

FTC Settles Text Message Scam for \$10 Million

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The FTC recently settled with three internet marketing and advertising companies over allegations that they sent unsolicited text messages to consumers offering “free” offers for items or offers that actually required payment of money to receive. According to the FTC, the companies, Acquinity Interactive, Revenue Path E-Consulting Pvt, Ltd., and Revenuepath Ltd., offered “free” gift cards to major retailers, made promises that a consumer had won a free prize in a sweepstakes, and sent out other (falsely) free offers. The defendants recruited potential customers by sending unsolicited text messages, either themselves or through third parties acting on their behalf. And, rather than being truthful free offers, according to the FTC, consumers had to sign-up for paid subscriptions (for which defendants got referral fees) to get their “free” items. In most cases, according to the FTC, consumers had to complete 13 offers to qualify for the promised “free” merchandise. In an amended complaint, the FTC also alleged that the defendants engaged in additional unfair and deceptive acts by telling people that to get the free merchandise, they needed to confirm their cell phone number and select and enter a PIN number. After doing that, the consumers were signed up for a premium SMS service at a cost of about \$10 a month, an activity the FTC referred to as “cramming.” In addition to agreeing to pay \$10 million in civil penalties, the companies – and their officers – are required to, among other things, (a) permanently refrain from (i) sending unsolicited text messages and (ii) billing consumer cell phones without evidence of prior written consent, as well as (b) clearly and conspicuously describe consumer’s monetary obligations associated with any gift or prize. The defendants are further obligated to bind their affiliates to the same settlement restrictions.

TIP: This case is a reminder that free offers should truly be free, and that companies should ensure they have appropriate and adequate consent before sending text messages.

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