for authorization on the front-end of a customer’s process could prove to better inform customers about their risk of accruing in-app charges and be “more seamless” than the “somewhat unpredictable password prompt formulas rolled out by Amazon.”

However, the district court denied the FTC’s request for an injunction prohibiting Amazon’s illegal conduct, finding that the FTC had not demonstrated a danger of a recurring violation. The district court reasoned that, given the changes Amazon had made to its in-app purchase prompt by June 2014, customers were “clearly informed” about both the existence of in-app charges and the scope of their consent. The continuing risk to owners of first-generation Kindle devices was part of the “substantial harm that Amazon caused customers, and for which monetary damages should be assessed,” the district court said, but it did not warrant an injunction.

THE APPEAL

Amazon appealed the district court’s ruling and the FTC appealed the denial of the injunction. While the appeals were pending, the district court stayed its order requiring Amazon to begin offering refunds to injured consumers.

Now, the parties have agreed to withdraw their appeals. According to the FTC, more than \$70 million of Amazon’s in-app charges made between November 2011 and May 2016 may be eligible for refunds. After nearly three years, the FTC’s action against Amazon has finally been resolved. Notably, Amazon’s requirement to refund \$70 million in in-app charges is significantly more than the amounts Apple and Google were required to refund as part of their respective settlements, which they entered into shortly after being sued by the FTC.

FOR MORE INFORMATION

Allison Fitzpatrick
Partner
212.468.4866
afitzpatrick@dglaw.com

Vivian Wang
Associate
212.468.4927
vwang@dglaw.com

or the D&G attorney with whom you
have regular contact.

Davis & Gilbert LLP
212.468.4800
1740 Broadway, New York, NY 10019
www.dglaw.com

© 2017 Davis & Gilbert LLP