



January 2, 2026

Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Comment submitted electronically via <https://www.regulations.gov>

Re: Petition for Renewed Click to Cancel Rulemaking, FTC-2025-0792

Truth in Advertising, Inc. (“TINA.org”) welcomes the opportunity to submit the following comment in support of Consumer Federation of America (CFA) and the American Economic Liberties Project (AELP)’s petition to the Federal Trade Commission for renewed Click-to-Cancel rulemaking. Despite a multitude of laws currently in place that apply to negative option offers, consumers continue to be unknowingly tricked into signing up for these subscriptions by companies that employ deceptive marketing tactics and then make it difficult for consumers to cancel these recurring orders. These substantive problems existed before the Eighth Circuit Court of Appeals vacated the 2024 Click-to-Cancel Rule based on perceived procedural infirmities, and they continue to exist today. As such, it is prudent for the Commission to strengthen its Negation Option Rule so that it can more effectively prevent and deter consumer deception in this area.¹

INTEREST OF COMMENTER

TINA.org is a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud; promote understanding of the serious harms commercial dishonesty inflicts; and work with consumers, businesses, self-regulatory bodies and government agencies to advance countermeasures that effectively prevent and stop deception in the economy. At the center of TINA.org’s efforts is its website, www.tina.org, which provides information about common deceptive advertising techniques, consumer protection laws and alerts about specific deceptive marketing campaigns—such as nationally advertised “Built in the USA” vans manufactured abroad, pillows and essential oils falsely marketed as being able to treat chronic diseases, and a tax preparation service deceptively advertised as free. The website functions as a clearinghouse, receiving consumer complaints about suspicious practices, which TINA.org investigates and, when appropriate, pursues with businesses and regulatory authorities. The website is also a repository of information relating to consumer protection lawsuits and regulatory actions.

Through its collaborative approach and attention to emerging issues and complexities, TINA.org has become a trusted source of expertise on matters relating to consumer fraud, and its representatives have testified before Congress on issues related to consumer protection, deceptive marketing and economic justice.² TINA.org regularly draws on its expertise to advocate for consumer interests before the FTC and other governmental bodies, and appears as *amicus curiae* in cases raising important questions of consumer protection law.³

Since its inception, TINA.org has filed legal actions with regulatory agencies against hundreds of companies and entities, published more than 1,600 ad alerts and more than 1,000 news articles, and tracked more than 6,500 federal class actions alleging deceptive marketing. Notably, since 2015, state and federal agencies have obtained monetary judgments of more than \$380 million against wrongdoers based on TINA.org's legal actions and evidence, and returned millions in ill-gotten gains to consumers.

With respect to negative option marketing specifically, TINA.org has investigated and reported on dozens of companies using deceptive negative option offers,⁴ and has filed complaints with state and federal regulators against six brands for engaging in such tactics.⁵ As a result of these investigations and complaints, six regulatory enforcement actions have been taken (including one by the FTC⁶), cumulatively resulting in more than \$6 million in civil penalties and consumer redress.⁷ TINA.org is also tracking more than 200 class-action lawsuits challenging alleged misleading negative option marketing used by a multitude of companies in diverse industries.⁸

In short, the tools the FTC has at its disposal to stop deceptive negative option offers and subscriptions—including, in particular, the proposed rulemaking currently at issue—are of central importance to TINA.org's work and mission.

A CLICK-TO-CANCEL RULE IS NEEDED

Deceptive marketing and similar forms of commercial dishonesty wreak havoc on the U.S. economy, cheating consumers out of billions of dollars and distorting the fair allocation of resources as those who hone fraudulent schemes are rewarded, and honest competitors suffer. Consumer fraud and deceptive marketing are classic market failures. And as consumers continue to gravitate to the internet for their purchases, savvy scammers are able to further exploit consumers while making it increasingly difficult for shoppers to protect themselves against such deception.

Exemplifying this troubling problem are deceptive negative option contracts, which have become a multibillion-dollar disaster for consumers and legitimate businesses alike. And despite the best efforts of the FTC and state attorneys general, among others, deceptive negative option offers continue to proliferate.

I. A Click-to-Cancel Rule Is Needed to Curb Widespread and Harmful Abuses of Negative Option Offers.

All too often, misleading negative option offers trap consumers into unwanted subscriptions and memberships that they cannot get out of—no matter how hard they may try. And despite a multitude of applicable laws currently in place,⁹ consumers continue to be tricked into signing up for these subscriptions by companies that employ an assortment of deceptive marketing tactics. Adding insult to injury, these companies make it difficult (if not impossible) for consumers to cancel the unwanted recurring charges. These problems are widespread, inflict billions of dollars in losses to cheated consumers, distort the efficient allocation of resources in our economy, and punish honest competitors focused on bringing superior products and services to market.

