UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

FEDERAL TRADE COMMISSION, Plaintiff, v. AMAZON.COM, INC., a corporation, Defendant.	**Civil Action No. 2:23-cv-0932** **COMPLAINT FOR PERMANENT INJUNCTION, CIVIL PENALTIES, MONETARY RELIEF, AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission"), alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(m)(1)(A), 53(b), 57b, and the Restore Online Shoppers' Confidence Act, ("ROSCA"), 15 U.S.C. § 8404, which authorize the FTC to seek, and the Court to order, permanent injunctive relief, restitution, civil penalties, and other equitable relief for Defendant's acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Section 4 of ROSCA, 15 U.S.C. § 8403.

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SUMMARY OF CASE

2. For years, Defendant Amazon.com, Inc. ("Amazon") has knowingly duped millions of consumers into unknowingly enrolling in its Amazon Prime service ("Nonconsensual Enrollees" or "Nonconsensual Enrollment"). Specifically, Amazon used manipulative, coercive, or deceptive user-interface designs known as "dark patterns" to trick consumers into enrolling in automatically-renewing Prime subscriptions.

3. The Nonconsensual Enrollment problem was well known within Amazon. [redacted]

4. In a draft memorandum [redacted]

5. Some Amazon employees pushed the company executives responsible for Prime—including Neil Lindsay ("Lindsay"), Russell Grandinetti ("Grandinetti") and Jamil Ghani ("Ghani")—to address Nonconsensual Enrollment and make changes so that Amazon would not be tricking its customers. [redacted]

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[redacted]

6. [redacted] Amazon and its leadership—including Lindsay, Grandinetti, and Ghani—slowed, avoided, and even undid user experience changes that they knew would reduce Nonconsensual Enrollment because those changes would also negatively affect Amazon's bottom line. [redacted]

7. For years, Amazon also knowingly complicated the cancellation process for Prime subscribers who sought to end their membership. Under significant pressure from the Commission—and aware that its practices are legally indefensible—Amazon substantially revamped its Prime cancellation process for at least some subscribers shortly before the filing of this Complaint. However, prior to that time, the primary purpose of the Prime cancellation process was not to enable subscribers to cancel, but rather to thwart them. Fittingly, Amazon named that process "Iliad," which refers to Homer's epic about the long, arduous Trojan War. Amazon designed the Iliad cancellation process ("Iliad Flow") to be labyrinthine, and Amazon and its leadership—including Lindsay, Grandinetti, and Ghani—slowed or rejected user experience changes that would have made Iliad simpler for consumers because those changes adversely affected Amazon's bottom line.

8. As with Nonconsensual Enrollment, the Iliad Flow's complexity resulted from Amazon's use of dark patterns—manipulative design elements that trick users into making decisions they would not otherwise have made.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

10. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), (b)(3), (c)(1), (c)(2), (c)(3), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

11. The FTC is an independent agency of the United States Government created by the FTC Act, which authorizes the FTC to commence this district court civil action by its own attorneys. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces ROSCA, 15 U.S.C. §§ 8401-8405, which prohibits the sale of goods or services on the Internet through negative option marketing without meeting certain requirements for disclosure, consent, and cancellation to protect consumers. A negative option is an offer in which the seller treats a consumer's silence—*i.e.*, their failure to reject an offer or cancel an agreement—as consent to be charged for goods and services. 16 C.F.R. § 310.2(w).

DEFENDANT

12. Defendant Amazon transacts and has transacted business in this District and throughout the United States. It is one of the world's largest online retailers, and is headquartered in Seattle, Washington, with its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109.

13. At all times relevant to this Complaint, acting alone or in concert with others, Amazon advertised, marketed, distributed, or sold a paid subscription service, Prime, that gives subscribers throughout the United States access to additional services otherwise unavailable or available only at an additional charge to other consumers. Among other things, these premium services include expedited "free" delivery of merchandise from Amazon's vast online marketplace, streaming content, and grocery delivery.

