



May 9, 2016

VIA OVERNIGHT MAIL AND EMAIL

John Andrew Singer
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
Mail Stop CC-9528
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580
[REDACTED]

Re: AdoreMe, Inc.'s Deceptive Advertising and Illegal Business Practices

Dear Mr. Singer:

I write to inform you of the findings of a recent Truth in Advertising ("TINA.org") investigation of Adore Me, Inc. ("Adore Me"), a New York City web-based lingerie company that is engaged in deceptive marketing and illegal business practices.

Specifically, our investigation revealed that Adore Me:

- uses advertisements that deceptively promote product prices that are only available to consumers who are bound to the company's VIP Membership program, not the pay-as-you-go option, without clearly and conspicuously disclosing this fact;
- by default, enrolls consumers into a negative option offer known as the VIP Membership without obtaining consumers' express consent and without clearly and conspicuously disclosing all the material terms and conditions, such as needing to take affirmative action every month in order to avoid recurring monthly charges;
- falsely tells consumers that monthly charges can be used as store credit at anytime when, in reality, the company keeps consumers' accumulated unused store credit if their VIP Memberships are canceled, though the company does not disclose this fact in any of its marketing materials; and

- employs dissuasion and diversion tactics so that consumers encounter unnecessary difficulty when trying to cancel their Adore Me VIP Memberships.

Based on this information, we contacted the company on April 29, 2016 notifying it of TINA.org's findings and asking that the company remedy the deceptive marketing and illegal practices.¹ TINA.org gave Adore Me a week to make corrections before forwarding this issue to your attention, but the company has not made any noticeable changes to its marketing or business practices.

A. Adore Me Background

Adore Me, which sells lingerie, bras, underwear, swimwear, sleepwear, and corsets online, was launched in 2011 and has grown exponentially since then.² In 2015, the company's revenues were \$43 million, up from approximately \$16 million in 2014.³ In fact, Adore Me was ranked the second fastest growing retailer on the Inc. 500 list and is New York's second-fastest growing company.⁴

Perhaps due to its rapid growth, the company has been the subject of tremendous attention since its inception, both good (as it touts on its Press page,⁵ which features articles about Adore Me from numerous major U.S. publications), and bad (as exemplified by its "F" rating from the Better Business Bureau and the over 600 consumer complaints the agency has received about the company, which include, among other things, reports of being billed by the company repeatedly without giving prior consent, and difficulty obtaining refunds and canceling memberships).⁶

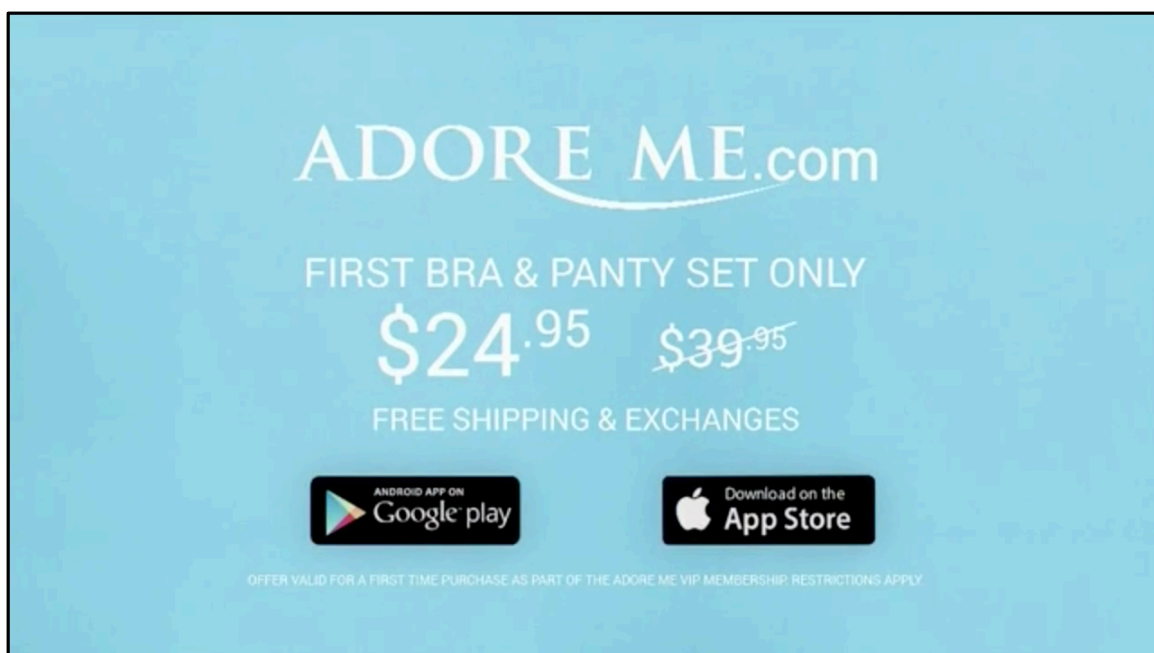
Adore Me currently sells its products in every U.S. state, as well as Canada, and has just expanded its web-based business by opening its first brick and mortar store in Manhattan in April, though purchases are still placed online through in-store iPads and then shipped to customers at a later date.⁷

