

FEDERAL TRADE COMMISSION

16 CFR Part 425

Rule Concerning the Use of Prenotification Negative Option Plans

AGENCY: Federal Trade Commission (FTC or Commission)

ACTION: Re-opening the record for submission of public comments.

SUMMARY: The FTC re-opens the time period for filing public comments in response to its Advance Notice of Proposed Rulemaking and Request for Public Comments for sixty (60) days.

DATES: Written comments must be received on or before October 13, 2009.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to “Prenotification Negative Option Rule Review, Matter No. P064202” to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at <http://www.ftc.gov/os/publiccomments.shtm>.

Because comments will be made public, they should not include any sensitive personal information, such as an individual’s Social Security Number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment

is requested must be filed in paper form and clearly labeled “Confidential.”¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink:

<https://secure.commentworks.com/ftc-NegativeOptionRuleANPR> (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink <https://secure.commentworks.com/ftc-NegativeOptionRuleANPR>. If this Notice appears at <http://www.regulations.gov/search/index.jsp>, you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at <http://www.ftc.gov> to read the Notice and the news release describing it.

A comment filed in paper form should include the “Prenotification Negative Option Rule Review, Matter No. P064202” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex Q), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

¹ The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

The Federal Trade Commission Act (“FTC Act”) and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

FOR FURTHER INFORMATION CONTACT: Robin Rosen Spector, (202) 326-3740 or Matthew Wilshire, (202) 326-2976, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On May 14, 2009, the Commission published an Advance Notice of Proposed Rulemaking (“Notice”) seeking comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC’s Trade Regulation Rule concerning “Use of Prenotification Negative Option Plans”² (“Negative Option Rule” or “Rule”). Currently, the Rule addresses only prenotification negative option plans for the delivery of merchandise. The Notice solicits comments on whether the Commission should expand the Rule to address additional negative option marketing categories and on the Rule’s

² 74 FR 22720 (May 14, 2009).

costs and benefits. The notice designated July 27, 2009, as the deadline for filing public comments.

Three parties filed requests for an extension of the comment period in this matter in mid-July. The Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection, “along with several other states including without limitation, Vermont, Florida, Iowa and Colorado” (collectively “states”) requested a 30-day extension. The Broward County Licensing and Consumer Protection Division requested a 60-day extension. Finally, the American Association of Law Libraries (“AALL”) requested a 30-day extension.

These entities explain that extension of the comment period will allow them to provide more comprehensive comments. Specifically, the states explain that they are compiling data responsive to some of the Notice’s specific questions and that the data they collect may be relevant to the Commission’s decision on whether to expand the Negative Option Rule to cover additional types of negative option offers. Similarly, Broward County explains that it has received numerous complaints concerning trial conversion negative option offers that it believes demonstrate that an expansion of the Rule’s coverage is warranted. Finally, the AALL explains that it represents “more than 5000 law librarians who are institutional consumers of enormous amounts of legal and other published material,” and as such, are parties to many types of negative option plans. AALL states that it is requesting information from its membership regarding the Rule and an extension of the comment period would provide it with additional time to collect this data.

All of this data would assist the Commission in evaluating the Rule’s effectiveness and determining whether there is reason to believe that unfair or deceptive acts or practices in non-Rule covered negative option marketing are “prevalent.” Moreover, the requested short

extension of the comment period will not substantially delay the rulemaking process. The Commission is mindful of the need to deal with this matter expeditiously; however, it also recognizes that its Notice requests comments on complex issues and believes that extending the comment period to facilitate the creation of a more complete record outweighs any harm that might result from any delay. The requests for an extension of the comment period were filed close to the comment deadline; therefore, there was insufficient time to extend the comment period. Accordingly, the Commission has decided to re-open the comment period for sixty (60) days, until October 13, 2009, to allow for additional comment.

By direction of the Commission.

Donald S. Clark
Secretary