

Someone's Watching Your Auto-Enrollment Program

Article By:

Ed Chansky

Erica Okerberg

“Auto enrollment” or “negative option” programs as they sometimes are called are very popular for many online services and mobile apps. Such programs often involve a free-trial period for a subscription or other electronic service. The consumer then becomes charged for the ongoing service if he/she doesn’t cancel before the end of the trial period.

A recent action by the FTC emphasizes the need for any company using auto-enrollment programs to be careful in how the program is structured and to ensure that the full terms are disclosed clearly and conspicuously to consumers.

The FTC action involved an online dating service. The service allowed free use of the site with limited access to information about other members. It also offered a fuller service (for a fee) to gain access to more information about other members.

The FTC action alleged that the site (a) tricked free members into signing up for the full subscription service by sending enticing messages about non-existent members attractive to the free members, and (b) then placed the new subscribers into an auto-renewal program, charging them for additional subscription periods without obtaining consent or adequately disclosing the auto-renewal feature. Moreover, even when users tried to cancel their accounts, the FTC alleges that the site often ignored the requests or questioned the reasons for cancelling while continuing to bill the consumer. The [case ultimately was settled](#) with payment of a fine of \$616,165, plus a promise to correct the allegedly offending business practices.

While the dating-site case involved some allegedly egregious facts, the moral of the story applies to any company using auto-enrollment or auto-renewal programs:

- Disclose all material terms of the offer clearly and conspicuously.
- Obtain unambiguous, affirmative consent from the consumer before any billing.
- Remind the consumer prior to any auto-renewal.
- Provide an easy-to-use mechanism for the consumer to cancel/opt-out.

Given the recent attention to negative option programs, companies should take care to comply with FTC and state requirements. For additional background on federal and state regulation of negative option and auto-enrollment programs, see our recent [GT Client Advisory](#).

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