

FTC Names Senior Executives in Suit Against Amazon for Use of “Dark Patterns” in Prime Enrollment Scheme

The Bottom Line

- While the FTC has named individual defendants in prior cases, the amended complaint shows that the FTC is willing to do so in challenges to large, publicly traded companies.
- Companies should closely review their consumer experience flows and cancellation policies, to ensure that they are not employing “dark patterns.”

Earlier this year, the Federal Trade Commission (FTC) filed a [complaint](#) against Amazon alleging that the company engaged in a tremendous variety of “dark patterns” to trick millions of consumers into enrolling in their Prime membership program.

Now, in an [amended complaint](#), the FTC has named three senior Amazon executives – senior vice presidents Neil Lindsay and Russell Grandinetti and vice president Jamil Ghani – as individual defendants. The FTC alleged that these executives were fully aware of issues surrounding consumers being subscribed to Prime without their consent and then facing significant hurdles when trying to cancel, and either chose not to act, or slowed or rejected user experience changes designed to reduce the potential for deception. The amended complaint further provides additional insights into Amazon’s alleged misconduct, by furnishing previously redacted portions of the complaint.

Allegations Against Key Executives

The FTC alleged that these executives were informed by other Amazon employees (in emails, meetings, and presentations) about issues in the Prime enrollment and cancellation process, and encouraged to make changes to stop Amazon from tricking its customers. For example, an internal draft memo documented Amazon’s techniques as being “designed to mislead or trick users to make them do something they don’t want to do, like signing up for a recurring bill.” Other internal documents show that consumers reported they were canceling Prime because they never intended to sign up in the first instance and they were “unaware” they had subscribed to Prime.

But, the FTC alleged that the executives chose not to act, instead slowing, avoiding, and even reversing user experience changes that they knew would reduce nonconsensual enrollment because those changes would also negatively affect Amazon's bottom line. The FTC noted that one draft internal memo noted that Amazon decided "clarifying" the enrollment process was not the "right approach" because it would cause a "shock" to business performance.

Newly Unredacted Information

The unredacted complaint reveals that Amazon allegedly:

- Used the term "misdirection" to refer to the company's practice of presenting consumers with a small blue text link to make a purchase without joining Prime, despite more prominently displaying a "Get FREE Two-Day Shipping" button to enroll consumers in Prime.
- Implemented policies that made it difficult for consumers to cancel, including requiring Amazon customer service employees to direct consumers who called to cancel Prime to an outline for Amazon's complicated "Iliad" flow, even though customer service agents had the ability to process the cancellation.
- Knew that "[t]he issue of accidental Prime-sign ups is well documented" and acknowledged that Prime customers "sign[] up accidentally and/or [don't] see auto-renewal terms."
- Received complaints as early as 2016 from Amazon employees acknowledging the company's use of deceptive user flows, but refused to take action.
- Attempted to delay and hinder the FTC's investigation of these issues, including by attempting to apply legal privilege to documents that were not privileged and concealing the existence of other relevant, damaging documents.

For More Information

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