

A Legal Update on the Evolving Requirements for Automatic Renewal Programs

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Agenda

- Background
- Applicable Laws, Rules, and Regulations
- General Requirements
- Enforcement Actions

Types of Subscription-Based Offers

- “Negative option”:
 - The customer’s silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.
- Negative option marketing includes:
 - Subscription programs
 - Automatic renewal programs
 - Trial offers followed by recurring shipping/billing
 - Membership clubs
 - Continuity programs



Background: Negative Option Offers

- Who is viewing these offers?
 - Consumers
 - Businesses can be consumers under certain state laws.
 - Law Enforcement and Quasi-Law Enforcement Entities
 - Class Action Attorneys
 - Competitors



Background: Negative Option Offers

■ Overarching Principles:

- Disclose the charges.
 - What is being charged, when it is being charged, and for what.
 - Disclose before obtaining payment information, and send a confirmation after the transaction is complete.
 - Provide periodic reminders.
- Obtain consent.
- Make it easy to cancel.





Applicable Laws, Rules, and Regulations

Applicable Law



- Federal Law

- Restore Online Shoppers Confidence Act (ROSCA) (Internet only)
- Negative Option Rule (*FTC Issued a Notice of Proposed Rulemaking and Request for Comments)
- Telemarketing Sales Rule (telephone only)
- Electronic Funds Transfer Act (debit cards)
- Section 5 of the FTC Act (all channels) (prohibits unfair and deceptive marketing practices)

- State Law

- Automatic renewal laws in various states (*e.g.*, California, Hawaii, Illinois, New York (went into effect in February), North Dakota, Oregon, Vermont, Virginia, D.C.)
- State notification laws (renewal notices)
- “Mini FTC Acts”

Federal Restore Online Shoppers' Confidence Act ("ROSCA")

- Requires online merchants selling a product or service on a negative option basis to:
 - Provide a text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information;
 - Obtain the consumer's express informed consent before charging the consumer's credit card, debit card, bank account, or other financial account for products or services through such transaction; and
 - Provide simple mechanisms for the consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account, or other financial account.

Negative Option Rule (Rule Concerning the Use of Prenotification Negative Option Plans)

- Currently, limited to **prenotification** plans
 - *E.g.*, book-of-the-month clubs, where the seller sends notice of a book to be shipped and charges for the book only if the consumer takes no action to decline the offer, such as sending back a postcard or rejecting the selection through an online account.
 - Does not include automatic renewals, or free-to-pay or discounted price-to-pay trial programs.
- Sellers must:
 - Disclose clearly and conspicuously the specific details of the offer terms;
 - Abide by particular time periods during which sellers must send introductory merchandise and announcements identifying merchandise the seller plans to send;
 - Give consumers a specified period to respond to announcements;
 - Provide instructions for rejecting merchandise in announcements; and
 - Promptly honor written requests to cancel from consumers who have met any minimum purchase requirements

Federal Telemarketing Sales Rule (TSR)

- Applies to telemarketing and sales made on the telephone.
- Must truthfully, clearly, and conspicuously disclose:
 - The nature of the goods or service.
 - The fact that the customer's account will be charged unless he or she takes an affirmative action — such as canceling — to avoid the charge.
 - The dates on which the charges will be submitted for payment.
 - The specific steps the customer must take to avoid the charges.
- Obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number.
- Recordkeeping requirements.



Electronic Funds Transfer Act (EFTA)

- Specific requirements for debit cards
- Confirmation Requirements
- Notices of material changes
- Recordkeeping requirements



Federal Trade Commission Act

- Prohibits unfair or deceptive acts or practices in or affecting commerce.
- FTC has highlighted Section 5 requirements that negative option marketing must follow to avoid deception.
 - Marketers must disclose the material terms of a negative option offer, before consumers agree to the purchase.
 - Disclosures must be clear and conspicuous.
 - Marketers must obtain consumers' consent to such offers.
 - Marketers must not impede the effective operation of promised cancellation procedures and should honor cancellation requests that comply with such procedures.
- The Commission has indicated that billing consumers without consumers' express informed consent is an unfair act under the FTC Act.