COMMERCE

14. At all times relevant to this Complaint, Amazon has maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT'S BUSINESS ACTIVITIES

15. Consumers pay $139 per year or $14.99 monthly to subscribe to Prime. Prime subscription fees account for $25 billion of Amazon's annual revenue.

16. Approximately 70% of Amazon's revenue comes from American consumers.

17. Subscribers are critical to Amazon's overall ecommerce business because Prime subscribers spend more than [redacted] as much shopping on Amazon as compared to non-Prime shoppers.

18. Consequently, one of Amazon's primary business goals—and *the* primary business goal of Prime—is increasing subscriber numbers.

19. Within Amazon's corporate structure, the Prime organization or department ("Prime Organization") operates Prime. Amazon evaluates the Prime Organization's performance based on the [redacted].

Typical Prime Enrollment Experiences

20. Consumers can subscribe to Prime through multiple pathways including through Amazon devices (like the Amazon Fire TV streaming device), while using Prime Video, or through Prime's unique webpage ("Prime Central"). However, [redacted] subscriptions occur through the Amazon shopping checkout process.

21. The basic consumer checkout enrollment experience proceeds as follows on both desktop and mobile devices. Consumers who are not Prime members visit Amazon's website—www.Amazon.com—to shop. They place items in their cart, and then provide (or confirm) their billing and address information. They then select a large orange "Continue" button, which typically appears in the lower right corner of the page, and move through additional pages to proceed with their purchase. Finally, consumers either complete their order by purchasing the items in their cart or abandon their cart.

22. Amazon presents all consumers who are not Prime subscribers with at least one opportunity (also known as an "upsell")—and often several opportunities—to join Prime before those consumers place their order on the final checkout page. Amazon has two primary types of upsells that enroll consumers: interstitials and non-interstitials. An interstitial is a page that interrupts consumers' online shopping experience by appearing before the page that consumers seek to access in the first place. In contrast, non-interstitial upsells are elements imbedded within checkout pages, including shipping-option selection and payment pages.

23. On desktop devices, Amazon has several Prime upsells: an interstitial upsell called the [redacted] and three non-interstitial upsells called the [redacted] On mobile devices, Prime upsells mirror those on desktop, and include the [redacted].

24. [redacted] **on Desktop**. Amazon calls the Prime interstitial upsell the [redacted]. Although the [redacted] has changed over time, it generally interrupts consumers' online shopping experience by presenting them with a prominent button to enroll in Prime and a comparatively inconspicuous link to decline. Consumers cannot avoid the [redacted]. The upsell forces consumers to select either the button or the link to proceed to checkout. *See* Attachments A–D.

[redacted]

25. The [redacted] orange button, which enrolls a consumer in Prime if clicked, is located toward the bottom right of the screen and often includes language referencing "free shipping" or a "free trial." [redacted] *See* Attachment A [redacted] *See* Attachment B. [redacted] *See* Attachments C and D. [redacted]

[redacted] *see* Attachment A and B, [redacted]

[redacted] *see* Attachments C and D, [redacted]

26. If a consumer clicks the orange button, Amazon enrolls the consumer in a Prime free trial, [redacted]

27. The [redacted]'s blue link, which declines the Prime membership if clicked, [redacted] includes language that the consumer will not receive "free shipping." [redacted] *see* Attachment A, [redacted] *see* Attachment B. [redacted] *See* Attachment C. [redacted] *See* Attachment D.

28. [redacted] *See* Attachments A–D.

29. The [redacted] does not adequately disclose the price of the monthly auto-renewal feature of Prime. [redacted]. *See* Attachments A–D.

30. [redacted]

[redacted]

(a) [redacted]

[redacted] *See* Attachment E.

[redacted]

(b) [redacted]

[redacted] Attachment E) [redacted]

[redacted]

[redacted] *See* Attachment E.

[redacted]

(c) [redacted]

[redacted]

[redacted] *See* Attachment E. [redacted]

[redacted]

[redacted]

(d) [redacted]

[redacted]

[redacted] *See* Attachment E.

[redacted]

(e) [redacted]

[redacted]

[redacted] *See* Attachment E.

