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FTC Targets Paid Reviews and Negative Option Sales in $100,000 Settlement

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Online reviews are big business nowadays. An endorsement from the right celebrity can send sales soaring. Even ordinary mortals are getting in on the act, with sites like Yelp attracting millions of consumers every day who use online reviews to make decisions about where to dine, what to buy, and who to shop with. But deceptively obtained reviews undermine a company's credibility, harming both consumers and competition. When that happens, especially if the Federal Trade Commission (FTC) identifies additional deceptive practices such as negative option sales, it can make the offending company eat its words, as snack box delivery service Urthbox, Inc. discovered. The company and its principal settled with the FTC for $100,000 after the agency alleged that Urthbox's glowing online consumer reviews had been paid for by the company.

The FTC's complaint identifies two separate deceptive practices. First, Urthbox ran an incentive scheme to get consumers to post positive reviews on the Better Business Bureau (BBB)'s site. Second, consumers who took the company up on its "free trial" snack box offer were unwittingly enrolled automatically in a six-month subscription that cost between $77 to $269 per month. That's a lot of money to pay for a "free" product.

According to the FTC, between January 2017 and November 2017, Urthbox paid consumers to post positive reviews about its service on the BBB website, offering free snack boxes and cash bonuses for positive reviews. This violated the FTC Act's

Section 5 prohibition against deceptive acts and practices because the company and its reviewers did not disclose their relationship, including the fact that the reviewers were compensated. In addition, from October 2016 to November 2017, the company offered a "free trial" snack box but neglected to tell consumers who accepted the "trial" offer that they would be committed to a six-month subscription unless they cancelled before the start of the subscription. Urthbox also failed to "clearly and conspicuously" disclose the length of the subscription term and the charges that consumers would incur before it collected their billing information, in violation of the Restore Online Shoppers Confidence Act (ROSCA).

In its Analysis to Aid Public Comment, the FTC explains its decision to bar Urthbox from misrepresenting paid endorsers as ordinary consumers. It requires Urthbox to clearly and conspicuously disclose any material connection with a reviewer and to remove any paid endorsements from review sites where the material connection between the endorser and the company is not made clear. In addition, Urthbox is prohibited from making misrepresentations relating to goods or services with a negative option feature. The company may not bill or take payment for products or services with a negative option feature without first obtaining the consumer's express informed consent.

The FTC takes adherence to the principles of its *Endorsement and Testimonial Guides* seriously. In the last few years, the Commission has fined a range of companies for posting endorsements that were bought and paid for without proper disclosures. In 2017, the FTC sent out letters to 90 marketers and influencers warning them of their obligation to clearly and conspicuously disclose their relationships when promoting or endorsing products through social media. The Commission has also targeted negative option schemes that fail to clearly explain fees and requirements in advance of charging payment or billing consumers. The FTC's recent settlement with supplement manufacturer Nobetes demonstrates the agency's focus on both undisclosed paid endorsements and insufficiently explained negative options.

Reviews can be an important part of marketing today. Likewise, many consumers do find it convenient to sign up for subscription services. However, marketers need to remember that disclosing payments or other considerations provided to endorsers, informing endorsers about their obligations under the FTC *Endorsement and Testimonial Guides*, monitoring endorsers' posts, and clearly informing consumers about fees and payments required at signup are not just essential to stay on the right side of FTC rules and guidance, but critical to maintaining consumer trust.

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