

FTC Issues Staff Report On Negative Option Plans

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The FTC issued a Staff Report this week regarding negative option marketing programs, which are transactions in which sellers interpret a customer's failure to take an affirmative action, such as rejection of an offer or cancellation of an agreement, as assent to be charged for goods or services. Typical negative option plans include record and book clubs, magazine subscriptions and other continuity programs, and free trial offers. The Staff Report highlights many of the consumer benefits that negative option plans provide and also reviews pitfalls of these programs, including failures to disclose adequately terms of the offer, obtain properly consumers' consent before billing, and provide effective means for cancellation. The FTC Staff also provides a series of recommendations to ensure that marketers of negative options comply with federal law.

Given the volume of negative option offers in the market, we expect the FTC to be vigilant in bringing additional cases against marketers who fall short of the FTC Staff's recommendations. It is important that marketers review all negative option marketing programs to ensure compliance in light of these recommendations.

This Client Advisory discusses issues related to negative option plans and presents an overview of the FTC Staff's marketing principles.