On July 29, a payment processor company and its two sales affiliates (defendants) agreed to a stipulated order with the FTC to settle charges that they imposed hidden terms, surprise exit fees, and “zombie charges” on small businesses.

The payment processor, based in Texas, marketed services to small- and medium-sized businesses who relied on card payments and checks from customers—the payment processor would serve as an intermediary between the company and the banks that issued the cards or checks.
The FTC filed a complaint in federal court alleging that the companies made false claims to lure small businesses into using its products, promising low costs and easy exits. Many of the businesses targeted by deceptive pitches had limited English proficiency. The FTC alleged numerous practices that were harmful to merchants, including engaging in deceptive pitches—according to the FTC, the company falsely promised low monthly fees and long-term savings, but failed to mention its periodic raising of prices. The company also imposed surprise fees when its customers attempted to cancel, despite promises of easy cancellation at any time or within a trial period without a fee. The defendants’ online enrollment system also hid a three-year obligation, numerous cancellation requirements and fees, an automatic renewal, and other information critical to business owners when evaluating options for payment processors. Finally, the FTC alleged that the defendants imposed “zombie charges,” meaning they made withdrawals from customer bank accounts even after the businesses withdrew consent for automatic debits.

On July 29, the parties agreed to a stipulated order under which the defendants are, among other things, prohibited from misleading customers and from making unsubstantiated claims about their products and services and refunding $4.9 million to customers affected by their harmful practices.

**Putting It Into Practice:**

This FTC enforcement action is worth reviewing in light of the claims related to unfair/deceptive fees and violations of ROSCA (Restore Online Shoppers’ Confidence Act) claims based on (i) obscured contract terms buried on websites and (ii) automatic, recurring charges after merchants had withdrawn ACH consent/attempted to cancel services. Using ROSCA in the B2B context is somewhat novel for the FTC, since the statute is designed to protect consumers in the online shopping context. As a result, payment processors and other B2B businesses would be well-advised to pay attention to the result here and review operations around auto-debits and cancellations. In addition, ROSCA carries a punch because – unlike typical UDAP claims — ROSCA authorizes the FTC to levy heavy penalties and remediation/restitution (we discussed ROSCA in previous blog posts here, here, and here).

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