



LEGAL UPDATES

New Click-To-Cancel FTC Rule Carries New Rules, Hefty Penalties for Violations

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Attention, any companies that sell direct to consumers: the FTC has announced a new final rule requiring businesses to make it easier for consumers to opt-out and cancel subscriptions. Businesses will have 180 days to comply with the new rule once it is published in the Federal Register.

After receiving an increased number of consumer complaints regarding company “negative option” and subscription practices, the Federal Trade Commission (FTC) has stepped in to save consumers time and money with its newly announced “Click-to-Cancel Rule.” The new rule expands and amends the FTC’s 1973 “Negative Option Rule,” (the “Negative Option Rule”) to combat unfair and deceptive trade practices in an increasingly digital economy.

The FTC announced its final “Click-to-Cancel Rule” on October 16, 2024. The 1973 Negative Option Rule was first promulgated to curb what the FTC deemed unfair and deceptive trade practices involving “Negative Option Programs,” which rely on a consumer’s silence or inaction as acceptance of a product or service. Common examples of “Negative Option Programs” include automatic renewals, free trial subscriptions that convert to paid subscriptions, memberships, and recurring-payment programs.

The new “Click-to-Cancel Rule” broadly applies to transactions that include any “Negative Option Feature,” and it imposes certain requirements on the sellers of such “Negative Option Programs,” such as the clear and conspicuous disclosure of material terms and the consumer’s right to cancel or opt-out of the agreement.

Notably, before any seller covered by the new “Click-to-Cancel Rule” obtains a consumer’s banking or billing information, they must conspicuously disclose the material terms of the agreement, such as (i) the length of any trial period, (ii) the amount a consumer will be charged, (iii) when a consumer will be charged, and (iv) how they can cancel or opt out of the agreement.

The “Click-to-Cancel Rule” also requires that all sellers (i) obtain a consumer’s express informed consent before charging the consumer and (ii) provide a simple cancellation mechanism (a “Click-to-Cancel” option). Express consent can be obtained with a “check box” feature, a signature, or a similar method, and the seller must maintain the records of the consent for at least three years. Most

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importantly, the simple cancellation mechanism (or “Click-to-Cancel”) must be provided in the same medium as the consumer’s initial consent and be easy to locate. The rule prohibits requiring a consumer to communicate with a live or virtual representative to cancel.

Violators of the new “Click-to-Cancel Rule” will be subject to significant penalties and fines, in addition to injunctive relief. To ensure compliance with the new “Click-to-Cancel Rule,” the FTC has posted a short [fact sheet](#) on its website.

Below are some key takeaways from the new “Click-to-Cancel Rule”:

Key Takeaways:

- The “Click-to-Cancel Rule” now covers agreements or transactions that include automatic renewals, free trial subscriptions, memberships and recurring-payment programs.
- A seller must disclose all material terms prior to obtaining or gaining access to a consumer’s banking information (including credit or debit card information).
- Sellers must include the deadline as to when the consumer must cancel to prevent further charges. Notably, sellers must exercise care to continue to abide by more protective state statutes, many of which proscribe reminder notice requirements and time periods for cancellations.
- Sellers must obtain a consumer’s express informed consent, which can be via checkbox, signature or similar method, prior to charging them.
- Sellers must maintain records of a consumer’s express informed consent for at least three years.
- Sellers must include an easy to locate “Click-to-Cancel” or otherwise simple cancellation mechanism that makes it as easy to cancel as it was to sign up.
- Any seller that violates the new “Click-to-Cancel Rule” can be subject up to \$10,000 per violation (*Note: each day that a violation continues is considered a “new” violation for purposes of civil penalties.*) (see generally 15 U.S.C.A. § 45(m)).

Should you have any questions, reach out to your Lathrop GPM attorney or one of the authors of this alert.