B. Adore Me's Deceptive Marketing and Illegal Business Practices

As explained below, Adore Me's deceptive and illegal practices are not limited to just one advertisement or practice. Rather, the company deceives its consumers at numerous points throughout the marketing and purchasing process, all in violation of state and federal laws.⁸

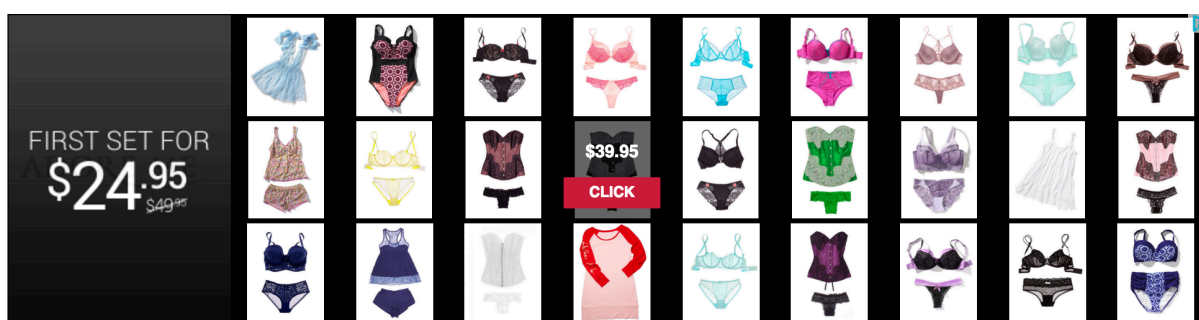
1) Point of Deception #1: Advertised Prices

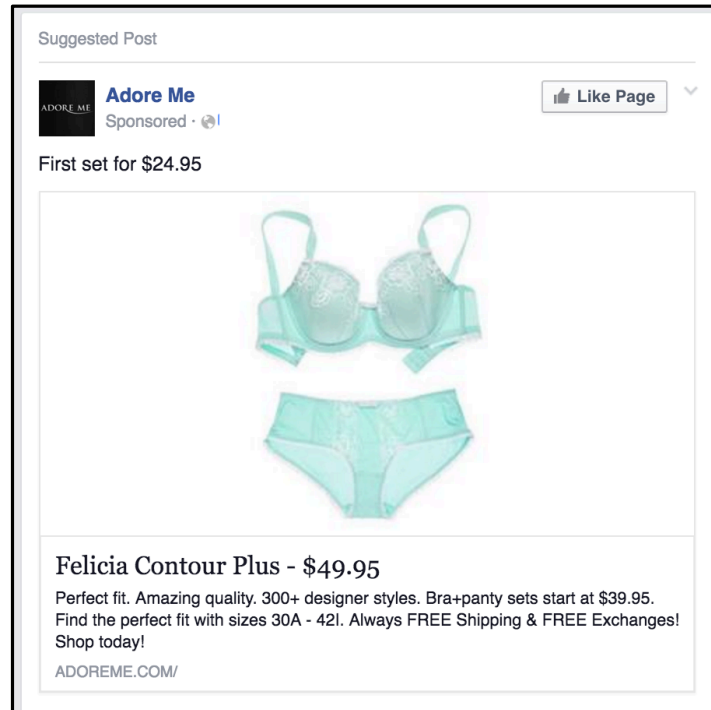
Adore Me's advertisements promote prices that are only available to consumers who are bound to the company's VIP Membership, but it does not clearly and conspicuously disclose this fact. For example, Adore Me television commercials – which air on a number of major television networks, including, for example, MTV, VH1, TLC, CMT, USA, BET, E!, OXYGEN, the Food Network, and Lifetime – universally promote a bargain price and end with the screen below (in various colors and backgrounds):



The \$24.95 advertised price is not available to consumers who choose the “Pay As You Go” option, yet the company only discloses this information in the fine print at the very bottom of the screen, which is displayed for approximately two seconds – “OFFER VALID FOR A FIRST TIME PURCHASE AS PART OF THE ADORE ME VIP MEMBERSHIP. RESTRICTIONS APPLY.” What a “VIP Membership” entails and what “restrictions apply” is never disclosed.