A. Deceptive Subscriptions Are Pervasive.

While not all subscription services involve dishonesty or are unwanted, deceptive conduct perpetuated by companies engaging in negative option offers has persisted for decades.¹⁰ Indeed, for those industries that employ negative option contracts, it is difficult to identify one that does *not* have members engaged in deceptive recurring subscriptions. TINA.org's investigations of more than 100 products and services sold through problematic subscription programs span a multitude of industries, including home internet and mobile services, vitamins and supplements, hunting supplies and outdoor gear, food delivery services, legal services, home cleaning services, printers, skin care products, books and magazines, movie tickets, perfumes, fitness memberships, clothing and lingerie, contact lenses, e-cigarettes, multilevel marketing opportunities and weight-loss products, among others.¹¹ Moreover, deceptive autorenewing models are not used just by small, fly-by-night operations, but also by large, sophisticated entities, including Amazon, AARP, Unilever and Xfinity.¹² TINA.org has also tracked class-action lawsuits alleging misleading subscription practices by such well-known companies as The New York Times, Walmart, Apple, Google, NFL Enterprises, Staples and Zoom.¹³

While subscription plans span a diverse number of industries, the manipulative tactics used to trap consumers in negative option offers remain remarkably uniform, as follows: (1) use deceptive marketing to lure consumers in, (2) conceal subscription terms so that consumers remain ignorant of the recurring costs, and (3) implement burdensome cancellation policies so consumers have difficulty terminating the subscriptions. These tactics are incredibly effective. By way of example, in 2022, the Washington Attorney General's office conducted a consumer survey that revealed that 59% of Washingtonians (or 3.5 million residents) may have been enrolled in a subscription plan or service when they thought they were making a one-time purchase.¹⁴ Further, the FTC has reported that it receives thousands of complaints regarding negative option offers and recurring subscriptions each year, that the number of such complaints has been “steadily increasing over the past five years,” and that in 2024, “the Commission received nearly 70 consumer complaints per day on average, up from 42 per day in 2021.”¹⁵

The data make clear that far too many companies are manipulating consumers with deceptive and misleading subscription offers and, as a result, Americans are spending “billions of dollars on stuff they have forgotten about.”¹⁶

B. Unwanted Subscriptions Cause Significant Harm to Consumers and Create Economic Inefficiencies.

The goal of companies deceptively employing recurring subscription models is to charge consumers indefinitely—luring and locking consumers in, driving out competitors, and all but ensuring consumers can never leave.¹⁷ This type of deceptive conduct deprives consumers of free choice in their purchasing decisions.¹⁸

Victims in just 16 resolved FTC deceptive subscription cases brought between 2008 and 2019 collectively lost \$1.4 billion.¹⁹ From 2015 to 2017, approximately 37,000 complaints filed with the Better Business Bureau reported an average loss of \$186 as a result of deceptive subscriptions.²⁰ The FBI’s Internet Crime Complaint Center recorded more than 9,600 complaints about free trial offers between 2015 and 2019, with losses totaling more than \$28 million over that time span.²¹ And these numbers are likely lower because, *inter alia*, as FTC studies have found, less than 10% of fraud victims report their losses to the BBB or law enforcement.²²

Further, a 2021 study by Chase Bank found that nearly three-quarters of Americans waste more than \$50 a month on unwanted subscription fees.²³ In a 2022 survey, consumers reported underestimating their actual monthly spend on subscriptions by \$133 (or two-and-a-half times more than what they thought they were paying).²⁴ And a 2025 survey found that four out of five U.S. adults have paid for one of more subscriptions in the past year, with the average subscriber paying more than \$200 a year on subscriptions they do not use.²⁵

Corresponding with this consumer dissatisfaction, more than 225 federal class actions have been filed on behalf of consumers complaining about various negative option terms and conditions since 2013.²⁶

Indeed, the scope and reach of deceptive subscription plans is so extensive that consumer complaints about them are ubiquitous.²⁷ In fact, issues with deceptive negative option offers are one of the most common types of complaints that TINA.org receives.²⁸ Consumers generally report unwittingly being enrolled in a negative option plan, and then finding it impossible to cancel the subscription. The following examples are illustrative:

- “[S]ent for the free bottle of . . . oil plus an extra one bottle they charged me \$98/93 . . . THAT IS FRAUD . . . i realize I have been scammed and as I am a pensioner [*sic*] they have taken my xmas money for my kids. i want to cancel the order and get my money back can you help me please as that amount for 1 bottle is outrageous there is no phone number to ring” (weight-loss company, 2016 complaint).²⁹

- “They charge your card \$39 every single month even if you do not shop that month. I would have never even shopped on their website if I known that. No where did I see I would be charged \$39. I think it’s sneaky and not good business. And I also see I’m not the only one who had this problem. I would have never known they were taking money out if it wasn’t for me checking my bank statement because they don’t send you a receipt to your email like they do when you order something” (children’s clothing company, 2021 complaint).³⁰
- “In December 2024 I ordered perfume from this company as a Christmas gift for my daughter. At the beginning of January 2025, I noticed that the company charged my credit card over \$42. When I disputed the charge they said it was for my monthly subscription. I asked that they refund the money & cancel the subscription since I had never agreed or subscribed to anything! They reversed the charges in short order. However—it is now February and I now see another \$42+ charge on my credit card from this company” (perfume company, 2025 complaint).³¹
- “If you try to cancel your service, they will make it so difficult that you will cry. I had to talk to 5 different people who all gave me different information, was assured that my service was canceled multiple times, only to continue receiving bills, it was a nightmare . . .” (internet and cable company, 2024 complaint).³²
- “Once you sign up for auto-renew, they make it near impossible to cancel. Thus they are participating in the kind of financial abuse of elders that they should be protecting us from. Avoid at all costs” (national senior service organization, 2023 complaint).³³
- “I have been trying to cancel my monthly subscription/membership for MONTHS. No response on live chats, no response through customer service. They keep charging me 50 dollars . . .” (lingerie company, 2020 complaint).³⁴
- “I tried to call and cancel, they told me it was canceled, but it was not. I received packages from them filled with . . . things I don’t eat. I called the bank to file a dispute and set up a stop payment, but that didn’t stop, they just kept changing the amount they were charging, so the stop payment didn’t do anything. Now left with no options, I have to close my card!” (meal-kit company, 2022 complaint).³⁵
- “In August, they took my money but never sent me the product. I contacted them via email to inform them of this and asked them to cancel my subscription since they did that. In September, they again took my money and never sent my product. Again, I contacted them for a refund

and cancellation. It happened again this week. I emailed them on Wednesday and today. I called today and they stated that they have not received any communication from me. They also said they would not refund my money unless I send them the bottles. But, being I am not receiving the product, how am I suppose to mail the bottles to them?” (multilevel marketing company, 2013 complaint).³⁶