State Law Requirements



- Disclosure requirements
- Definitions of “clear and conspicuous”
 - Text in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language.
 - In visual proximity to the request for consent
 - Font type, formatting, and size requirements
- Additional requirements for consent
- Renewal reminders
- Cancellation requirements
- Special requirements for annual programs and trial programs
- Enforced by state attorneys general, class action plaintiffs, and district attorneys (the California Autorenewal Task Force)

General Requirements

Summary of Requirements

- Clear and Conspicuous Disclosures
- Affirmative Express, Informed Consent
- Order Confirmation
- Simple Cancellation Mechanism
- Renewal Reminders
- Material Changes to the Offer

Disclosures: What to Disclose

- That the subscription agreement will continue until the consumer cancels
- Pricing plans / program offers (length of term, price, features)
- The amount of recurring charges
- The length of the subscription term (*e.g.*, weekly, monthly, annually, etc.)
- Minimum purchase obligation, if any
- The description of the cancellation policy that applies to the offer, including the deadline by which to cancel



Disclosures: How to Disclose

- Disclosures must be made:
 - In a “clear and conspicuous” manner before obtaining the consumer’s billing information.
 - In visual or temporal proximity to the request for consent to the offer.
- Written disclosures: in a larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language.
- Oral disclosures: in a volume and cadence sufficient to be readily audible and understandable.



Disclosures: Program-Specific Requirements



- Additional requirements for annual programs and trial programs.
- Annual programs:
 - Vermont: must clearly and conspicuously disclose the terms of the automatic renewal provision in plain, unambiguous language in **bold-face type**.
- For trial offers:
 - When the trial ends, that the pricing changes once the trial ends
 - The price that will be charged after the trial ends
 - A hyperlink to the cancellation mechanism
 - Cancellation deadline

Summary of Requirements

- Clear and Conspicuous Disclosures
- **Affirmative Express, Informed Consent**
- Order Confirmation
- Simple Cancellation Mechanism
- Renewal Reminders
- Material Changes to the Offer

Consent: How to Obtain It

- Must obtain the customer's affirmative, express informed consent before obtaining the consumer's credit card, debit card, bank account, or other financial account.
- Must be the affirmative/explicit agreement of the consumer to enroll.
 - Consumers must unambiguously articulate their consent.
 - Silence is not tantamount to consent, nor does an ambiguous response from a consumer equal consent.
- Informed consent: having been appropriately informed of the offer disclosures, the consumer provides consent.

Consent: How to Obtain It

- Affirmative consent: an affirmative action opting in to the automatic renewal provision.
 - Regulators prefer a distinct method, such as a check box, signature, or similar method, which the consumer must affirmatively select to accept the negative option terms, and no other portion of the offer.
 - Consent mechanism directly adjacent to the material terms of the offer.
 - The terms should be presented adjacent to the checkbox, not only via a hyperlink.
 - Disclosures and checkbox should not be muddled with other disclosures.

Additional Consent in Program-Specific Offers

- For a **free trial** of a good or service with a term of one month or more, where the contract automatically renews at the end of the free trial period, the seller must:
 - Notify the consumer of the automatic renewal between one and seven days before the free trial period ends, and
 - Notwithstanding the consumer’s consent to the free trial, obtain the consumer’s affirmative consent to the automatic renewal before charging the consumer for the automatic renewal.
 - This consent **must be obtained even if the company already obtained the consumer’s affirmative consent to the free trial.**
- Card Brand Rules: Once the trial period expires, seller must provide disclosures and obtain explicit consent before charging the consumer again.
- Annual Programs:
 - Vermont law: in addition to accepting the contract, the consumer must take an affirmative action to opt in to the automatic renewal provision.

Summary of Requirements

- Clear and Conspicuous Disclosures
- Affirmative Express, Informed Consent
- **Order Confirmation**
- Simple Cancellation Mechanism
- Renewal Reminders
- Material Changes to the Offer

Confirmation / Order Acknowledgment

- Sending a written order confirmation repeating offer disclosures is required in some states.
- Requires that merchants send an acknowledgment – “in a manner that is capable of being retained by the consumer” – with specific offer terms.
- If the automatic renewal offer or continuous service offer includes a free gift or trial, the business shall also disclose in the acknowledgment how to cancel, and allow the consumer to cancel, the automatic renewal or continuous service before the consumer pays for the goods or services.