The company’s other advertisements, such as online banner and social media ads, also highlight the VIP Membership price of \$24.95 for the first set without including any disclosure about the binding contractual conditions whatsoever.⁹ For example:

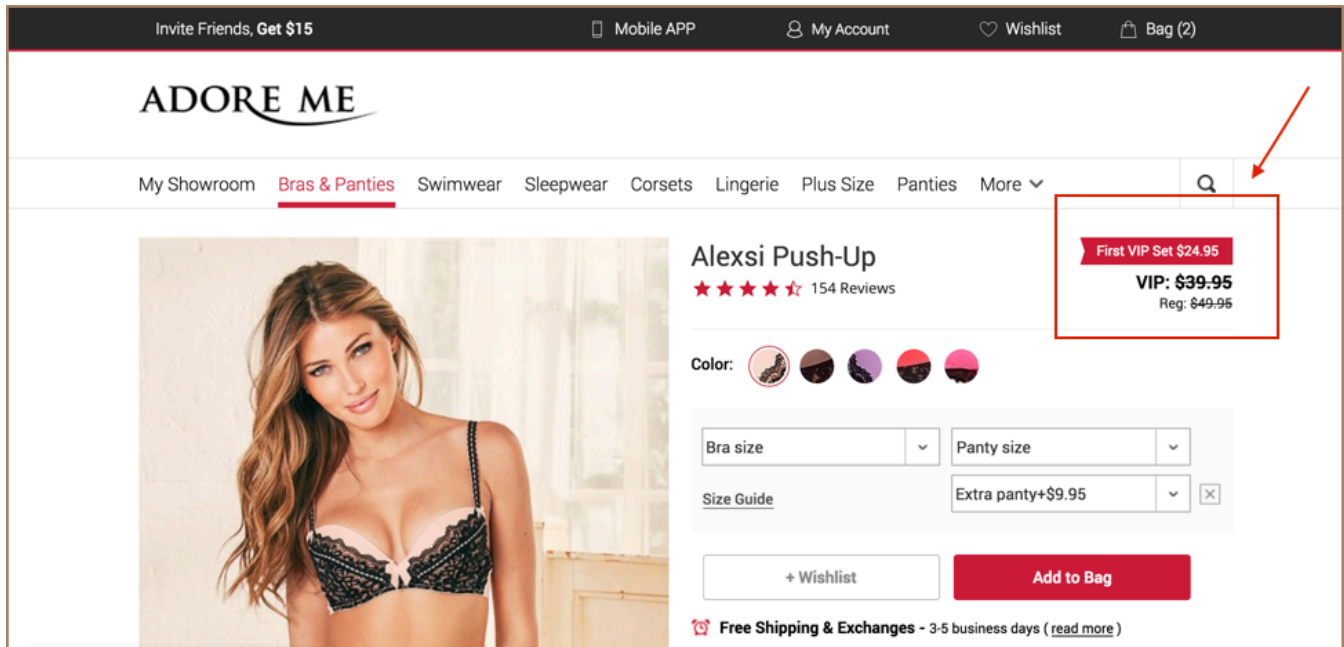




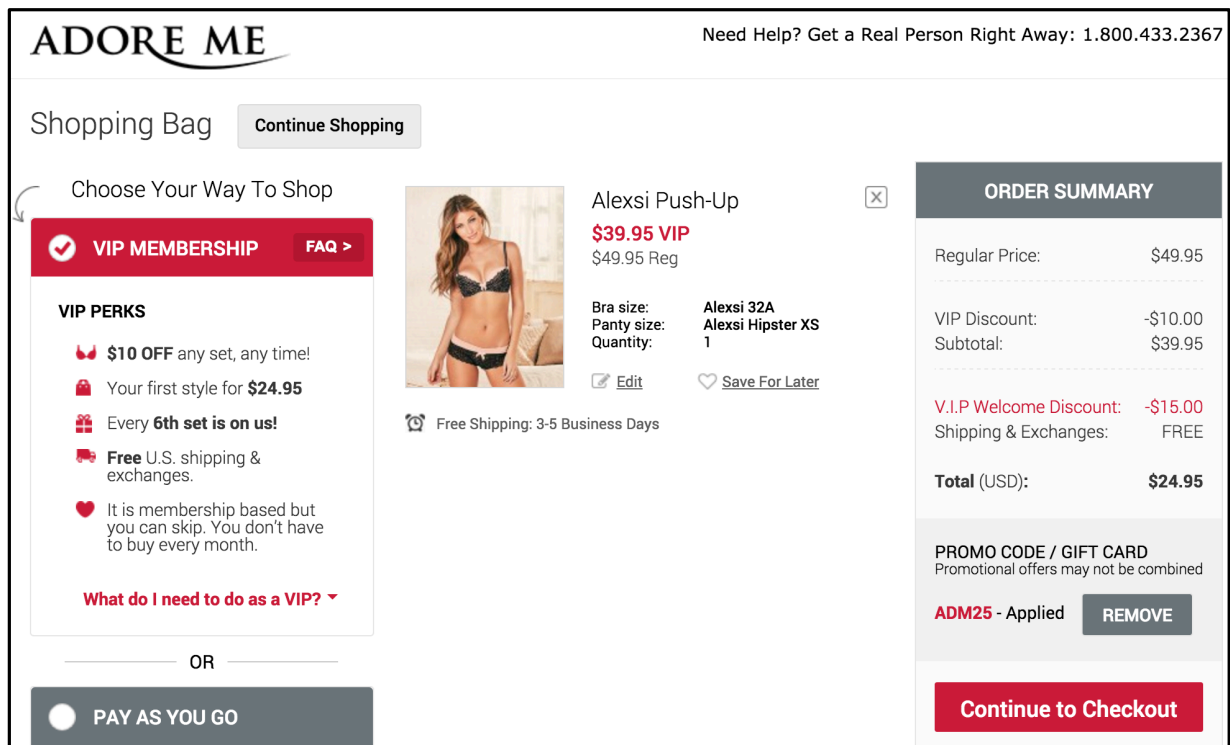
This price marketing is deceptive as the material conditions for obtaining the offered price are either not mentioned at all or incompletely mentioned in barely visible and quickly disappearing fine print. Accordingly, such advertisements are in violation of FTC standards, as well as the FTC Act.¹⁰