The tactics employed to trick consumers into subscriptions that are difficult to cancel also have an especially burdensome impact on susceptible populations, including those with limited financial resources,³⁷ seniors,³⁸ the disabled³⁹ and children (and their parents).⁴⁰

Of course, the harm of deceptive negative option contracts is not limited to consumers—such dishonest practices inflict systemic damage on the American economy. Bad advertising can drive out good advertising: When consumers become suspicious of advertising claims, persuading them that an honest representation is true becomes more costly—a special obstacle for new market entrants, who account for a disproportionate share of innovative products and must rely on advertising to overcome consumer wariness.⁴¹ Capital is likewise being misdirected to fraudulently successful subscription businesses and toward efforts to keep consumers locked in negative option contracts. In significant ways, such issues have worsened over time as more and more companies have adopted the subscription model.⁴²

Without a Click-to-Cancel rule, the FTC will be prevented from effectively and efficiently regulating deceptive negative option contracts and, as such, many companies that utilize subscription models will continue to ignore the fundamentals of truth-in-advertising requirements and persist in their manipulation of consumers. As the Supreme Court stated nearly a century ago, “[t]he careless and the unscrupulous must rise to the standards of the scrupulous and diligent. The Commission was not organized to drag the standards down.”⁴³

II. A Click-to-Cancel Rule Would Provide Much-Needed Protection for All Consumers.

It has become clear that modern and more specific regulations are necessary to address deceptive subscription offers as the FTC has struggled to ensure that this dishonest business model does not continue as a winning strategy.⁴⁴ The FTC first promulgated the Negative Option Rule in 1973 to curb abuses of pre-notification negative option plans (such as product-of-the-month clubs).⁴⁵ Though the Commission initiated reviews of the Rule several times,⁴⁶ the last report, issued in 2014, concluded that amending the rule was not warranted at that time.⁴⁷ The Agency reasoned that although negative option marketing was the cause of substantial consumer injury, the then-recently enacted Restore Online Shoppers’ Confidence Act (“ROSCA”)⁴⁸ and the Telemarketing Sales Rule (“TSR”)⁴⁹ might prove adequate to address the issue. The past decade and a half, however, have shown that the tools available to the FTC are not adequate to address deceptive negative option contracts.⁵⁰

Since 2011, the FTC has brought 49 actions alleging violations of ROSCA.⁵¹ In addition, recognizing the ever-present harms associated with deceptive subscriptions and automatic renewal provisions that continue to plague consumers, a multitude of states⁵² and even some credit card companies⁵³ have issued laws and rules in an attempt to fill the gap in federal oversight. However, much like the federal landscape, these rules and regulations have not been able to effectively eradicate the negative option offer problem. Moreover, these efforts differ significantly in scope, requirements, and category of products to which they apply. As a result, consumers receive different levels of protection depending on where they live geographically, what goods or services they are purchasing, or what credit card they use; and so far, these provisions have been inadequate to stem the tide of unwanted subscriptions that continue to bedevil American consumers. As such, the uniform protection of a Click-to-Cancel Rule is much needed.

To be sure, lying to consumers can be a lucrative business strategy, which is why a rule is needed that specifically targets deceptive negative option practices that remain pervasive despite the current regulatory landscape. In the absence of an updated FTC rule, deceptive negative option practices will continue to harm consumers and honest businesses. As former FTC Chair Joseph Simons aptly stated, “Truthful advertising allows consumers to make well-informed decisions about how to best use their resources and promotes the efficient functioning of market forces by encouraging the dissemination of accurate information.”⁵⁴

CONCLUSION

The widespread harm caused by deceptive negative option marketing remains ongoing and undiminished by the Eighth Circuit’s decision to vacate the 2024 Click-to-Cancel Rule. As such, TINA.org supports the CFA and AELP petition urging the Commission to respond by renewing a Click-to-Cancel rulemaking (with appropriate procedural adjustments) that covers negative option marketing across all mediums and addresses cancellation mechanisms, as well as misrepresentations, disclosures, and consent.

Sincerely,



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¹ Of note, TINA.org filed two previous comments pertaining to the FTC’s original “Click-to-Cancel” rule proposal. See TINA.org’s Comment to FTC Re: The FTC Should Update Its Negative Option Rule (Dec. 2, 2019), https://truthinadvertising.org/wp-content/uploads/2019/12/12_2_19-comment-to-FTC-re-NOO-Rule.pdf; TINA.org’s Comment to FTC Re: Negative Option Rule; Project No. P064202 (June 20, 2023), https://truthinadvertising.org/wp-content/uploads/2023/06/6_20_23-Negative-Option-Rule-Comment-to-FTC.pdf.