Summary of Requirements

- Clear and Conspicuous Disclosures
- Affirmative Express, Informed Consent
- Order Confirmation
- Simple Cancellation Mechanism
- Renewal Reminders
- Material Changes to the Offer

Simple Cancellation Mechanism

- Provide a simple mechanism for a consumer to stop recurring charges.
- Provide a toll-free telephone number, email address, postal address (if the seller directly bills the consumer), or other cost-effective, timely, and easy-to-use mechanism that the consumer can use to cancel.
- Consumers who accept an automatic renewal offer online must be allowed to cancel the offer online.
- Additional laws and rules require companies to provide a weblink to permit online cancellation.

Summary of Requirements

- Clear and Conspicuous Disclosures
- Affirmative Express, Informed Consent
- Order Confirmation
- Simple Cancellation Mechanism
- **Renewal Reminders**
- Material Changes to the Offer

Renewal Reminders



- Additional notices must be sent, depending on the contract's initial term and renewal term.
 - (For example, if the initial term is 12 months or more, and automatically renews for a term of one month or more).
 - North Dakota imposes notice requirements for automatic renewal periods of longer than six months. (North Dakota prohibits automatic renewal periods of greater than 12 months).
 - Notice must include specific disclosures.
- Laws vary regarding the timing of this notice, but timing is generally based upon: (a) the automatic renewal date, (b) the termination date, or (c) the deadline by which the consumer must provide notice to cancel the contract.
- Should be provided in a format that is capable of being retained by the consumer.



Summary of Requirements

- Clear and Conspicuous Disclosures
- Affirmative Express, Informed Consent
- Order Confirmation
- Simple Cancellation Mechanism
- Renewal Reminders
- Material Changes to the Offer

Material Changes to the Offer

- Provide current consumers with a clear and conspicuous notice of the change, and information regarding how to cancel.
 - Provided in a manner that is capable of being retained by the consumer.
 - Hyperlink to cancellation mechanism.
- If a company charges a consumer a different amount than the amount stated in the original disclosures and confirmation notice, the company must send the consumer a written notice with specific disclosures.
- Best practice is to obtain consumers' affirmative consent to the changes.

State Law Updates

California

(AB-390)

- Free gifts or trials or promotional/discounted price periods:
 - Provide a notice explaining how to cancel at least 3 days before, and at most 7 days before, the expiration of the free trial or promotional/discounted price period.
 - If notice is sent electronically, the notice must include a link that directs a consumer to the cancellation process.
- Cancellation:
 - A business that allows a consumer to accept an automatic renewal offer online must allow a consumer to terminate the service exclusively online ***at will, and without engaging any further steps that impact or restrict the consumer's ability to terminate the service immediately.***
 - The cancellation method must either:
 - Be on an internet website in the form of a direct link or button to cancel, **or**
 - A termination email formatted and provided by the business that the consumer can send to the business without additional information.
- The bill is set for hearing in April.

Other Notable State Laws

- New York's Automatic Renewal Law
 - Went into effect in February 2021.
 - Tracks the requirements of California's current automatic renewal law.
- Vermont
 - Applies to offers with an initial term of one year or longer that renew for a subsequent term that is longer than one month.
 - Disclosures in bold; separate opt-in mechanism for auto-renew; notice requirements.
 - Went into effect in 2019; challenges have begun to be filed.
- District of Columbia
 - Obtain consent (again) before the end of any trial period with a renewal term of one month or more.

Enforcement Actions

Redress and Penalties Sought

- Injunctive relief
 - “Follow the law” provisions and additional requirements
 - Class action plaintiffs often allege that these additional requirements are required by law.
- Monetary relief
 - Refunds
 - Rescission of contracts
 - Disgorgement
 - Penalties
 - FTC statutory penalty (\$43,792)
 - State statutes authorize civil penalties (California authorizes a penalty of \$2,500 per violation).
 - NOTE: U.S. Supreme Court is currently deciding *AMG Capital*, which is deciding the scope of FTC’s authority to recover monetary relief in certain types of FTC actions.

