

Federal Court Finds Amazon Liable for Kids' In-App Purchases

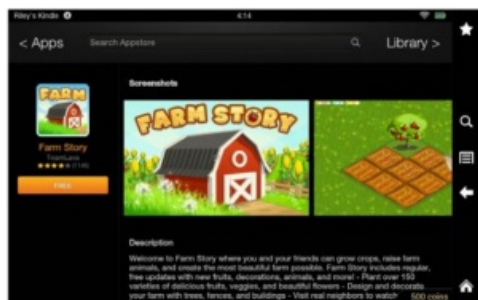
April 28, 2016



Yesterday, a federal judge [ruled](#) that Amazon is liable for permitting unauthorized in-app purchases incurred by children. Amazon is the last in a series of actions brought by the FTC against third-party platforms related to kids' in-app charges (we previously blogged about the other two actions against Apple and Google [here](#) and [here](#), which resulted in refunds to consumers totaling over \$50 million).

FTC Allegations

The FTC first filed its [complaint](#) against Amazon in district court in July 2014, alleging that the billing of parents and other account holders for in-app purchases incurred by children “without having obtained the account holders’ express informed consent” violated Section 5 of the FTC Act. Many of the apps offering in-app purchases were geared towards children and offered as “free” with no indication of in-app purchases. These in-app charges generally ranged from \$0.99 to \$99.99, but could be incurred in unlimited amounts. The FTC alleged that, while the app developers set the price for apps and in-app purchases, Amazon retained 30% of the revenue from every in-app sale.



The complaint alleged that when Amazon first introduced in-app charges in November 2011, the default setting initially permitted in-app purchases without a passcode, unless this setting had been enabled by the user in the parental controls. Following a firestorm of complaints by parents surprised to find these in-app charges, Amazon introduced a password prompt feature for in-app charges of \$20 or more in March 2012. This initial step, however, did not include charges that, in combination, exceeded \$20. In August 2012, the FTC notified Amazon that it was investigating its in-app billing practices.

Amazon began to require password prompts more frequently beginning in February 2013, only if the purchase initiated was over \$20, a second in-app purchase was attempted within five minutes of the

first, or when parental controls were enabled. Even so, once a password was entered, in-app purchases were often authorized for the next hour. Amazon continued to refine its in-app purchase process over the next few months, identifying that “In-App Purchasing” was available on an app’s description page, and adding a password requirement for all first-time in-app purchases, among other things.

The Court’s Order

The FTC moved for summary judgement in February 2016. In its April 27 order, the court granted the FTC’s summary judgement motion finding that: (1) the FTC applied the proper three-prong legal test for determining unfair business practices (*e.g.*, a substantial injury that is not reasonable to consumers, and not otherwise outweighed by countervailing benefits); (2) the FTC’s witness used to calculate money damages was timely disclosed, even though she was identified after the discovery cut-off date since the FTC made its intentions to seek monetary relief known from the beginning; and (3) Amazon’s business practices around in-app purchases violated Section 5.

First, the court (in its heavily-redacted order) reasoned that there was substantial injury to consumers due to the significant number of in-app purchases. Even though Amazon provided refunds to consumers, the court concluded that many customers were never aware they had made an in-app purchase, and those who were aware spent significant time contesting the charges.

Second, the court also found that the injury was not reasonably avoidable by consumers, because consumers were generally unaware of the possibility of in-app purchases until June 2014, since notices were not conspicuously placed in the app’s description page, and even when passwords became required for certain in-app purchases these prompts did not indicate that users could make multiple charges within a given timeframe. Lastly, the court found that Amazon’s billing practices around in-app purchases did not benefit consumers or competition.

The court is requiring further briefing to determine the extent of damages and how much in refunds should be provided to consumers. Nonetheless, the FTC’s initial complaint identified that Amazon received tens of millions of dollars from its cut of the in-app purchases.

The Bottom Line



The court’s analysis is significant in that it imputes third-party liability on a company when such company knew or should have known of the challenged conduct, financially benefited from such conduct, and failed to take appropriate or prompt steps to address consumer concerns. We have seen this analysis in previous FTC actions, and will likely continue to see them in the future.