TINA.org also filed a comment with the FTC on July 15, 2021 supporting the Movie Pass, Inc. Consent Agreement, which is also relevant here, particularly as it pertains to the Commission’s proposal to prohibit misrepresentations in connection with a negative option offer of “any material fact related to the transaction, such as the negative option feature, or any material fact related to the underlying good or service” (Proposed Section 425.3), which TINA.org supports. See TINA.org’s Comment to FTC Re: In the Matter of MoviePass, Inc. – Consent Agreement (Commission File No. 192 3000) (July 15, 2021), https://truthinadvertising.org/wp-content/uploads/2021/07/FTC-2021-0032-0003_attachment_1.pdf.

² Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic Before the Subcomm. on Consumer Prot. and Com. of the Comm. on Energy and Com., 117th Cong. (Feb. 4, 2021) (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/house-testimony-2021-summary-action/>; Curbing COVID Cons: Warning Consumers about Pandemic Frauds, Scams, and Swindles Before the Subcomm. on Consumer Prot., Prod. Safety, and Data Sec. of the Comm. on Com., Sci., & Transp., 117th Cong. (Apr. 27, 2021), (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/senate-testimony-2021-summary-action/>.

³ See, e.g., Brief for Amici Curiae Truth In Advertising, Inc., et al. in Support of Plaintiff-Appellee, *Fed. Trade Comm’n v. Quincy Bioscience Holding Co., Inc.* (2d Cir. July 24, 2025) (No. 25-12), https://truthinadvertising.org/wp-content/uploads/2021/12/7_24_25-TINA-amici-motion-and-brief.pdf; Brief of Amici Curiae Truth In Advertising, Inc., et al. in Support of Respondent, *Intuit, Inc. v. Fed. Trade Comm’n* (5th Cir. June 21, 2024) (No. 24-60040), <https://truthinadvertising.org/wp-content/uploads/2024/06/Intuit-v-FTC-TINA-Amici-Brief.pdf>; Brief for Truth In Advertising, Inc. as Amicus Curiae Supporting Respondent, *AMG Capital Mgmt., LLC v. Fed. Trade Comm’n*, 593 U.S. 67 (2020) (No. 19-508), https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389_19-508%20brief.pdf; Brief of Amici Curiae Truth In Advertising, Inc., et al. in Favor of Appellants and in Support of Reversal, *Fed. Trade Comm’n v. Quincy Bioscience Holding Co., Inc.* (2d Cir. Mar. 6, 2019) (No. 17-3745), https://truthinadvertising.org/wp-content/uploads/2018/03/Prevagen_Amici-Curiae-brief.pdf.

⁴ TINA.org’s Ad Alerts: Results Using the “Subscriptions” Filter, <https://truthinadvertising.org/ad-alerts/?f-search=&f-tactic%5B%5D=4700>.

⁵ TINA.org’s Homeaglow Investigation, <https://truthinadvertising.org/brands/homeaglow/>; TINA.org’s HelloFresh Investigation, <https://truthinadvertising.org/brands/hellofresh/>; TINA.org’s Savage X Fenty Investigation, <https://truthinadvertising.org/brands/savage-x-fenty/>; TINA.org’s FabKids Investigation, <https://truthinadvertising.org/brands/fabkids/>; TINA.org’s Adore Me Investigation, <https://truthinadvertising.org/brands/adore-me/>; TINA.org’s O2PUR Investigation, <https://truthinadvertising.org/brands/o2pur/>.

⁶ Complaint for Permanent Injunction and Other Equitable Relief, *Fed. Trade Comm’n v. AdoreMe, Inc.* (S.D.N.Y. 2017) (No. 1:17-cv-09083), <https://truthinadvertising.org/wp-content/uploads/2017/11/FTC-v-AdoreMe-complaint.pdf>; Motion to Enter Stipulated Order for Permanent Injunction and Monetary Judgment, *Fed. Trade Comm’n v. AdoreMe, Inc.* (S.D.N.Y. 2017) (No. 1:17-cv-09083), <https://truthinadvertising.org/wp-content/uploads/2017/11/FTC-v-AdoreMe-settlement-motion.pdf>.

⁷ Settlement Agreement, *In the Matter of Scott Barth*, DCP Case No. 82403 and 86039 (Utah Div. of Consumer Prot. Dept. of Com. Jan. 20, 2017), <https://truthinadvertising.org/wp-content/uploads/2017/01/O2Pur-Settltmt-Agrmt-w-Scott-Barth.pdf>; Settlement Agreement, *In the Matter of: Alpha Int’l Mktg. LLC*, No. 86039 (Utah Div. of Consumer Prot. Dept. of Com. Jan. 4, 2017), <https://truthinadvertising.org/wp-content/uploads/2017/01/O2Pur-Settltmt-Agrmt-w-Alpha-Intern.pdf>; Motion to Enter Stipulated Order for Permanent Injunction and Monetary Judgment, *Fed. Trade Comm’n v. AdoreMe, Inc.*, No. 1:17-cv-09083 (S.D.N.Y. Nov. 20, 2017), <https://truthinadvertising.org/wp-content/uploads/2017/11/FTC-v-AdoreMe-settlement-motion.pdf>; Press Release, Off. N.Y. State Att’y Gen., A.G. Schneiderman Announces Settlement With Adore Me Lingerie Company For Deceptive Advertising (Mar. 20, 2018), <https://ag.ny.gov/press-release/2018/ag-schneiderman-announces-settlement-adore-me-lingerie-company-deceptive>; Stipulation for Entry of Final Judgment, *State of California v. AdoreMe, Inc.*, No. 18cv332846 (Cal. Super. Ct. Aug. 20, 2018), <https://truthinadvertising.org/wp-content/uploads/2019/01/Adore-Me-Final-Judgment.pdf>; Final Judgment and Injunction Pursuant to Stipulation, *State of California v. Lavender Lingerie, LLC d/b/a Savage X Fenty*, No. 22CV402737 (Cal. Super. Ct. Nov. 23, 2022), <https://truthinadvertising.org/wp-content/uploads/2021/12/CA-v-Savage-x-Fenty-order.pdf>; *In the Matter of AdoreMe, Inc.* Settlement Agreement (June 9, 2023), https://truthinadvertising.org/wp-content/uploads/2021/12/NC_AdoreMe_Settlement-Agreement.pdf.