(f) [redacted]

[redacted]

[redacted] *See* Attachment E.

31. [redacted]

[redacted]

(a) [redacted]

[redacted]

[redacted]

[redacted] *See* Attachment F.

(b) [redacted]

[redacted] *See* Attachment F.

(c) [redacted]

[redacted] *See* Attachment F.

(d) [redacted]

[redacted]. *See* Attachment F.

[redacted]

32. Separate from the [redacted], various Prime upsells appear as elements within the online checkout flow, which itself appears in various versions to consumers depending on factors

(*i.e.*, whether a consumer has previously declined a Prime upsell). [redacted]

[redacted]

33. [redacted] **on Desktop.** [redacted]

[redacted]

34. [redacted]

[redacted]

. *See* Attachment G, at 3–4. [redacted]

[redacted]

. *See* Attachment G, at 4.



35. [redacted] *See* Attachment G, at 5.

36. [redacted] *See* Attachment G, at 6. [redacted]

[redacted]

37. [redacted] *See* Attachment G, at 7.

38. [redacted] *See* Attachment G, at 7. [redacted]

[redacted]

39. [redacted]

40. [redacted] **on Desktop.** [redacted]

[redacted]

[redacted]

41. [redacted]

[redacted] *See* Attachment H, at 3–4.

42. [redacted]

43. [redacted]

[redacted] *See* Attachment H, at 5. [redacted]

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[redacted]

44. [redacted] *See* Attachment H, at 5.

45. [redacted] *See* Attachment H, at 5.

[redacted]

46. [redacted] *See* Attachment H, at 5.

47. [redacted]

[redacted] *See* Attachment H, at 6.

48. [redacted]

49. [redacted] **on Desktop.** [redacted] *See* Attachments I–K.

[redacted]

50. [redacted]

51. [redacted] *Compare* Attachment I *with* Attachments J and K.

52. [redacted] *See* Attachment I, at 3. [redacted]



53. [redacted]

[redacted] *See* Attachment K, at 4.

[redacted]

54. [redacted]

[redacted] *See* Attachment I, at 4. [redacted]

[redacted]

55. [redacted]

[redacted]

[redacted]

[redacted] *See* Attachment I, at 4.

[redacted]

56. [redacted] *See* Attachment I, at 4.

57. [redacted] *See* Attachment I, at 4. [redacted]

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[redacted]

58. [redacted]

See Attachment I, at 5.

[redacted]

59. [redacted]

See Attachment I, at 4.

[redacted]

[redacted]

[redacted]

[redacted]

60. [redacted]

[redacted]

[redacted] *See* Attachment J, at 7. [redacted]

[redacted]

[redacted]

[redacted] *See* Attachment J, at 7.

[redacted]

61. [redacted] *See* Attachment K, at 5.

62. [redacted] *See* Attachment J, at 8. [redacted]

[redacted]

[redacted] *See* Attachment J, at 8.



63. [redacted], Prime upsells on the mobile checkout flow have mirrored those on desktop checkout, and have included the [redacted].

64. Navigating Prime upsells on mobile devices is more difficult than on a desktop. Amazon often places material terms such as price and auto-renewal terms at the very bottom of the mobile page—past the point viewable on the screen unless the consumer scrolls down—where consumers are least likely to see this information. On mobile devices, consumers are also more likely to select a prominent option without scrutinizing fine print.

65. **Mobile (Past).** [redacted]

[redacted]

66. [redacted]

[redacted]

[redacted] *See* Attachment L, at 4.

