

Class Action Alleges Spotify Charged Credit Cards Without Consent

JANUARY 16, 2014

In ongoing news for a class action lawsuit filed against Spotify USA Inc., alleging that the music streaming company charged customers for automatic subscription renewals without first getting their express consent, the company recently moved to have the case moved to federal court. The case arose from Spotify's alleged failure to get affirmative consent from subscribers of Spotify's premium, ad-free music streaming service. According to the name plaintiff, subscribers' credit cards were charged on a monthly-basis, yet Spotify failed to hyperlink to the Terms (which contain a reference to the automatic renewal offer) and failed to have a consumer expressly "opt-in" to automatic plan renewals in violation of California's Unfair Competition Law, which prohibits businesses from charging a consumer's credit or debit cards for "an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms." Spotify has based its removal request on the fact that the asserted claims are likely to exceed \$5 million, and thus meet federal jurisdictional requirements (according to Spotify, California subscribers spent more than \$9.75 million on automatically renewing their Spotify Premium accounts for the desktop computer application). The parties have stipulated that Spotify has until January 27, 2014, to respond to the class action complaint, but Spotify has already noted in its Notice of Removal that it denies all allegations of liability and will oppose certification of the putative class.

TIP: While this case is still pending, it serves as a reminder that in addition to keeping in mind the FTC's Marketing Principles for Online Negative Option Offers, companies that collect automatic payments for goods and services should also keep in mind state laws, which include laws specific to these types of programs, as well as general unfair competition laws, like the one alleged in this case, which give rise to a private right of action. Consumers and regulators alike will look to see, for example, if the terms are clearly presented, how to cancel the program is clear, and if affirmative consent to automatic renewals is obtained.

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