⁸ TINA.org’s Class-Action Tracker: Results Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=&f-tactic%5B%5D=4700>; TINA.org’s Class-Action Tracker: Search Results for “Amazon” Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=amazon&f-tactic%5B%5D=4700>; TINA.org’s Class-Action Tracker: Walmart+ Subscriptions, <https://truthinadvertising.org/class-action/walmart-subscriptions/>; TINA.org’s Class-Action Tracker: Apple’s Subscriptions to Digital Content, <https://truthinadvertising.org/class-action/apples-subscriptions-to-digital-content/>; TINA.org’s Class-Action Tracker: Search Results for “Google” Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=google&f-tactic%5B%5D=4700>; TINA.org’s Class-Action Tracker: Search Results for “YouTube” Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=YouTube&f-tactic%5B%5D=4700>; TINA.org’s Class-Action Tracker: Search Results for “NFL” Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=NFL&f-tactic%5B%5D=4700>; TINA.org’s Class-Action Tracker: MLB Prime Subscriptions, <https://truthinadvertising.org/class-action/mlb-prime-subscriptions/>; TINA.org’s Class-Action Tracker: Search Results for “New York Times” Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=New%20York%20Times&f-tactic%5B%5D=4700>.

⁹ See *infra*, Section II.

¹⁰ See Negative Option Rule, 89 Fed. Reg. 90476 (Nov. 15, 2024); see also Sophia Wang, *One Size Does Not Fit All: The Shortcomings of Current Negative Option Legislation*, 26 CORNELL J.

L. & PUB. POL'Y 197, 201-03 (2016) (describing deceptive practices in early negative option marketing starting in the 1970s).

¹¹ See TINA.org's Ad Alerts: Results Using the "Subscriptions" Filter, <https://truthinadvertising.org/ad-alerts/?f-search=&f-tactic%5B%5D=4700>; TINA.org Legal Actions, Brands & Industries: Results Using the "Subscriptions" Filter, <https://truthinadvertising.org/legal-action/brands-industries/?f-tactic%5B%5D=4700>.

¹² See *id.*

¹³ See TINA.org Class-Action Tracker: Results Using the "Subscriptions" Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=&f-tactic%5B%5D=4700>.

¹⁴ Press Release, Wash. State Off. Att'y Gen., *Consumer Alert: Attorney General's Consumer Survey Reveals that Millions of Washingtonians May Have Been Unintentionally Enrolled in a Subscription Service* (Oct. 10, 2022), <https://www.atg.wa.gov/news/news-releases/consumer-alert-attorney-general-s-consumer-survey-reveals-millions-washingtonians>.

¹⁵ Press Release, Fed. Trade Comm'n, *Federal Trade Commission Announces Final "Click-to-Cancel" Rule Making It Easier for Consumers to End Recurring Subscriptions and Memberships* (Oct. 16, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/10/federal-trade-commission-announces-final-click-cancel-rule-making-it-easier-consumers-end-recurring>.

In addition, a 2024 survey conducted by CNET found that "48% of respondents said they had signed up for a free trial of a paid subscription and then forgot to cancel it." Nick Wolny, *'Subscription Creep' Is Real. Consumers Are Paying Over \$1,000 Each Year, CNET Survey Finds*, CNET (Oct. 17, 2024), <https://www.cnet.com/personal-finance/subscription-creep-is-real-consumers-are-paying-over-1000-each-year-cnet-survey-finds/>.

¹⁶ Ben Cohen, *The Real Reason You're Paying for So Many Subscriptions*, WALL ST. J. (Jan. 19, 2024), <https://www.wsj.com/business/cancel-subscriptions-save-money-streaming-peacock-da7e6123>.

¹⁷ See, e.g., Caruso & Cox, *Silence as Consumer Consent: Global Regulation of Negative Option Contracts*, 73 AM. U. L. REV. 1611, 1624 (2024) ("Negative option contracts fundamentally differ from most other contracts. Absent regulation, a consumer can sign up once and, via negative option, essentially obligate themselves to pay for some good or service indefinitely. While they may offer some efficiencies and benefits [. . .], these contracts also present real consumer risks and are highly susceptible to abuse.").