[redacted]

67. [redacted]

[redacted] *See* Attachment L, at 5-6. [redacted]

[redacted]

68. [redacted] *See* Attachment L, at 7. [redacted]

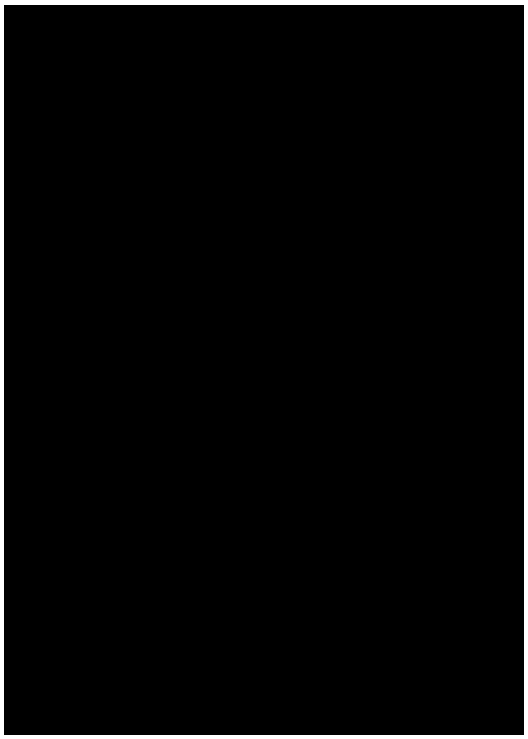
[redacted]

69. [redacted] *See* Attachment L, at 7.

70. [redacted] *See* Attachment L, at 8.

71. The [redacted] on mobile devices contained similar problematic elements as the [redacted] on desktop.

72. The [redacted] on mobile [redacted] required consumers to either accept or decline a Prime subscription before allowing them to continue shopping. *See* Attachment M. [redacted]



73. The [redacted] on mobile also contained similar problematic elements as [redacted] on desktop.

74. [redacted] *See* Attachment N, at 3-4. [redacted] *See* Attachment N, at 5-6.

75. [redacted] *See* Attachment N, at 7. [redacted]

[redacted]

76. [redacted]

See Attachment N, at 8. [redacted]

77. **Mobile (Current).** In 2022, Amazon [redacted]

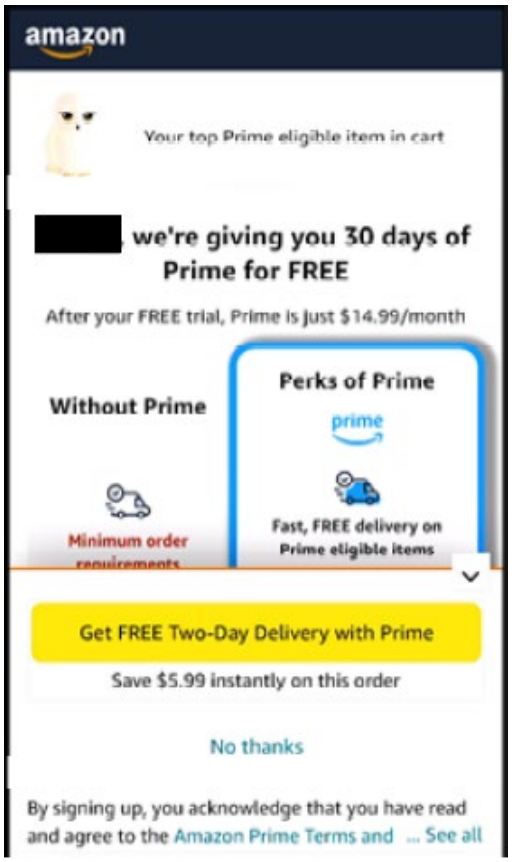
78. The current mobile upsells contain many of the same problematic elements as the [redacted]—including misleading language and manipulative designs—which lead consumers to enroll in Prime without their consent.

79. Consumers using mobile devices to navigate to Amazon.com can select a product by clicking a large yellow button ("Add to Cart"), and continue shopping, or a large orange button ("Buy Now") to proceed directly to the checkout. *See* Attachment O, at 1. Consumers who continue shopping add additional products to their cart by clicking the large yellow "Add to Cart" button, until they finish and choose another large yellow button ("Proceed to checkout"), which takes the consumer to the next step. *See* Attachment O, at 2.

80. At this point, the consumer signs in (if the consumer has not already) and clicks a large yellow "Continue" button to proceed to a mobile [redacted]. Consumers who have already signed in proceed directly to the mobile [redacted].