2) **Point of Deception #2: Negative Option Offer**

Consumers whose interest has been piqued by the company's advertisements may then visit its website – www.adoreme.com – or mobile app in order to browse the company's products. Those who enter their email addresses, as required by the company, are then given access to Adore Me's collections. Notably, the price listed for each product as a first-time visitor to the site is the "First VIP Set" price; other prices are universally crossed out.



Then, once adding an item(s) to the virtual Shopping Bag, consumers are automatically pushed into the “VIP Membership” option rather than the “Pay As You Go” option, and automatically given the “V.I.P. Welcome Discount” of \$15.



In fact, consumers may miss the Pay As You Go option altogether before clicking on “Continue to Checkout” because it is at the bottom of the screen and in gray, which is in stark contrast to the bright red “VIP Membership” and “Continue to Checkout” boxes.

Even assuming, however, that consumers notice the Pay As You Go option before checking out and thus can make a decision regarding whether to enroll in the VIP membership, the company obscures important information about the membership.

Specifically, the highlighted “VIP Perks” advertised on the Shopping Bag page state, among other things,

“It is membership based but you can skip. You don’t have to buy every month.”¹¹

This language undoubtedly leads reasonable consumers to believe that the membership does not result in monthly charges when that simply is not the case. Only consumers who go beyond the language that is shown on the screen will learn about the monthly charges. Clicking on “What do I need to do as a VIP?” on the Shopping Bag screen, or reading the “Frequently Asked Questions” or “How It Works” sections of the website (both of which are only accessible by scrolling to the very bottom of the company’s webpages)¹² will reveal the following important information: If VIP members do not **take action** each and every month by selecting either the “shop” option (i.e., make a purchase) or “skip” (i.e., not make a purchase) option, they will be charged \$39.95 per month, which can be used as store credit in the future.¹³

In short, Adore Me pushes consumers into a negative option offer without obtaining their express consent and without clearly and conspicuously disclosing all material terms and conditions, in violation of The Restore Online Shoppers’ Confidence Act (ROSCA), as well as the FTC’s general disclosure requirements for online marketing.¹⁴

3) Point of Deception #3: Store Credit Expiration Term is Hidden

Thus far in the purchasing process, consumers are left completely in the dark about another critical term of the VIP Membership: Adore Me keeps consumers’ accumulated unused store credit if their VIP Memberships are canceled for any reason, despite having told consumers they could use the funds as store credit **anytime**.¹⁵ For some consumers, the money taken from them could amount to several hundred dollars, depending on the length of the membership.¹⁶

TINA.org was unable to find any Adore Me marketing materials that disclose this fact. Prospective and current consumers can only learn about this condition if they read the company’s Terms & Conditions,¹⁷ which are only accessible by going to the very bottom of the Adore Me homepage:

