

FTC Announces \$1.3 Million Settlement in Negative Option Case

Gonzalo E. Mon

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Last week, the FTC announced that an online lingerie company had agreed to return more than \$1.3 million to customers who enrolled in a negative-option membership program offering discounts and other benefits.

The logo for Adore Me, featuring the words "ADORE ME" in a serif font with a decorative underline.

Under Adore Me's VIP program, a member would be charged \$39.95 per month, unless the member either purchased apparel or pressed a "skip" button during the first five days of that month. The company advertised: "If you do not make a purchase or skip the month by the 5th, you'll be charged a \$39.95 store credit that can be used *anytime* to buy anything on Adore Me."

Despite promises that credits could be used "anytime", for at least a year, a disclosure buried in the company's terms stated that unused credits could be forfeited for a number of reasons. According to the FTC, the company "took unused credit amounts away from consumers who cancelled their memberships or initiated chargebacks with financial institutions to dispute their transactions with the company."

In addition to alleging that Adore Me misrepresented its credit policy, the FTC also alleged that the company violated the Restore Online Shoppers Confidence Act by making it difficult for customers to cancel memberships, including by limiting how customers could submit cancellation requests, understaffing its customer service department, and putting customers through drawn-out cancellation request processes.

Under the settlement, Adore Me generally agreed: (a) not make misrepresentations about its membership program; (b) provide an easy way to cancel memberships; (c) make specific disclosures about the negative option program, both up-front and in a confirmation notice; and (d) not to use billing information without customers' express informed consent. In addition, the order imposes a \$1,378,654 judgment that will be used to pay refunds to customers.

Companies that sell products or services through subscription models need to keep in mind that various federal and state laws could impact how these models are structured and advertised. Failure to comply with these laws could result in significant penalties, especially as the FTC, states, and class action attorneys increase their scrutiny.