¹⁸ See *FTC v. Am. Screening, Ltd. Liab. Co.*, 105 F.4th 1098, 1104 (8th Cir. 2024) (noting that "because the seller's misrepresentation tainted the purchasing decision . . . the consumer has lost the chance to avoid the purchase entirely, and is stuck with one that he did not intend to make"); see also *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 189 (1948) ("People have a right to assume that fraudulent advertising traps will not be laid to ensnare them."); *Spiegel, Inc. v. FTC*, 494 F.2d 59, 62 (7th Cir. 1974) ("[I]ndividuals in society have a right to be told the truth so that their choices among products, or, as in this case, among offers, can be understandingly made."). And when consumers are deprived of free choice, they suffer financially. See *Subscription Traps and Deceptive Free Trials Scam Millions with Misleading Ads and Fake Celebrity Endorsements*, BETTER BUS. BUREAU (Dec. 12, 2018), <https://www.bbb.org/article/investigations/18929->

[subscription-traps-and-deceptive-free-trials-scam-millions-with-misleading-ads-and-fake-celebrity-endorsements](#) [hereinafter *Subscription Traps*].

¹⁹ *Subscription Traps; BBB Investigation Update: Free Trial Offer Scams*, BETTER BUS. BUREAU (Apr. 21, 2020), <https://www.bbb.org/article/news-releases/22040-bbb-update-free-trial-offer-scams> [hereinafter *BBB Investigation Update*].

Importantly, these numbers do not account for FTC deceptive subscription cases brought after 2019, including, among others, the FTC’s actions against Amazon.com, Inc. (\$2.5 billion), Vonage (\$100 million), Instacart (\$60 million), Legion Media, LLC (\$27.6 million), and GrubHub Inc. (\$25 million).

²⁰ *Subscription Traps; BBB Study: Free Trial Scams*, BETTER BUS. BUREAU (https://www.bbb.org/all/scamstudies/free_trial_scams/free_trial_scams_full_study) [hereinafter *BBB Study*].

²¹ *Subscription Traps; BBB Study; BBB Investigation Update*.

²² *BBB Study*.

²³ *Survey from Chase Reveals That Two-Thirds of Consumers Have Forgotten About At Least One Recurring Payment In The Last Year*, CHASE (Apr. 1, 2021), <https://media.chase.com/news/survey-from-chase-reveals>.

²⁴ *Subscription Service Statistics and Costs*, C+R RESEARCH (May 18, 2022), <https://www.crrresearch.com/blog/subscription-service-statistics-and-costs/>.

²⁵ Dashia Mildren, *You May Be Losing \$1,000 a Year to Subscriptions, and You May Not Even Know It*, CNET Survey Finds, CNET (June 18, 2025), <https://perma.cc/ER9V-3QTG/>.

²⁶ See TINA.org’s Class-Action Tracker, available at <https://truthinadvertising.org/legal-action/class-action-tracker/>.

²⁷ Unsurprisingly, a 2016 consumer survey found that hidden fees associated with, among other things, trial offers and automatically renewing subscriptions was the biggest financial complaint of consumers. See Rebecca Lake, *Report: Hidden Fees Are #1 Consumer Complaint*, MY BANK TRACKER (updated Nov. 29, 2021), <https://www.mybanktracker.com/money-tips/money/hidden-fees-consumer-complaint-253387>.

²⁸ Other outlets for consumer complaints, including the FTC, BBB, and TrustPilot, also receive complaints concerning negative option offers on a frequent and continual basis.

²⁹ TINA.org’s Comment to FTC Re: The FTC Should Update Its Negative Option Rule (Dec. 2, 2019), https://truthinadvertising.org/wp-content/uploads/2019/12/12_2_19-comment-to-FTC-re-NOO-Rule.pdf.

³⁰ TINA.org, Complaint Letter to FTC re: FabKids’ Deceptive Advertising and Illegal Business Practices (Aug. 30, 2021), https://truthinadvertising.org/wp-content/uploads/2021/08/8_30_21-FabKids-complaint-to-FTC_Redacted.pdf.

³¹ *Business Profile: Dossier, Complaint Details*, BETTER BUS. BUREAU, <https://www.bbb.org/us/ny/new-york/profile/perfume/dossier-0121-87146464/complaints> (last visited Mar. 19, 2025).

³² *Ad Alert: Xfinity Home Internet and Mobile Promotion*, TINA.ORG (Mar. 3, 2025), <https://truthinadvertising.org/articles/xfinity-home-internet-and-mobile-promotion/>.

³³ *Ad Alert: AARP Membership*, TINA.ORG (Feb. 25, 2025), <https://truthinadvertising.org/articles/aarp-membership/>.

³⁴ TINA.org's Comment to FTC Re: Negative Option Rule; Project No. P064202 (June 20, 2023), https://truthinadvertising.org/wp-content/uploads/2023/06/6_20_23-Negative-Option-Rule-Comment-to-FTC.pdf.

³⁵ *Id.*

³⁶ *What You Should Know about Nerium*, TINA.ORG (updated Sept. 28, 2023), <https://truthinadvertising.org/articles/what-you-should-know-about-nerium/>; *see also* Nerium Complaints on File with FTC 2012-July 2016, <https://truthinadvertising.org/wp-content/uploads/2017/04/Nerium-Complaints.pdf> (sent to TINA.org in response to FOIA Request).

³⁷ Consumers with limited disposable income do not have the means to absorb unexpected or unauthorized negative option payments, and as a result, when they are tricked into recurring subscription charges, they may find themselves unable to pay for necessary expenses or may incur costly overdraft charges. *See* Kamaron McNair, *Nearly Half of Americans Say They Live Paycheck to Paycheck*, CNBC (Nov. 19, 2024), <https://www.cnbc.com/2024/11/19/bank-of-america-nearly-half-of-americans-live-paycheck-to-paycheck.html> (noting that 26% of households spend 95% or more of their income on necessities); Sally Greenberg, *Capital One Eliminates Predatory Overdraft Charges*, NCL (Jan. 6, 2022), https://nclnet.org/overdraft_fees/ (explaining that a \$5 charge can result in a \$40 cost, when including a \$35 overdraft fee).