ROSCA Enforcement

Recent focus of enforcement:

- The marketer failed to disclose the terms and conditions of an auto-renew offer or failed to disclose the terms *adequately* under the “clear and conspicuous” standard.
- Failure to adequately disclose how to stop recurring charges.
- Did not provide a simple cancellation mechanism.



ROSCA Enforcement Trends

- Disclosures of the automatically recurring charges:
 - Business will automatically enroll subscribers in subscriptions that automatically renewed unless the subscriber affirmatively acted to cancel his or her subscription.
- Disclosures of the total costs and frequency of charges:
 - Where the total cost of a multi-month subscription will be due in a lump sum rather than monthly installments.
- Failure to provide simple cancellation mechanism:
 - Subscribers who wished to cancel their subscriptions could only do by an undisclosed cancellation deadline.
 - Subscribers who call customer service line to cancel their subscriptions will be prevented or discouraged from doing so by unavailable or uncooperative customer service agents.
 - Put on hold for 30 minutes or more; being terminated or disconnected before they can talk to an agent.
 - Inability to cancel online, challenges reaching customer service because defendants understaffed customer service phone line, confusing and inconsistent instructions about how to cancel.

ROSCA Enforcement

FTC v. ABCMouse (September 2020)

- Alleged that customers thought they were signing up for a 12-month plan but were enrolled in a negative option plan
- Material terms of the offer were disclosed via a separate hyperlink.
- FTC challenged representations about the ease of cancellation because the website did not disclose how people could cancel.
- FTC alleged that the company made it difficult to cancel.
 - Did not post a customer service telephone number or email address that customers could use to contact, long wait times, confusing online cancellations, did not honor cancellation requests.

The image shows a screenshot of the ABCmouse website. On the left, there is a promotional banner for a "Special Offer" of 38% OFF Annual Membership. The price is listed as \$59.95 for 12 months, with a payment option of 4 equal monthly installments of \$19.75 (Save 17%). Below this, there is a testimonial from a recent study stating that 85% of over 5,000 parents reported a significant positive impact on their children's learning. At the bottom of the banner, it says "Award-Winning Curriculum!" and shows several award logos.

On the right, there is an "Easy Enrollment!" form. It is divided into three steps:

- 1 Create Your Family Account**: Includes fields for Email, Confirm Email, Password, and Confirm Password.
- 2 Enter Your Payment Information**: Includes payment method options (MasterCard, VISA, Discover, PayPal, Pay with Amazon), Cardholder Name, Credit Card Number, Expiration Date (MM/YY), CVV, and Billing Zip/Postal Code. A note says "(Gift/International Cards: please enter 12345)". There is also a field for Phone Number (Optional, but recommended).
- 3**: Includes a checkbox for "I agree to the Terms & Conditions" and a "Submit" button.

Below the payment information, there is a section for "Easy Cancellation" which states: "If your family does not absolutely love ABCmouse, you can cancel at any time!" and "Your information is safe and protected."

ROSCA Enforcement

FTC v. ABCMouse (September 2020)

- Settlement prohibits misrepresenting the cost of the program or that it is “free”, “trial”, “no obligation”, or for a specific term, without clearly and conspicuously disclosing material terms of the negative option program, including:
 - The extent to which the consumer must take any affirmative action to avoid any charges: a) for the offered good or service, b) of an increased amount after the trial or promotional period ends, and c) on a recurring basis;
 - The total cost (or range of costs) the consumer will be charged and, if applicable, the frequency of such charges unless the consumer timely takes steps to prevent or stop such charges; and
 - The deadline(s) (by date or frequency) by which the consumer must affirmatively act in order to stop all recurring charges.

ROSCA Enforcement

FTC v. ABCMouse (September 2020)

- Settlement requires the company to obtain consent through a check box, signature, or other substantially similar method, which the consumer must affirmatively select or sign to accept the negative option feature, and no other portion of the offer.
 - The material terms of the offer must be presented clearly and conspicuously and immediately adjacent to the consent mechanism.