Invite Friends, Get \$15

Mobile APP

My Account

Wishlist

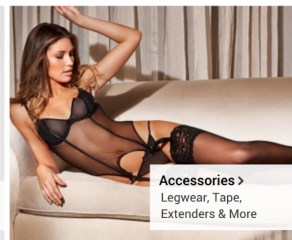
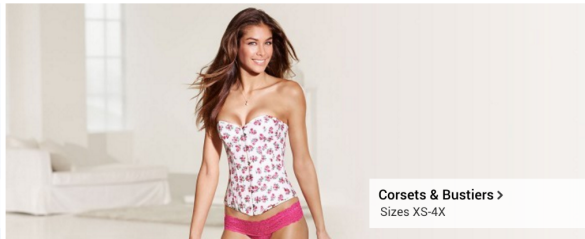
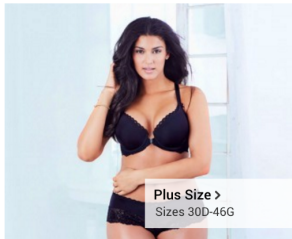
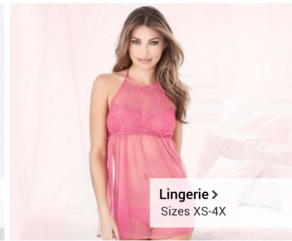
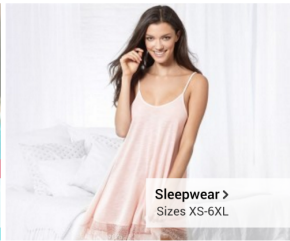
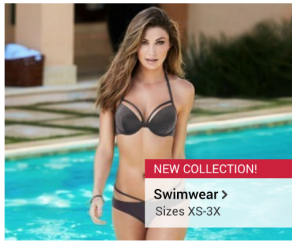
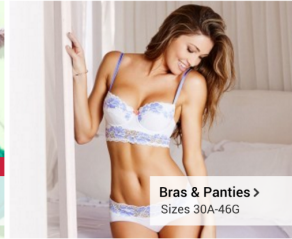
Bag (1)

Your First Set for \$24.95 + Free Shipping & Exchanges! >

ADORE ME

My Showroom Bras & Panties Swimwear Sleepwear Corsets Lingerie Plus Size Panties More >

Q



#ADOREMEGRAM

Share the love, shop the looks, and get inspired.



CUSTOMER CARE

FREQUENTLY ASKED QUESTIONS

CONTACT US

SHIPPING, EXCHANGES & RETURNS

👤 INVITE FRIENDS, GET \$15

ABOUT ADORE ME

HOW IT WORKS

PRESS

BLOG

2014 ANNUAL REVIEW

OUR STORY

GIFT CARDS

CAREERS

REVIEWS

OUR STORES

FIND AN ADOREME STORE

GET SOCIAL



© 2016 ADOREME.COM. ALL RIGHTS RESERVED.

PRIVACY POLICY

TERMS & CONDITIONS

After accessing the Terms & Conditions, consumers must read through almost 2,000 words before arriving at the following language:

Unused credits will be forfeited if your Adore Me membership is terminated for any reason – whether you choose to cancel or if Adore Me cancels your membership at any time.¹⁸

In other words, Adore Me conceals – deep within a document that most of its customers will never read – the fact that it will take their money if their memberships are canceled. This practice not only violates state and federal truth in advertising laws, but such wrongful taking of another’s property may also violate state and federal criminal laws.¹⁹

4) Point of Deception #4: The Company Makes It Difficult to Cancel

In addition to the above issues, consumers are also kept in the dark about the difficulty they will encounter if they should try to cancel their Adore Me VIP Memberships.

A review of consumer complaints submitted to the Better Business Bureau, the FTC, and the New York Attorney General’s Office regarding Adore Me has revealed that over 130 consumers have reported cancellation issues, ranging from continuous Adore Me charges even after cancellation to poor customer service making it difficult to cancel (e.g., being forced to call the company to cancel but then having repeated trouble getting through to a customer service representative in order to process the transaction).²⁰ For example, as one consumer reported to the BBB:

Attempting to cancel membership is a nightmare. Trying to contact anyone via phone has proven illusive and frustrating. Out of three calls I have yet to get through to a live person (made on different days of the week, during different times). When you request to cancel via email, the response redirects you to the site where you initially requested the cancellation. On my first two calls I was on hold for over half an hour and then the call was terminated. On the third attempt I was redirected to a voicemail that was full.²¹

TINA.org’s investigation also revealed that Adore Me requires its members to complete a four-page questionnaire before canceling a membership, a questionnaire that is indisputably intended to dissuade members from going through with the cancellation.²² The questionnaire asks, for example, “I can get a refund any time: True or False,” or “I automatically get a FREE set after every 5th set purchased: True or False.” The questionnaire also features testimonials on each page stating, for example,

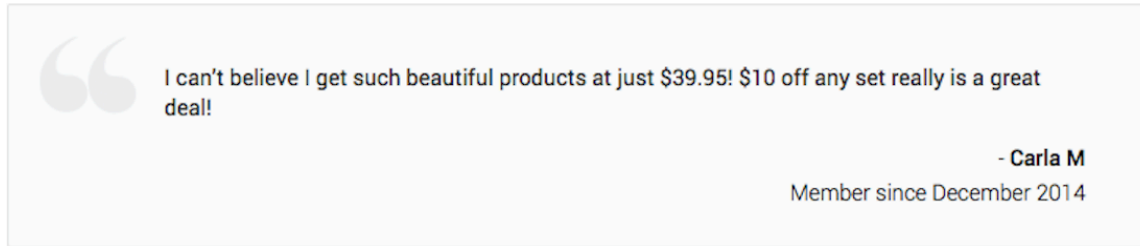


At first, I was confused by the membership. But now that I understand it, I think that it's hassle free and super convenient.