³⁸ Older adults are particularly vulnerable to deceptive subscription services. One study by the Iowa Attorney General's office found that consumers older than 65 were disproportionately represented among those who were billed for a subscription but never used any of its purported benefits. *See* Prentiss Cox, *The Invisible Hand of Preacquired Account Marketing*, 47 HARV. J. LEGIS. 425, 452 (2010).

³⁹ Deceptive negative option offers are problematic for those with disabilities, especially those with vision and hearing impairments. For example, cancellation policies that require a phone call can be particularly difficult for consumers who have hearing problems, and a website that disguises or hides material terms of an offer is a notable challenge for those with vision issues. *See* Natasha Frost, *Why Call-to-Cancel Policies Are an Accessibility Nightmare*, MODERNRETAIL (July 22, 2020), <https://www.modernretail.co/retailers/why-call-to-cancel-policies-are-an-accessibility-nightmare/>; Caruso & Cox, *supra*, at 1636. Further, those with mental health challenges or disabilities are especially susceptible to deceptive negative option schemes. *See, e.g.,* Nadya Ali et al., *Citizens Advice, TRICKS OF THE TRADE* (Dec. 2022), https://assets.ctfassets.net/mfz4nbgura3g/4UtD4Gkl7cmdVrps2Uy2ZG/378374c06e75496974571cfd6a9237bf/OCA_20report_20-20version_202_20_5.pdf (“[W]hen looking at subscription traps we found 26% of people have signed up accidentally, but this rises to 46% of people with a mental disability or mental health problem.”).

⁴⁰ Children are vulnerable to deceptive subscription traps. Although children are adept at handling technology, when it comes to advertising, they do not interpret or understand marketing material in the same ways that adults do—a smaller proportion of children than adults have the ability to recognize advertising messages, and even those that do may not be able to critically evaluate the underlying marketing message. *See* Angela Campbell, *Rethinking Children's Advertising Policies for the Digital Age*, 29 LOY. CONSUMER L. REV. 1, 38 (2017); Iulia Grad, *Ethical Considerations on Advertising to Children*, 6 POSTMODERN OPENINGS 43, 51 (2015); Fran Blumberg et al., *Linkages Between Media Literacy and Children's and Adolescents' Susceptibility to Advertising*, ADVERTISING TO CHILDREN: NEW DIRECTIONS, NEW MEDIA 158, 163 (Mark Blades et al. eds., 2014). Thus, children (and by extension their parents) are also unwitting consumers of subscription products and services. *See* Jaime Catmull, *4 Ways Your Child's Unlimited App Usage May Be Costing You*, FORBES (Feb. 26, 2025), <https://www.forbes.com/sites/jaimecatmull/2025/02/26/four-ways-your-childs-unlimited-app-usage-may-be-costing-you/> (“Whether a child signed up for the app under the pretense that it was entirely free, or if they meant to come back and cancel it before the first charge, it’s possible for busy parents to go months paying for a rogue app subscription without even realizing it.”).

⁴¹ *See* Peter S. Menell, *Symposium—Brand New World: Distinguishing Oneself in the Global Flow, Part II 2014: Brand Totalitarianism*, 47 U.C. DAVIS L. REV. 787, 790 n.17 (2014) (“[I]nformative advertising plays a role in the introduction of new products to the market and in allowing consumers to differentiate among similar products.”); *see also, e.g.*, Andrew Faridani, *How To Market To Skeptical Consumers*, FORBES (May 22, 2024), <https://www.forbes.com/councils/forbesbusinessdevelopmentcouncil/2024/05/22/how-to-market-to-skeptical-consumers/> (“Clearing that air of mistrust requires a robust marketing strategy that is both novel and authentic.”).

⁴² *See Spiegel*, 494 F.2d at 63 (“If sellers in our society are free to compete for consumers’ patronage with others by unfair advertising, not only is the consumers’ right violated, but our commitment to fair competition becomes a pretense.”).

⁴³ *FTC v. Algoma Co.*, 291 U.S. 67, 79 (1934) (citations omitted).

⁴⁴ This does not result from any want of trying. The FTC, the Consumer Financial Protection Bureau, and multiple state attorneys general have all brought civil actions to enforce the current laws against companies allegedly engaged in deceptive negative option marketing. *See* Negative Option Rule, 89 Fed. Reg. 90476 (Nov. 15, 2024) (to be codified at 16 C.F.R. pt. 425); Comment Letter from Attorneys General to FTC re: Negative Option Rule (16 C.F.R. pt. 425) (Project No. P064202); Request for Public Comment, 84 Fed. Reg. 52393-01 (Dec. 2, 2019) (ANPRM). Further, the FTC’s ability to rely on the FTC Act to protect consumers and deter deception has been limited since the Supreme Court’s decision in *AMG Capital Management, LLC v. FTC*, 593 U.S. 67 (2021) (holding that the FTC does not have the authority to obtain consumer redress under Section 13(b) of the FTC Act).

⁴⁵ 16 C.F.R. § 425 (1973).

⁴⁶ *See* FTC Rule Concerning the Use of Prenotification Negative Option Plans, 74 Fed. Reg. 22720 (May 14, 2009) (ANPRM).