ROSCA Enforcement

FTC v. ABCMouse (September 2020)

- Settlement requires the company to provide a simple cancellation mechanism:
 - The cancellation mechanism must be at least as simple as the mechanism the consumer used to enroll in the negative option program.
 - For consumers who enroll online, the company must provide a mechanism, accessible on the same Internet website or through the same web-based application that consumers can easily use to cancel the product or service and to immediately stop all further charges.
 - For consumers who enrolled through an oral offer and acceptance, company must maintain a telephone number and a postal address that consumers can easily use to cancel the product or service and to immediately stop all further charges.
 - All calls to this telephone number must be answered during normal business hours and mail to the postal address must be read regularly.

- \$10,000,000 in equitable monetary relief

ROSCA Enforcement – Allegedly Inadequate Cancellation Mechanism

Ongoing lawsuit in *FTC v. Match Group Inc.*

- FTC alleged that Match.com misled consumers with a confusing and cumbersome cancellation process.
 - Multiple “save” attempts before a customer could cancel his or her membership.
- Alleges that the cancellation flow was “hard to find, tedious, and confusing. Members often think they’ve cancelled when they have not and end up with unwanted renewals. The current process takes over 6 clicks.”
- Case has been stayed in federal court pending the Supreme Court’s decision in *AMG Capital*.



FEDERAL TRADE COMMISSION'S COMPLAINT

State Law Enforcement

State Regulators

- California Automatic Renewal Task Force has brought cases against:
 - Care.com
 - Classmates.com
 - Home Chef
 - Checkpeople.com
- District of Columbia Attorney General case against Town Sports International
- Massachusetts Attorney General case against Safe Home Security
- New York Attorney General case against AdoreMe

People of the State of California v. Match.com

(Nov. 30, 2020)

- Filed by Santa Cruz County District Attorney and district attorneys of Los Angeles, Santa Barbara, Santa Clara, San Diego, and Santa Monica.
 - The case was filed even though the Federal Trade Commission is currently litigating a case against Match.com.
- Alleged that the website contained language in fine print, to the side of the page, that stated “Billing-Continuous Service” and “All subscriptions automatically renew until cancelled” after which appeared a hyperlink in equally small print terms “Learn More”.
 - Below payment information field, the website stated “Your subscription will automatically renew for the same price and package length until you cancel via your Account Settings page. By subscribing, you authorize us to charge your card now and upon each renewal. Learn More [hyperlink].”
 - Alleged that these disclosures were not full and complete, clear and conspicuous, or in visual proximity to the location where Match.com requested the consumer consent to the offer.
 - Alleged that the language was presented in text that was smaller than the surrounding text and in faded type that would not clearly call consumers’ attention to the language.

People of the State of California v. Match.com

(Nov. 30, 2020)

- Alleged that the website did not obtain consumers' affirmative consent.
 - The website included another sentence in “equally inconspicuous text” that stated “By clicking Subscribe Now I agree to the Match.com terms of use [hyperlink]”
 - The hyperlinked terms of use was a multi-page contract consisting of 24 discrete paragraphs.
- Alleged that the post-purchase email confirmation was inadequate.
 - The bottom of the email acknowledgment stated “At the end of your initial subscription, and each renewal period thereafter, your subscription package (including add-ons) will automatically renew at \$[the subscription rate] until you cancel.” The font was smaller than the other type size on the email and less conspicuous than other portions of the email acknowledgment which were bolded.
 - The email confirmation contained no information regarding how to cancel.
- Alleged that Match's cancellation policy was too cumbersome and required consumers to navigate multiple pages.

People of the State of California v. Peopleconnect, Inc. d/b/a Classmates.com

(Nov. 30, 2020)

- Filed by San Diego County District Attorney and the district attorneys of Santa Cruz, Santa Clara, Los Angeles, and Santa Monica counties.
- Alleged violations of California law by failing to present the automatic renewal offer terms clearly and conspicuously in visual proximity to the request for consumers' consent to the plan; failing to obtain consumers' affirmative, express informed consent to the automatic renewal terms; failing to provide a post-purchase acknowledgment that included clear and conspicuous disclosure of the terms; and failing to provide a simple online cancellation mechanism.
- Settlement included injunctive relief, payment of up to \$150,000 in restitution and \$400,000 in civil penalties.

