



Business Blog

Negative options – make them a positive

By: Lisa Weintraub Schifferle | September 22, 2016

There's no such thing as a free lunch. That's what consumers who signed up for NutraClick's "free" samples learned. But what can your business take away from the [FTC's settlement with NutraClick](#)? If your company is considering offering a negative option program, and wants it to be a positive experience, you'll want to read on.

Maybe you've heard of NutraClick. They sell nutritional supplements and beauty products including Force Factor, Peak Life, ProBioSlim, SomnaPure, VolcaNO, and Stages of Beauty. Their products are available online and in stores like Walgreens, Walmart, GNC and CVS.

NutraClick advertised "free" product samples. But the company didn't clearly tell consumers that to get the samples, they were automatically signed up for a membership for nutritional supplements, costing \$29.99 to \$79.99 per month. This type of offer – where consumers get regular shipments at a set rate until they cancel the agreement – is also called a negative option continuity plan.

The FTC's complaint alleges that NutraClick violated Section 5 of the FTC Act by failing to adequately disclose all material terms of its negative option continuity plan. The complaint also alleges that NutraClick violated Section 4 of the [Restore Online Shoppers Confidence Act \(ROSCA\)](#) – a newer law governing Internet negative option sales – by failing to: (1) clearly and conspicuously disclose all material terms of its offer and (2) obtain consumers' express informed consent before charging their credit cards.

Under the settlement between the FTC and NutraClick, the company cannot say that samples are free if accepting them enrolls consumers in a payment plan. They also must make clear how much consumers will be charged, the length of the trial period, and the way to stop recurring charges. For any oral offers of negative options, the company must get unambiguous affirmative consent before billing. Finally, the company must pay \$350,000.

Want to make sure your company has a more positive experience with negative options? Remember that if you use a negative option, we've got you covered – under several laws, in fact. Think [Negative Option Rule](#), FTC Act, and ROSCA. Here are some things to keep in mind about these laws.

Students of the Negative Option Rule know that it applies to only one type of negative option – where consumers get periodic announcements about upcoming shipments, have a period of time to decline, and then get the item if they

don't say no. So, that rule wasn't at play in the NutraClick case.

But if you're using other types of negative options, you're not off the hook. The FTC Act and ROSCA still apply. That means you're covered whether you're using a continuity plan (like NutraClick, where people get regular shipments at a set rate until they cancel), trial conversions (where people get free or reduced price shipments for a period of time then start getting billed at a higher rate if they don't cancel), or automatic renewals (where companies continue to renew subscriptions – like magazine subscriptions – until people affirmatively cancel).

Want to steer clear of a ROSCA violation? Remember that ROSCA makes it illegal to use a negative option online unless the business:

- Clearly and conspicuously discloses all material terms of the transaction before getting consumers' billing information;
- Gets consumers' express informed consent before charging their accounts; and
- Offers simple ways for people to cancel and stop the recurring charges.

For more information about negative options, check out our blog "[Acc-cen-tuate the negative?](#)" And for further compliance guidance, visit the Business Center's [Advertising and Marketing](#) portal.

Tags: [Consumer Protection](#) | [Bureau of Consumer Protection](#) | [Advertising and Marketing](#) | [Online Advertising and Marketing](#) | [Advertising and Marketing Basics](#)

5 Comments

Comments have been turned off for this consumer alert.

[Read Our Privacy Act Statement](#)

[Read Our Comment Policy](#)

Bill Anton January 07, 2018

I had the same problem two different times; I bought a subscription to Consumer Reports paying for it with cash. The following year I bought a renewal with my credit card. The year after that I received a notice in the mail that my subscription had been auto-renewed. The notice for the auto renew was hidden in the contract and it was not an option if you used a credit card. I have never purchased any products from Consumer Reports from that time on. The other time was when I purchased an antivirus program from Kaspersky at Best Buy. I took it home and loaded it on my computer and everything went well for the first year. At the end of the subscription I got a message from Kaspersky that my subscription was about to expire and they offered to renew by email which I did. This year they automatically renewed my subscription at the time that I was considering buying another antivirus product. I sent them three emails and phoned them once to be taken off their auto-renewal racket to no avail. The phone call to "customer service" was useless. All I got from that was a broken English speaking salesman that tried to con me out of money for a lifetime guarantee of their virus scanning and removal service. He failed to stop the auto-renewal process. Their policy is to only honor requests for cancellation from those who have saved their original receipts. I am now attempting to take advantage of their 30 day cancelation policy with full refund. I'm not holding my breath on that, either as they will probably still require a receipt. This has made me somewhat paranoid of using my credit card for any online activity.

David Baker June 01, 2018

SugarSync lacks a simple way to cancel an individual account. If you call their customer service phone number (888) 784-7822 (as of this writing 6/1/18) you are asked to leave your email and phone number. if you want to cancel. They never get back to you. However, if you go to their tech support dept they will cancel your account. I quoted them their terms of service to the effect that cancellation would be immediate on request and asked for a confirming email. This went well. My complaint is that Accounting was not willing to do what tech support did to live up to their terms of service in this regard. No matter. I finally shut off a \$400 recurring bill that had run five years. Negative Option? I'll say. I used to have a mortgage company. Wish I'd thought of a scam this good!

Ashok November 10, 2018

I agree with Bill Anton. Kaspersky has a deceitful auto-subscription policy and if you dont monitor you emails, you will be charged for a auto -renewal even if you dont need the service. When you sign up for the first time, there is no clear indication of auto-renewal.

Sharong January 22, 2020

The very same problem with rollon skin care. They billed me for product I never got. They said time had past for me to cancel. I am just so disappointed with these tactics

FTC Staff January 23, 2020

You can report problems you have with a business to the FTC at www.FTC.gov/Complaint. The information you give goes into a secure database that the FTC and other law enforcement agencies

use for investigations.

More from the Business Blog

Business Blog

[How readiness can help protect veteran-owned businesses](#)

Lesley Fair | November 10, 2022

Business Blog

[And the FTC Bureau of Consumer Protection Partner Award goes to ...](#)

Lesley Fair | November 4, 2022

Business Blog

[Checking out the FTC's \\$100 million settlement with Vonage](#)

Lesley Fair | November 3, 2022

Business Blog

[Pulling the mask off impersonation scams: How they impact your business](#)

Lesley Fair | November 2, 2022

Get Business Blog updates

Subscribe