⁴⁷ *See* Confirmation of Rule, FTC Rule Concerning the Use of Prenotification Negative Option Plans, 79 Fed. Reg. 44271 (July 31, 2014).

⁴⁸ ROSCA contains provisions related to disclosures, express consent, and provision of simple cancellation of negative option offers; however, it only applies to online transactions and does not provide the level of detail prescribed in the proposed Click-to-Cancel Rule. *See* 15 U.S.C. § 8403.

⁴⁹ The TSR prohibits telemarketers from making misrepresentations regarding negative option offers—but it applies only to offers made over the phone. *See* 16 C.F.R. 310.

⁵⁰ *See supra*, Section I.

⁵¹ *FTC’s ROSCA Actions*, TINA.ORG (updated Oct. 15, 2025), <https://truthinadvertising.org/articles/fics-rosca-actions/>. The agency has also issued a staff advisory opinion regarding the application of ROSCA.

⁵² *See, e.g.*, ALASKA STAT. §§ 45.45.920, 930 (2024); CAL. BUS. & PROF. CODE §§ 17600-17606 (Deering 2024); COLO. REV. STAT. §§ 6-1-704, -732 (2024); CONN. GEN. STAT. § 42-126b (2024); DEL. CODE ANN. TIT. 6, §§ 2731-2737 (2024); FLA. STAT. § 501.165 (LexisNexis 2025); GA. CODE ANN. §§ 13-12-1 - 13-12-5 (2024); HAW. REV. STAT. § 481-9.5 (LexisNexis 2024); IDAHO CODE § 48-603G (2024); 815 ILL. COMP. STAT. § 601/1-601/20 (LexisNexis 2024); KY. REV. STAT. ANN. § 367.580 (LexisNexis 2025); LA. STAT. ANN. § 9:2716 (2024); 940 CODE MASS. REGS 38.00 (LexisNexis 2024); ME. STAT. TIT. 10, § 1210-C (2024); MD. CODE ANN. COM. LAW § 14-12B-06 (LexisNexis 2024); N.D. CENT. CODE § 51-37-02; N.H. REV. STAT. ANN. § 358-I:5 (LexisNexis 2024); N.J. STAT. ANN. § 56:12-95.5 (2024); N.M. CODE R. § 12.2.11 (LexisNexis 2025); N.Y. GEN. BUS. LAW § 527, 527-a (Consol. 2025); N.C. GEN. STAT. § 75-41 (2025); N.D. CENT. CODE § 51-37-01 (2025); OR. REV. STAT. §§ 646A.292 - 646A.295 (2025); 73 PA. CONS. STAT. § 2164 (2025); S.C. CODE ANN. 44-79-60 (2024); 6 R.I. GEN. LAWS § 6-13-14 (2024); S.D. CODIFIED LAWS § 49-31-116 (2025); TENN. CODE ANN. § 47-18-133 (2024); UTAH CODE ANN. § 15-10-201 (LexisNexis 2024); VT. STAT. ANN. TIT. 9, § 2454a (2025-26); VA. CODE ANN. §§ 59.1-207.45 - 59.1-207.49 (2024); WIS. STAT. § 134.49 (2023-24). *See also* D.C. CODE §§ 28A-201-204 (2025).

⁵³ MasterCard and Visa, for example, have established their own rules to govern negative option offers. Updated Policy for Subscription Merchants Offering Free Trials or Introductory Promotions, VISA (June 20, 2019), <https://usa.visa.com/dam/VCOM/global/support-legal/documents/subscription-merchants-visa-public.pdf> (requiring merchants to get express consent for recurring payments, send copies of terms and conditions of subscriptions, make upfront disclosures, and create easier cancellation, among other requirements); *Press Release: Visa Brings Convenience and Control to Booming Subscription Economy*, VISA (Apr. 4, 2024), <https://usa.visa.com/about-visa/newsroom/press-releases.releaseId.20541.html> (announcing Visa’s subscription manager tool for Visa cardholders to more easily track and stop their subscriptions); Revised Standards for Subscription/Recurring Payments and Negative Option Billing Merchants, MASTERCARD (Nov. 2022), https://www.mastercard.us/content/dam/public/mastercardcom/na/global-site/documents/subscription_recurring-payments-and-negative-option-billing-merchants.pdf (requiring, among other things, merchants to provide cardholders with an email or other electronic communication every time there is an approved authorization request for a subscription, including instructions for canceling subscriptions).

⁵⁴ *Federal Trade Commission: Protecting Consumers and Fostering Competition in the 21st Century, Before the H. Comm. on Appropriations*, 116th Cong. 16-17 (2019) (Statement of

Joseph Simons, Chair of the Fed. Trade Comm’n). That is precisely what a Click-to-Cancel rule will help achieve.

When there is a specific FTC rule in place delineating certain conduct as prohibited, companies have clear parameters to stay within the boundaries of acceptable behavior and regulators have a clear path for enforcement. *See Keynote Remarks of FTC Acting Chairwoman Rebecca Kelly Slaughter*, FED. TRADE COMM’N, (May 4, 2021), https://www.ftc.gov/system/files/documents/public_statements/1589607/keynote-remarks-acting-chairwoman-rebecca-kelly-slaughte-cfa-virtual-consumer-assembly.pdf (“Once developed and published, rules provide clarity about the boundaries of illegal behavior, and in exchange for that clarity companies can face penalties even for first-time rule violations. As a result, rules create strong incentives to comply with the law. Powerful deterrence makes for lawful markets that are good for consumers and businesses alike.”).