Even Without Click-to-Cancel, the FTC Forces $7.5M Settlement Based on Subscription Violations: What Your Business Should Do

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The FTC just announced a $7.5 million settlement with an educational technology company over its unlawful cancellation practices, sending a warning to all businesses that offer subscription-based offerings. Even though a federal appeals court recently vacated the FTC's Click-to-Cancel rule on procedural grounds, the agency still has existing laws like the Restore Online Shoppers' Confidence Act (ROSCA) at its disposal – and it can use them to bring actions against companies that offer subscription-based pricing but don't provide an easy cancellation method for consumers. What do you need to know about the September 15 settlement against Chegg, Inc.? And what are some steps you should take to ensure compliance with existing law?

What Happened in Chegg?

According to the FTC Complaint, Chegg – an ed tech company that provides homework help, digital textbook rental, online tutoring, and other subscription-based services – forced subscribers to navigate multiple confusing steps before they could cancel. The Complaint alleges that Chegg employees and managers discussed users' cancellation issues, indicating that the company was well aware of consumer frustrations.

The September 15 settlement requires Chegg to pay $7.5 million in consumer refunds and provide a cancellation process that is at least as simple as the enrollment process. Ironically, this is almost exactly what would have been required under the proposed "Click to Cancel" Rule that was recently set aside by a court order.

Click-to-Cancel Rule

Our previous July Insight on the Click-to-Cancel Rule outlined why the 8th Circuit Court of Appeals struck it down, and provided warnings to businesses that subscription-based services could still be attacked by the agency. Some businesses may have viewed this outcome as a reprieve, but the Chegg settlement shows that the FTC still has ample authority to challenge difficult cancellation processes under the existing law. The agency's message is clear: they will not wait for the new rule to act against what it perceives as unfair or deceptive cancellation practices.

Without Click-to-Cancel, What Did the FTC Rely On?

The FTC already has authority to pursue these types of matters under the federal statute ROSCA. Enacted in 2010, ROSCA prohibits charging consumers for goods or services sold through a "negative option feature" unless three conditions are met:

1. **Clear and conspicuous disclosure** of all material terms of the transaction before obtaining the consumer's billing information;
2. **Express informed consent** from the consumer before charging the consumer's credit card, debit card, bank account, or other financial account for products or services through such transaction; and
3. **Simple mechanisms** for a consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account, or other financial account.

A negative option feature means "in an offer or agreement to sell or provide any goods or services, a provision under which the consumer'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."

The FTC alleged that Chegg violated ROSCA's third requirement by making cancellation difficult and confusing. The statute provides the FTC with a statutory basis for injunctive relief and monetary remedies. Besides the $7.5 million payment, the FTC is requiring Chegg to maintain compliance reporting as part of its injunctive power.

So Why Did the FTC Want the Click-to-Cancel Rule if it Can Rely on ROSCA?

The FTC Click-to-Cancel Rule contained more specific requirements that build upon ROSCA's requirements. The Rule would have required that the cancellation process be *at least as easy* as the sign-up process, whereas ROSCA only requires that the cancellation be "simple."

The Click-to-Cancel Rule would have also required that the cancellation process for online signups also needs to be available online, and would have prohibited a requirement that a consumer speak to a live or virtual agent if the sign-up process did not include such a requirement.

What Does this Mean for Businesses With Online Subscription Offerings?

This settlement should serve as a wake-up call to your business. If you offer subscription-based services, you should consider taking the following steps.

- **Audit Your Subscription Practices**: Ensure you're not making it harder to cancel than to enroll.
- **Review Consent Mechanisms**: If necessary, redesign your process to make sure customers affirmatively agree to terms in a standalone, conspicuous way.

- **Test Your Cancellation Flows**: Customers should be able to cancel using a simple method, and according to the Chegg settlement, perhaps one that is at least as easy as the sign-up process.
- **Pay Attention to State Laws**: Determine whether state automatic renewal laws (ARLs) apply. California, Minnesota, Oregon, Colorado, and several other states have strict laws already in force, and others will be coming online in the coming years.

Conclusion

Fisher Phillips will continue to monitor developments in this area and provide updates as warranted, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information direct to your inbox. You can also visit FP's U.S. Consumer Privacy Hub for additional resources to help you navigate this area. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any member of our Privacy and Cyber team.

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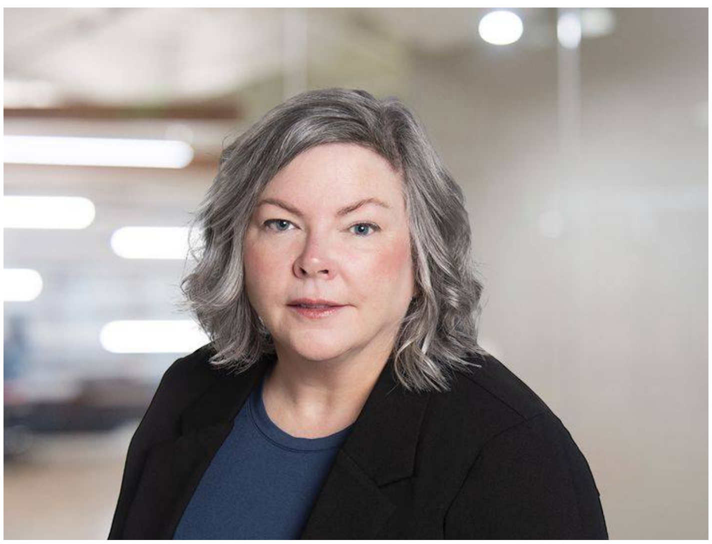

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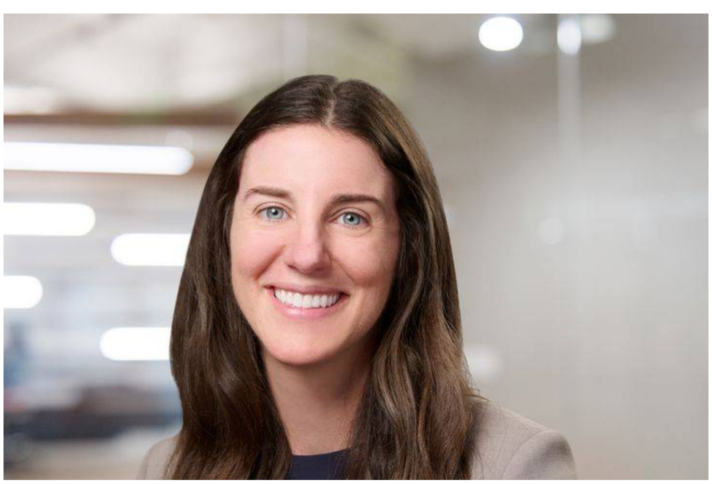

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