People of the State of California v. Peopleconnect, Inc. d/b/a Classmates.com

(Nov. 30, 2020)

- Settlement requires Classmates to:
 - Obtain affirmative consent to the automatic renewal offer terms.
 - Consent must be obtained by an express act, “through a check-box, signature, express consent button, or substantially similar mechanism” that consumers must affirmatively select to give their consent.
 - This mechanism cannot relate to consent for anything other than the automatic renewal offer terms (such as final payment or completion of the transaction).
 - Immediately adjacent to the consent mechanism, the automatic renewal offer terms must be disclosed. The disclosure must not contain any additional information and must be clear and conspicuous.
 - Provide a post-purchase acknowledgment that provides the automatic renewal terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained.
 - Must be sent via email, promptly after the order or via U.S. mail within 2 days of the order.
 - The email subject line must clearly indicate that it is a confirmation of the transaction.
 - If the offer includes a free trial, the acknowledgment must be sent with sufficient time for the consumer to cancel within the trial period and clearly and conspicuously disclose how the consumer can cancel without obligation to pay.

People of the State of California v. Peopleconnect, Inc. d/b/a Classmates.com

(Nov. 30, 2020)

- Settlement requires Classmates to:
 - Provide a simple cancellation mechanism.
 - Mechanism must be cost-effective, timely, and easy-to-use.
 - Customers who accept the autorenewal offer online must be allowed to terminate exclusively online.
 - **All online cancellations must be effective upon request**, subject to validation of the consumer's identity making the request.
 - For any autorenewal offer with a renewal period of one year or more, must provide email or electronic reminder notice to the consumer, no later than 7 days before the renewal.

People of the State of California v. Relish Labs d/b/a Home Chef

(Jan. 12, 2021)

- Filed by Los Angeles District Attorney and the district attorneys of San Diego, Santa Cruz, Santa Clara, and Santa Monica counties.
- Alleged violations of California law:
 - Failure to clearly and conspicuously disclose the automatic renewal terms in visual proximity to a request for consumer’s consent to the plan.
 - Failure to obtain affirmative, express informed consent to the automatic renewal terms.
 - Failure to provide post-payment acknowledgment that clearly and conspicuously disclosed the automatic renewal terms.
 - Failure to provide simple mechanism for consumers to stop recurring charges.
- Settlement included injunctive relief, payment of up to \$250,000 in restitution and \$150,000 in civil penalties and costs, and \$50,000 to the claims administrator.

People of the State of California v. Relish Labs d/b/a Home Chef

(Jan. 12, 2021)

- Follow the law requirements and additional injunctive provisions:
 - Consent:
 - Consent must be obtained by an express act of the consumer through a check box, signature, button, or other substantially similar mechanism that the consumer must select, sign, or click to give consent to the automatic renewal terms.
 - The mechanism cannot be the same mechanism used to complete the purchase of the automatic renewal.
 - The automatic renewal terms must be disclosed adjacent to the consent mechanism.
 - Disclosures:
 - The automatic renewal offer terms must include the words “**automatically renewing subscription**,” which must be bolded and/or underlined.
 - Cancellations:
 - All cancellation requests made before the next scheduled billing shall be effective upon receipt.

People of the State of California v. Relish Labs d/b/a Home Chef

(Jan. 12, 2021)

- Follow the law requirements and additional injunctive provisions:
 - Prohibited from using an online button or hyperlink for obtaining payment that is misleading or not clearly named to indicate that payment is being taken.
 - Prohibited from obtaining payment without first giving the consumer the chance to review a summary of the pending order and the opportunity to make changes to the order.
 - Prohibited from “using a web page or other online sales flow for the purchase of goods or services that is materially misleading.”

