

FTC Closes Investigation Involving Proposed Changes to PayPal's Terms

Gonzalo E. Mon

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Earlier this year, PayPal announced planned changes to its User Agreement that would have, among other things, given the company broad rights to contact people by phone or text messages. The provision stated, in part:

You consent to receive autodialed or prerecorded calls and text messages from PayPal at any telephone number that you have provided us or that we have otherwise obtained. We may place such calls or texts to (i) notify you regarding your account; (ii) troubleshoot problems with your account; (iii) resolve a dispute; (iv) collect a debt; (v) poll your opinions through surveys or questionnaires, (vi) contact you with offers and promotions

The provision was set to go into effect on July 1, 2015, and the only option to avoid being contacted in this manner was to stop using the service. Predictably, consumers did not react well to the provision, particularly as it related to the offers and promotions. Neither did FTC staff, who contacted PayPal to remind them of their obligations under the Telemarketing Sales Rule and the Do Not Call Registry.

Although the TSR permits telemarketing calls to numbers on the Registry if a consumer has provided express written consent to receive such calls, the proposed language did not meet the requirements for the exception. The staff noted, for example, that the request seeking consent must be "clear and conspicuous" and cannot be "buried" in a lengthy user agreement. Moreover, calls may only be placed to a number specified by a consumer – not to any number "otherwise obtained."

On June 29, 2015, PayPal revised the proposed language such that the company only reserved rights to place calls or texts to "(i) provide notices regarding your Account or Account Activity, (ii) investigate or prevent fraud, or (iii) collect a debt owed to us." Based on these changes – and because the company hadn't yet made any telemarketing calls under the proposed language – the FTC's Division of Marketing Practices decided not to recommend enforcement action.

As we've posted before, few things will get companies in trouble faster than sending unwanted calls or texts. You can ask for permission to send those, but the request has to be done in a way that is clear and conspicuous.