

# ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

## MASTERCARD ANNOUNCES NEW FREE TRIAL RULES FOR MERCHANTS

Mastercard recently announced that it will be imposing new obligations on merchants that offer free trials to consumers. The new rules will apply to companies that sell physical products such as clothing, skincare and healthcare items but not to those who provide digital products or services.

### REQUIREMENTS

Companies engaged in negative option or subscription-based marketing must comply with a variety of requirements, ranging from the Federal Trade Commission's "Negative Option Rule" and the federal Restore Online Shoppers' Confidence Act to the various state laws regulating automatic renewal programs and other forms of subscription-based marketing. For additional information, please see a previous alert on this subject titled, "[Thinking About Starting a Subscription-Based App or Business? Do it Right to Avoid Legal Risk.](#)"

Merchants can now add Mastercard's new free trial rules to those existing requirements.

In a blog post titled, "Free Trials Without The Hassle," Mastercard acknowledged that free trial offers "can be a legitimate and useful way to increase sales and improve consumer satisfaction." However, Mastercard also recognized that some free trials of skincare or healthcare products "can unwittingly turn into a recurring product subscription that is difficult to cancel" and that its new rules will help to "increase transparency."

### THE BOTTOM LINE

Companies that engage in negative option and subscription-based marketing must comply with various federal and state laws governing their practices. The proposed Mastercard rules will add another set of requirements to this compliance landscape. Marketers should prepare to comply with the Mastercard requirements once they are more clearly defined and go into effect (reportedly in April).

When the new rules take effect, reportedly this April, they will require that a merchant:

- >> Gain cardholder approval at the conclusion of a free trial before billing the cardholder;
- >> Send the cardholder – by email or text – the transaction amount, payment date, merchant name, and "explicit instructions" on how to cancel the trial subscription program; and
- >> Send a receipt by email or text for each payment with "clear instructions" on how to cancel.

Mastercard also explained that, under the proposed new rules, "all charges" that appear on a cardholder's statement would have to include the merchant website URL or the phone number of the store where the cardholder made the purchase.

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