Private Class Actions: Trends

- Failure to obtain affirmative consent via a standalone checkbox or similar mechanism
 - Vermont law: “in addition to accepting the contract, the consumer takes an affirmative action to opt in to the automatic renewal provision”
- Failure to adequately disclose the cancellation policy
 - Cancellation mechanism **and** cancellation deadline
- Failure to adequately disclose trial terms.

Private Class Actions:

Turnier v. Bed Bath & Beyond (S.D. Cal.)

- Plaintiff challenged Bed Bath & Beyond’s BEYOND+ membership program, including the failure to obtain affirmative consent.
- Court:
 - The autorenewal terms must be in “visual proximity . . . to the request for consent.”
 - **The terms themselves—not the access point to them—need to be in visual proximity to the request.**
 - **The required terms do not appear on the webpage that contains the request for consent.**
 - Even if “it is common to use a hyperlink to terms and conditions, and that practice is sufficient to form a valid contract. . . it does not change what is required under ARL (the disclosure of terms in a specific manner and location).”
- **But**, plaintiff failed to allege causation.

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Billing Address

Contact Information

Terms and Conditions

I accept the [terms and conditions](#) of the program

Review



BEYOND+ 1 Year Membership

Private Class Actions:

Arnold v. Hearst Magazine Media (S.D. Cal.)

- Plaintiff alleged that: the disclosure was not “clear and conspicuous” because it was presented in a smaller font size than the surrounding text, failed to state that the subscriptions will continue until the consumer cancels, failed to describe a cancellation policy, failed to state the amount of the recurring charges, and failed to state the length of the automatic renewal term:
 - ***Continuous Service Program:** I understand that unless I tell you otherwise, I will receive uninterrupted service and access; my subscription(s) will be automatically renewed at the end of each subscription term, at the rate(s) then in effect. I authorize you to fulfill my subscription(s) and charge the credit/debit card if provided, or send me a bill if not. I won't be bothered with any renewal notices, instead, I will receive a clearly marked reminder notice with the then current rate(s) about 30 days prior to charging my credit/debit card or receiving a bill. I may opt out of the automatic renewal at any time by contacting customer service referenced below and receive a refund for all undelivered issues.

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Fill in the fields below to get 1 FREE issue of Food Network Magazine and be automatically entered for your chance to win. If you'd prefer to enter the sweepstakes without getting a free trial, [click here](#).

NO PURCHASE NECESSARY TO ENTER OR WIN.



If you like what you see, you'll get 1 year (for a total of 11 issues) for just \$12.00 — that's 78% less than others pay on the newsstand. If not, return the bill marked "cancel" and keep the first issue with no obligation. You'll still be eligible to win the sweepstakes.

FIRST NAME:	<input type="text" value="First Name"/>
LAST NAME:	<input type="text" value="Last Name"/>
ADDRESS:	<input type="text" value="Address"/>
ADDRESS 2:	<input type="text" value="Address 2"/>
CITY:	<input type="text" value="City"/>
STATE • ZIP:	<input type="text" value="- select state -"/> <input type="text" value="Zip Code"/>
EMAIL:	<input type="text" value="Email Address"/>

ADDITIONAL INFORMATION:

I'd like to learn more and receive the latest Festival news from the Food Network & Cooking Channel New York City Wine & Food Festival presented by Capital One? ([Privacy Policy](#))

Yes No

NYCgo delivers the best of NYC right to your inbox. Want exclusive updates on dining, NYC Restaurant Week®, Broadway, attractions and more?

([Privacy Policy](#))

Yes No

*Continuous Service Program: I understand that unless I tell you otherwise, I will receive uninterrupted service and access; my subscription(s) will be automatically renewed at the end of each subscription term, at the rate(s) then in effect. I authorize you to fulfill my subscription(s) and charge the credit/debit card if provided, or send me a bill if not. I won't be bothered with any renewal notices, instead, I will receive a clearly marked reminder notice with the then current rate(s) about 30 days prior to charging my credit/debit card or receiving a bill. I may opt out of the automatic renewal at any time by contacting customer service referenced below and receive a refund for all undelivered issues.

SUBMIT



Questions? Contact Us

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