- Gabriela H.

Member since March 2012

or



On the last page of the questionnaire, Adore Me finally informs its members that “by leaving the VIP membership you **forfeit** all former benefits (including but not limited to reward points, special sales, store credits etc).”²³

Additionally, Adore Me refuses to cancel VIP memberships if VIP members have an order that is processing or in transit, or if they have enrolled in the one-time three-month payment vacation.²⁴

No doubt, these tactics are employed to dissuade, or even prevent, members from canceling so that Adore Me may continue charging consumers on a monthly basis even if they have expressed a desire to terminate and do not want Adore Me products. This practice is in violation of ROSCA, as well as the FTC’s general disclosure requirements for online marketing.²⁵

Conclusion

For these reasons, TINA.org urges the Federal Trade Commission to commence an investigation of the claims being made by Adore Me, as well as the illegal business practices being employed by the company, and take appropriate enforcement action.²⁶

Sincerely,

Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.

Bonnie Patten, Esq.
Executive Director
Truth in Advertising, Inc.

Cc: James A. Kohm, Director, Division of Enforcement
Jessica Rich, Director, Bureau of Consumer Protection
Morgan Hermand-Waiche, Founder & Chief Executive Officer, Adore Me, Inc.
Jeff Tsai, Alston & Bird LLP

¹ TINA.org's April 29, 2016 letter to Adore Me and related correspondence are all available at <https://www.truthinadvertising.org/summary-of-action-adore-me/>.

² See NYS Department of State Registration, available at https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=4153220&p_corpid=4145255&p_entity_name=adoreme&p_name_type=A&p_search_type=BEGINS&p_srch_results_page=0. See also <http://www.inc.com/profile/adore-me> (note that Inc. indicates the company started in 2010, but other sources say 2011).

³ Adore Me's latest plan to upend Victoria's Secret, CNBC, Feb. 24, 2016, <http://www.cnbc.com/2016/02/24/adore-mes-latest-plan-to-upend-victorias-secret.html>; Inc. profile, <http://www.inc.com/profile/adore-me>; Adore Me pop-up is no tease: lingerie brand plans N.Y.C. store, New York Business Journal, Feb. 4, 2016, <http://www.bizjournals.com/newyork/news/2016/02/04/adore-me-pop-up-a-prelude-to-nyc-brick-and-mortar.html>; Adore Me Moves From Clicks to Bricks, WWD.com, Mar. 1, 2016, <http://wwd.com/fashion-news/fashion-scoops/adore-me-physical-store-10375725/>.

⁴ Adore Me pop-up is no tease: lingerie brand plans N.Y.C. store, New York Business Journal, Feb. 4, 2016, <http://www.bizjournals.com/newyork/news/2016/02/04/adore-me-pop-up-a-prelude-to-nyc-brick-and-mortar.html>.

⁵ Adore Me Press, <http://www.adoreme.com/press/news/>.

⁶ BBB Business Review of Adore Me, Inc., <http://www.bbb.org/new-york-city/business-reviews/online-retailer/adore-me-inc-in-new-york-ny-136513/>.

In addition to these consumer complaints, a class-action lawsuit was filed against the company in November 2015 alleging, among other things, that the company violated Pennsylvania consumer protection laws by enrolling consumers into its VIP Membership without clearly or conspicuously disclosing all the terms of the membership. See *Prukala v. Adore Me, Inc.*, (M. D. Penn.), Docket No. 15-cv-2427. The case is pending.

Bloomberg.com also recently published a story about Adore Me, which highlighted several consumer protection issues regarding the company. See *The Future of Shopping: Trapping You in a Club You Didn't Know You Joined*, by Rebecca Greenfield and Kim Bhasin, April 28, 2016, <http://www.bloomberg.com/features/2016-adore-me/>.

⁷ Adore Me Showroom, <http://www.adoreme.com/stores>; Adore Me's latest plan to upend Victoria's Secret, CNBC, Feb. 24, 2016, <http://www.cnbc.com/2016/02/24/adore-mes-latest-plan-to-upend-victorias-secret.html>; Adore Me pop-up is no tease: lingerie brand plans N.Y.C. store, New York Business Journal, Feb. 4, 2016, <http://www.bizjournals.com/newyork/news/2016/02/04/adore-me-pop-up-a-prelude-to-nyc-brick-and-mortar.html>; <http://wwd.com/fashion-news/fashion-scoops/adore-me-physical-store-10375725/>.

