

President Signs the Restore Online Shoppers' Confidence Act

December 30, 2010

This week, President Obama signed the Restore Online Shoppers' Confidence Act. The Act prohibits a post-transaction third-party seller — a company that sells goods or services online through an initial merchant after a consumer has initiated a transaction — from charging a consumer for any good or service, unless the seller does the following: (a) clearly and conspicuously discloses the material offer terms, including a description of what is being sold, the cost, and that the third-party seller is not affiliated with the initial merchant; and (b) receives express consent for the charge from the consumer. Sellers must obtain the full account number directly from the consumer — it is unlawful for an online seller to transfer a consumer's financial account number to a third-party seller.

The Act also regulates negative option plans under which a seller interprets the consumer's silence or failure to reject goods or services, or to cancel the sales agreement, as acceptance of the offer. Companies who use negative option plans must do the following: (a) clearly and conspicuously disclose the material terms of the transaction before obtaining the consumer's billing information; (b) obtain a consumer's express informed consent before charging the consumer; and (c) provide a simple mechanism for a consumer to stop the recurring charges.