



RETAIL INDUSTRY LEADERS ASSOCIATION

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November 30, 2019

Mr. Hampton Newsome
Attorney, Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Re: Negative Option Rule (16 CFR part 425); Project No. P064202

On behalf of the Retail Industry Leaders Association (RILA), we appreciate the opportunity to provide comments to the Federal Trade Commission (FTC) on ways to improve its existing regulations for negative option marketing. Specifically, RILA's comments will focus on continuity plans, a common form of marketing for retailers that allows Americans the flexibility and predictability to receive certain goods, products, and services. As detailed below, these types of plans, when executed in an appropriate and responsible manner, give consumers the service experience they want while providing transparency and control. RILA looks forward to working with the FTC on these issues.

RILA is the U.S. trade association for leading retailers. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. Our aim is to elevate a dynamic industry by transforming the environment in which retailers operate. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

Recent technological advances have altered the way people communicate, conduct commerce, and access information. Core industries touching multiple pillars of our nation's economy have adapted and evolved to embrace this technological revolution, and the retail industry is no different. RILA members have adopted new technologies to allow consumers to easily access goods in a timely manner. Continuity plans provide retailers an important opportunity to create new customer experiences and enhanced services. These plans are now an important part of the daily lives of American families. The simple convenience of being able to responsibly order specific items and have them delivered on a regularly scheduled, personal timeline is of great importance to customers.

In particular, these programs provide vital benefits to single family homes. In today's hectic and busy environment, parents and caretakers may not have the ability to visit the grocery store every week. Continuity plans play an important role in making sure basic necessities, food and household supplies ranging from diapers to dish soap and milk to fresh fruit are delivered when they are needed.

This is also true for military households, when one parent is serving our nation in a foreign land and the other parent assumes the day-to-day caregiving responsibilities for the family. Continuity plans also provide relief for Americans who work several jobs or shift work as well as those who live in more remote and rural regions of our country and who may not have easy access to their preferred retailer. The convenience and predictability of these plans provide a great service to Americans of all social and economic classes from coast to coast.

Continuity plans not only represent value and convenience for customers, but importantly, have translated to sustained brand loyalty – an attribute retailers desire in a highly competitive retail environment. For example, some continuity plans “lock in special guaranteed pricing” that would extend for the life of the offering.

As the FTC is reviewing potential changes to continuity plans, RILA strongly believes it is important to highlight the protections and processes RILA members have established to give consumers information about and control over their specific plans.

First, when ordering an eligible item online, consumers have a choice between a one-time delivery or a continuity plan. This means it is the consumer who decides whether to sign up for the continuity plan. During the online checkout process, consumers are provided a separate clear and prominent display where the customer affirmatively consents to the continuity plan. This consent is provided via a checkbox or button the customer must select, to enroll. In an effort to be fully transparent to the customer, the material terms of the continuity program are either provided at the time of enrollment, in the product description details, or via a link.

Finally, the customer receives a notice, typically in email, around the time of each shipment, which again includes information about how to modify or cancel the continuity plan. Consumers can also manage or cancel their plans at any time by accessing their online accounts with specific merchants or contacting the merchant’s customer service representatives. Cancellation is transparent, clear and customer centric.

Continuity plans are widespread in the marketplace and provide substantial benefits for consumers and merchants alike. Retailers’ first and primary goal is always to provide the best experience for their customers. The processes established by RILA members provide transparency and allow consumers total control over their plans. If bad actors in this space are harming consumers, RILA members welcome appropriate targeted measures by the FTC to address specific bad behaviors but any potential restriction or regulation should be narrowly targeted so not to risk losing all the benefits that continuity plans provide customers.

RILA once again commends the FTC for soliciting industry feedback on ways to improve its existing regulations for negative option marketing. RILA looks forward to working as a collaborative partner in this process and will be reaching out directly for an in-person meeting on the importance in maintaining continuity plans.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austen Jensen".

Austen Jensen
Senior Vice President, Government Affairs

