

FTC Brings First ROSCA Case Challenging Deceptive Free Product Offers

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The Federal Trade Commission recently filed its first case alleging a violation of the Restore Online Shoppers' Confidence Act (ROSCA) against a network of businesses deceptively selling wellness and weight loss products. The FTC's complaint charges Health Formulas LLC, and its network of related companies and individuals, with deceptively enrolling consumers in negative option programs, and offering misleading "free" and buy-one-get-one product offers. The FTC alleges consumers were enrolled in negative option plans without providing clear and conspicuous disclosures about the program or the associated charges. The complaint goes on to allege that Health Formulas failed to obtain consent from consumer prior to charging their credit cards and failed to provide an easy mechanism to opt-out of recurring charges. The FTC complaint note that, if these disclosure were made at all, they were typically accessible through obscure links in terms and conditions averaging ten pages in length. In an example cited by the FTC, the defendant advertised a free trial of a supplement whereby the consumer paid only shipping and handling for a 30-day supply. In the fine print was an explanation that the trial period only lasted 14 days and began on the date the product was *shipped*. A federal judge issued a temporary restraining order against the company while the FTC seeks a permanent injunction to stop the defendants' practices.

TIP: This case offers online retailers the first chance to see how the FTC interprets and applies ROSCA. ROSCA requires that companies engaged in online sales clearly disclose all material terms of a transaction and obtain express, informed consent prior to charging a consumer's financial account.

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