



NEGATIVE OPTIONS

Ever sign up for a free trial but surprised to find you were charged money later on? With more and more businesses opting to use a subscription model, many consumers have signed up for a free trial, only to be charged for the subscription after the free trial expired. These charges can quickly add up, leaving consumers saddled with hundreds of dollars of unwanted payments every month. Worse, it can also be extremely hard to cancel your subscription compared to how easy it was to sign up for the free trial offer. These types of transactions are called “negative options” and they have grown in popularity in recent years. Whether signing up for a free trial or a new subscription, it is important to keep in mind the following:

How do Negative Options Work?

A negative option is a type of transaction where goods or services are sent to you automatically unless you tell the seller you explicitly do not want them. Think a recurring streaming subscription or recurring online purchase. Negative options are usually marketed as having a free trial or special offer. Generally, free trial offers require you to cancel the subscription before the trial period ends. If you fail to do so, you will be charged for the price of the subscription or goods.

Are Negative Options Illegal?

Not necessarily. The Federal Trade Commission has recently issued a [“Negative Option Rule”](#) that provides companies with guidance on how to adequately inform their customers. If a company fails to provide these disclosures to consumers, they may be liable under federal or state law. Under the FTC’s Negative Option Rule, Companies are required to clearly and conspicuously disclose the material terms of the offer on all promotional materials. These terms include the right of a subscriber to cancel their

membership at any time, whether charges include postage and handling, and ways in which the subscriber can notify the seller if they do not wish to complete the transaction.

Recently, the Consumer Financial Protection Bureau issued a [Consumer Financial Protection Circular](#) that companies engaged in negative option transactions can violate the Consumer Financial Protection Act if the company 1) misrepresents or fails to clearly and conspicuously disclose the material terms of a negative option program; 2) fails to obtain consumers’ informed consent; or 3) misleads consumers who want to cancel, erects unreasonable barriers to cancellations, or fails to honor cancellation requests that comply with its promised cancellation procedures.

What Should I Do?

You should be cautious of any free trials and special offers because they usually are too good to be true. To avoid unwanted monthly payments, you should:

- ◆ Read all of the terms and conditions of the offer before accepting.
- ◆ Determine how long you have to cancel the trial before you will be charged.
- ◆ Review how much you will be charged after the trial expires.
- ◆ Determine how and when you can cancel your subscription.

If you believe a company is not giving adequate disclosures and is unknowingly signing up consumers for unwanted subscriptions or making it exceedingly difficult to cancel a subscription, you may have a



claim. Be sure to save copies of any emails or promotional materials you received as they will be valuable in proving your claim.

Labaton Sucharow's lawyers are available to address any questions you may have regarding these developments. Please contact the Labaton Sucharow lawyer with whom you usually work or the contacts below.

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