

NAD Finds Dark Patterns in a Rewards Program

Gonzalo E. Mon

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For \$9.99 per month, Pier 1 offers Pier 1 Rewards, a loyalty program that includes benefits such as a 10% discount on all purchases and free shipping and returns on eligible items. Until recently, when a consumer added an item to a cart, the company would automatically also add the Pier 1 Rewards membership to the cart (with a pre-checked box indicating acceptance) and apply the 10% discount. A consumer had to uncheck the box to remove the membership from the cart.

NAD discovered this as part of their routine monitoring – or routine shopping (it’s hard to tell) – and had two related concerns about what Pier 1 was doing. First, whether advertising a discounted price for a product is misleading if it reflects a discount that is only available with a subscription. And second, whether Pier 1 clearly and conspicuously disclosed the material terms of the subscription before a consumer made a purchase decision.

NAD determined that it could be misleading to advertise a discounted price if it reflects a discount that’s only available with a subscription, unless the terms of the subscription are clearly disclosed. In this case, NAD was concerned that the subscription was automatically added to a cart with a pre-checked box, but that consumers wouldn’t see the material terms – including that the subscription automatically renews – unless they clicked on a link to “Learn More.” (NAD also questioned whether a pre-checked box was sufficient to show acceptance, though it stopped short of saying it wasn’t.)

In its decision, NAD leaned on the FTC’s “Bringing Dark Patterns to Light” [report](#) and the agency’s .com Disclosure [guidelines](#). To those who have been following the FTC and state AG enforcement on [automatic-renewals](#), the decision shouldn’t come as a surprise. But it does serve as a good reminder of how important it is to clearly disclose subscription terms, especially as more companies begin to offer discounts that are contingent upon consumers signing up for other services.