



Key Update:

- The Federal Trade Commission (FTC) has used a \$1 million settlement with NutraClick to reimburse customers who allegedly believed they were receiving free products but were actually enrolled in an unwanted monthly subscription program.

In 2016, the FTC settled with NutraClick over its alleged practices of advertising free samples of supplements and cosmetics and then enrolling customers in unwanted recurring subscriptions. In 2020, the FTC filed a complaint against NutraClick alleging it violated the 2016 court order by misleading customers about the cancellation deadline for free trial subscriptions. NutraClick settled the 2020 complaint for \$1.04 million in

customer redress. The FTC recently used these funds to reimburse customers who were enrolled in the unwanted NutraClick subscriptions.

The settlement also bans NutraClick from negative option marketing and requires the company to clearly and conspicuously disclose the terms of its recurring subscription programs. NutraClick is specifically prohibited from misrepresentations regarding the date a consumer will be charged and any material aspects of refund or cancellation terms. NutraClick must retain accounting records, personnel records, records of all consumer complaints and refund requests, and a copy of each unique ad and marketing material for five years after creation for a 15-year period, and submit compliance reports to the FTC for 15 years. See the [stipulated final order](#) for more detail.

To reduce risk when offering free trials that convert to automatically renewing subscriptions, follow these best practices:

- **Disclose Material Terms.** Clearly and conspicuously communicate the material terms of the transaction such as amount charged after free trial ends, frequency of charge, deadline by which the consumer must act to stop the charges, cancellation method, and other material terms.
- **Use Clear and Conspicuous Disclosures.** Ensure disclosure of material terms is easy to find, read (or hear), and understand for ordinary consumers. In fact, the FTC has recently indicated such disclosures should be unavoidable in digital media.
- **Obtain Express Consent.** Obtain express consent to recurring subscription terms before consumers are enrolled in the subscription.
- **Create a Simple Cancellation Procedure.** Make subscription cancellation methods easy to find and use. And, of course, honor cancellation requests.

For more information, [see our post](#) regarding the FTC Enforcement Statement on Recurring Subscription Programs and Dark Patterns. [Several states](#) have also amended or added automatic renewal laws. An overview of California's most recent automatic renewal law is available [here](#).

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