⁸ See Adore Me Walk-Through Video created by TINA.org, <https://www.truthinadvertising.org/adore-me-walk-through-video/>.

⁹ More samples of Adore Me ads are available at <https://www.truthinadvertising.org/evidence-adore-me/>.

¹⁰ 15 U.S.C. §45.

As the FTC has stated in its guidance to advertisers,

Your ads should clearly and conspicuously disclose all the information about an offer that is likely to affect a consumer's purchasing decision. Disclose the most important information - like the terms affecting the basic cost of the offer - near the advertised price... Television advertisers should not hide key information in...subscripts using small print size...[or]...[t]ype that disappears from the screen too fast for consumers to read and comprehend...

FTC: Big Print. Little Print. What's the Deal? How to Disclose the Details,
<https://www.ftc.gov/tips-advice/business-center/guidance/big-print-little-print-whats-deal>.

Furthermore, as part of the FTC's 2014 "Operation Full Disclosure," in which it sent warning letters to more than 60 companies that failed to make adequate disclosures in their television and print ads, the FTC highlighted that ads quoting the price of products without adequately disclosing the conditions for obtaining that price are deceptive. Operation 'Full Disclosure' Targets More Than 60 National Advertisers: FTC Initiative Aims to Improve Disclosures in Advertising, September 23, 2014, <https://www.ftc.gov/news-events/press-releases/2014/09/operation-full-disclosure-targets-more-60-national-advertisers>.

¹¹ See Adore Me Shopping Bag, <http://www.adoreme.com/checkout/cart/>. A PDF version of the page is also available at <https://www.truthinadvertising.org/wp-content/uploads/2016/05/Adore-Me-Shopping-Cart.pdf>.

¹² Consumers can also click on the small "FAQ" box that is accessible from the Shopping Bag page, but this condensed version of the Frequently Asked Questions section of the website does not tell consumers the amount of the monthly charge.

FAQs

Q: Do I have to buy something every month?

A: **Nope!** Just skip the month if you don't feel like shopping.

Q: Will I be charged every month?

A: **Not at all!** Simply shop or skip if you don't want a credit.

Q: Will I be reminded to shop or skip?


A: **Yes!** We will send you email reminders.

Q: What if I forget to skip the month?

A: **No problem!** You'll be charged a store credit to be used for any future purchase. If you'd like a refund, just give us a call within 30 days.

Q: Can I change my mind?

A: **Sure!** If you are a VIP, you can leave the membership any time, then shop as a Pay As You Go customer, no questions asked. You're welcome to rejoin the VIP membership later to enjoy the benefits.



Other Questions?
Call us anytime. 1.800.433.2367
Real people, no robots.

¹³ See Frequently Asked Questions, <http://help.adoreme.com/customer/en/portal/articles/992574-how-does-the-vip-membership-work-> (“If you do not skip the month or make a purchase between the 1st and the 5th of the month, you will see a \$39.95 charge on your card and it will appear on your Adore Me account as store credit. The store credit will remain active on your account and you can shop with it anytime!”); How it Works, http://www.adoreme.com/how_it_works (“We’ll send you reminder emails, but if you forget, no worries! You’ll be charged a \$39.95 store credit to use anytime—and if you don’t want this store credit, we have a convenient 30 day no-questions-asked refund policy. We think you’ll adore the VIP life!”).

¹⁴ Restore Online Shoppers’ Confidence Act (ROSCA), 15 U.S.C. § 8403. ROSCA prohibits any person from charging or attempting to charge any consumer for goods or services sold on the Internet through any negative option offer, unless the person: (1) provides text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer’s billing information; (2) obtains a consumer’s express informed consent before charging the consumer’s account; and (3) provides simple mechanisms for a consumer to stop recurring charges.

See also .com Disclosures: How to Make Effective Disclosures in Digital Advertising, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>. As the Commission has stated, marketing disclosures must be prominent, conspicuous, and “effectively communicated to consumers before they make a purchase or incur a financial obligation.”

In reviewing their ads, advertisers should adopt the perspective of a reasonable consumer. They also should assume that consumers don’t read an entire website or online screen, just as they don’t read every word on a printed page. Disclosures should be placed as close as possible to the claim they qualify. Advertisers should keep in mind that having to scroll increases the risk that consumers will miss a disclosure. ... Simply making the disclosure available somewhere in the ad, where some consumers might find it, does not meet the clear and conspicuous standard.

Id.

¹⁵ News outlets have recently reported that Adore Me has ceased this practice of wrongfully keeping consumers’ accumulated store credit. However, as of today, May 9, 2016, the company’s Terms and Conditions indicate that the company still employs this tactic.

