Opting In to a New Continuity Model

by Rachel Hirsch

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It has been a tough few years for the trial/continuity space, with regulatory scrutiny at an all-time high after several high-profile enforcement actions by the Federal Trade Commission (FTC).

A trial/continuity offer, or a "negative option offer," is one where a consumer agrees to an introductory "free trial period," after which (assuming the consumer does nothing) the consumer is automatically enrolled in a continuity program whereby the consumer's credit card is charged at regular intervals (usually monthly) for continuing to receive product, until they cancel.

The heightened scrutiny facing the trial/continuity industry can be attributed to the following factors:

Factor #1 – Inadequate Disclosures

Advertisers in this industry struggle with reconciling the strict guidelines imposed by the FTC in disclosing negative option offers with the realities of doing business. While the FTC Guidelines require advertisers to obtain the affirmative consent of consumers before opting in to a continuity plan, the means of obtaining such consent – usually in the form of a checkbox – hurts conversion rates.

Factor #2– High Chargebacks

The lack of adequate billing disclosures leads to high chargebacks. Consumers call to complain about unanticipated charges to their credit cards once they learn that they are enrolled in a negative option plan. For those advertisers who conduct their businesses wisely, these complaints can readily be rectified through the issuance of a full refund, no questions asked. Yet for others who engage in aggressive customer retention techniques, these consumer complaints can often turn into chargebacks.

Factor #3 – Fraudulent Affiliate Traffic

While disclosures on an advertiser's sales page are important, it is equally important that consumers who are directed to an advertiser's offer be sent there through non-fraudulent means. That means, consumers should not be lured in to purchasing products through deceptive sales tactics, such as survey traffic. Advertisers are responsible not only for what they disclose on their sales pages, but also for the marketing materials disseminated by their traffic partners to generate sales.

Factor #4 – Processing Transparency

Advertisers have a difficult time obtaining processing solutions that allow them to deal with excessive chargebacks. To do so, advertisers need multiple merchant accounts to juggle, or balance, their transactions. Given the limits placed on opening multiple merchant accounts and the caps placed on those accounts, advertisers are faced with a no-win situation to run – what may otherwise be – legitimate transactions.

Factor #5 – Churn-and-Burn Businesses

Finally, there are advertisers in the industry conducting business the wrong way, such that it is difficult for other advertisers running legitimate sales to compete in the market. Some advertisers are just invested in the short term – make enough money in a short time period to re-brand or get out of the industry entirely.

If the trial/continuity industry has any hope for survival, it needs to revamp its image by weeding out the bad actors and imposing self-regulation. If advertisers police themselves, and each other, that will lessen the need for regulatory oversight, and maybe then the industry can operate not only legitimately, but also practically. [FF]

Rachel Hirsch is Chair of the Internet Marketing and Advertising Group at Ifrah PLLC.