

# ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

## LOCAL CHALLENGES TO AUTOMATIC RENEWAL PROGRAMS CONTINUE IN CALIFORNIA: NOW, THE BEACHBODY CASE

Local governments in California are playing an increasing role in examining and challenging potentially misleading advertising and marketing practices. Recently, a company based in Santa Monica agreed to revise its auto-renewal practices to include, among other things, a standalone “check-box” for consumers to consent to automatic renewals, and to pay \$3.579 million in penalties and restitution.

### ENFORCEMENT AUTHORITY IN CALIFORNIA

One of the unique aspects of consumer protection laws in California is that not only is the attorney general authorized to enforce state laws, certain local law enforcement officials are as well. In particular, the laws can be enforced by:

- >> a district attorney or a county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance;
- >> a city attorney of a city having a population in excess of 750,000; or
- >> a city attorney in a city and county, or, with the consent of the district attorney, a city prosecutor, in a city having a full-time city prosecutor.

### THE BEACHBODY CASE

This case involved Beachbody, LLC (Beachbody), which sells exercise videos, supplements and weight loss programs, including the wildly popular

### THE BOTTOM LINE

As the Beachbody case illustrates, businesses must clearly disclose to consumers the terms of auto-renewal programs and should obtain their express, affirmative consent before collecting any payments. Many states, as well as the federal government, have laws that address this specifically. The failure to do this could lead to costly litigation brought not just by federal and state authorities but, in some instances, by local authorities, too.

P90X, and the beach town of Santa Monica, California.

The city attorney for Santa Monica determined that Beachbody was automatically charging customer credit cards for renewals of products and services without obtaining customers’ express consent.

### SETTLEMENT TERMS

In settling the allegations, Beachbody agreed to alter its auto-renewal practices on its website and in its advertising and marketing with respect to the issues of disclosure, affirmative consent, acknowledgment and cancellation in the following manner:

- >> Disclosure. Beachbody agreed to clearly and conspicuously disclose renewal terms before obtaining a consumer’s payment information. Toward that end, it agreed to explain that the subscription or purchasing agreement would continue until the consumer cancelled; describe its cancellation policy and how to cancel; and discuss the recurring charges to be charged as part of the auto-renewal plan, the length of the auto-renewal term (unless chosen by the consumer) and the minimum purchase obligation, if any.

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- >> Affirmative consent. Beachbody agreed to obtain a consumer's affirmative consent to an auto-renewal or continuous service plan by having a separate "check-box" or similar mechanism that only relates to consent.
- >> Acknowledgment. Beachbody agreed to send at least one post-payment acknowledgment of the transaction to consumers that includes a summary of the renewal terms. For all renewal periods of six months or more, Beachbody also agreed that it would send written notices to consumers advising of the upcoming automatic renewal and explaining how to cancel.

- >> Cancellation. Beachbody agreed to provide at least two "easy and simple" mechanisms – online and by toll-free telephone – for consumers to stop recurring charges.

The terms of the settlement were contained in a final judgment and injunction issued by a county court in Los Angeles. In a statement issued after the judgment was entered, the Santa Monica city attorney suggested that this was the first injunction in California to require a separate check-box for consumers to use to enroll in auto-renewal programs. It may not be the last.

**FOR MORE INFORMATION**

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