¹⁶ For example, one consumer reports having lost over \$475 as a result of being deceived by Adore Me. See Consumer complaints submitted to BBB regarding Adore Me, available at <http://www.bbb.org/new-york-city/business-reviews/online-retailer/adore-me-inc-in-new-york-ny-136513/complaints> and <https://www.truthinadvertising.org/wp-content/uploads/2016/05/Adore-Me-BBB-Complaints.pdf>.

¹⁷ Adore Me also notifies consumers of this condition at the very end of a four-page cancellation questionnaire that consumers must complete in order to cancel:

One Last Thing!

Before deactivating your account, we're obliged to inform you that by leaving the VIP membership you **forfeit** all former benefits (including but not limited to reward points, special sales, store credits etc).

We strongly suggest that you use your current store credits and reward points, as items will be more expensive outside of the membership. If you prefer, you could take a Payment Vacation now, use your store credits and rewards, then unsubscribe later—it's always your decision!



Switch to the Quarterly VIP membership instead

Enjoy all the perks without visiting the site to shop or skip each month.

Switch to quarterly >

☐ I understand and agree to forfeit the perks attached to my VIP membership.

I want to stay a VIP >

I don't want to be a VIP

The complete cancellation questionnaire is available at <https://www.truthinadvertising.org/wp-content/uploads/2016/05/Adore-Me-Cancellation-Quiz.pdf>.

¹⁸ Adore Me Terms & Conditions, <http://www.adoreme.com/terms-conditions> (also available at <https://www.truthinadvertising.org/wp-content/uploads/2016/05/Adore-Me-Terms-Conditions.pdf>). The Terms and Conditions also state, further down on the page, “VIP MEMBERSHIP CANCELLATIONS [. . .] By cancelling your membership you forfeit your store credits and abandon your reward points.”

¹⁹ See ROSCA, 15 U.S.C. §8403 (requiring, among other things, clear and conspicuous disclosures of all material terms of the transaction before obtaining the consumer’s billing information); Federal Wire Fraud Statute, 18 U.S.C. §1343 (making it a criminal offense to, among other things, transmit by wire any writings for the purpose of executing a scheme to defraud, or to obtain money or property by means of false or fraudulent pretenses, representations, or promises); *Federal Trade Commission v. BlueHippo Funding, LLC*, 08-cv-1819 (S.D.N.Y.), Docket No. 138, April 19, 2016 (Court Order imposing contempt sanctions on company found to be operating a deceptive computer financing scheme by, among other things, failing to disclose material terms of their refund policy, and for violating a previous Order prohibiting such actions).

See also New York General Business Law § 396-I (requiring businesses to disclose all terms and conditions of store credit – including expiration dates – clearly and conspicuously, and prohibiting businesses from refusing to accept store credit for payment of goods if presented pursuant to all clearly and conspicuously disclosed terms); New York Penal Law § 155.05 (prohibiting the withholding of another’s property with intent to deprive the other person of that property by, among other ways, trickery or false promise); New York Executive Law §63(12) (prohibiting businesses from engaging in repeated fraudulent or illegal acts or otherwise demonstrating persistent fraud or illegality in the carrying on, conducting, or transaction of business).

²⁰ See <https://www.truthinadvertising.org/adore-me-consumer-complaints/>. Note that while the BBB reports having received well over 600 complaints from consumers about Adore Me, only 291 are available online. The BBB explained to TINA.org that because of the unusually large

number of complaints being filed against Adore Me, the BBB is only publishing approximately one of every five complaints.

²¹ Consumer Review by Jessica, dated Jan. 12, 2016 on Adore Me, Inc. BBB Business Review page, <http://www.bbb.org/new-york-city/business-reviews/online-retailer/adore-me-inc-in-new-york-ny-136513/customer-reviews>. Also available at <https://www.truthinadvertising.org/wp-content/uploads/2016/05/Sampling-of-BBB-Customer-Reviews.pdf>.

²² Adore Me Cancellation Quiz, <https://www.truthinadvertising.org/wp-content/uploads/2016/05/Adore-Me-Cancellation-Quiz.pdf>.

²³ *Id.*

²⁴ Adore Me Terms & Conditions, <http://www.adoreme.com/terms-conditions> (also available at <https://www.truthinadvertising.org/wp-content/uploads/2016/05/Adore-Me-Terms-Conditions.pdf>).

²⁵ ROSCA requires marketers of negative option offers to provide “simple mechanisms for a consumer to stop recurring charges.” 15 U.S.C. § 8403(3). In addition, in the FTC Division of Enforcement’s Report on Negative Options, the Commission instructs that marketers of negative options must clearly disclose how to cancel the offer in order to comply with Section 5 of the FTC Act. *See* Negative Options: A Report by the staff of the FTC’s Division of Enforcement, January 2009, available at <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>.

²⁶ TINA.org has also sent complaint letters to the New York Attorney General’s Office and the District Attorney’s Office in Santa Clara County, California.