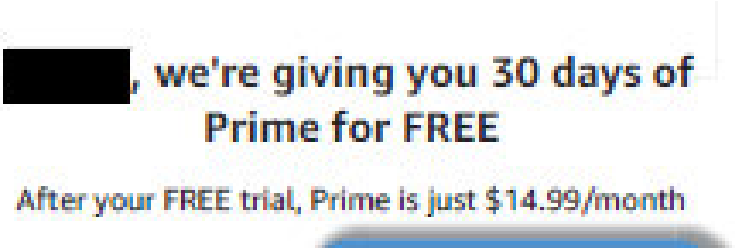
81. Consumers without an account must create one before reaching the mobile [redacted]. Creating an account involves four steps: entering an email address, creating a password, and adding an address and a payment method. *See* Attachment O, at 3-4. Completing these steps takes the consumer to the mobile [redacted].

82. When a consumer reaches the mobile [redacted], Amazon divides the page, with a footer (sometimes known as a "sticky footer") that occupies the screen's bottom half, rendering only a portion of the top half visible unless the consumer scrolls down. *See* Attachment O, at 5.

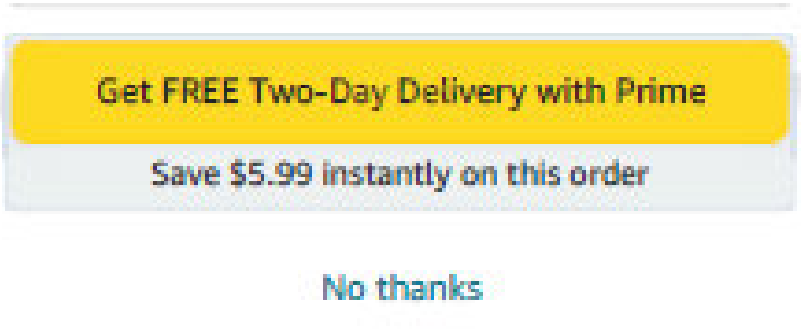




83. At the top of the mobile [redacted], Amazon informs the consumer that "we're giving you 30 days of Prime for FREE." *See* Attachment O, at 5. Smaller text below reads: "After your FREE trial, Prime is just $14.99/month," but does not reference Prime's auto-renewal feature. Consumers can view this section without scrolling.



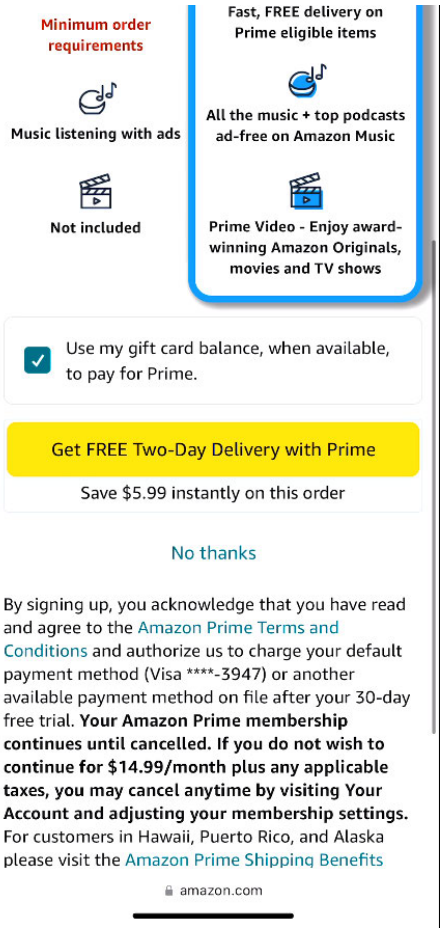
84. The sticky footer on the lower half of the screen contains double-stacked buttons: the top yellow "Get FREE Two-Day Delivery with Prime" button and an image appearing to be a gray lower button labelled "Save $5.99 instantly on this order." *See* Attachment O, at 5. Amazon enrolls consumers who click the yellow button in Prime. As such, a consumer can enroll in Prime without viewing the portion of the page that the sticky footer hides.



85. If a consumer scrolls down, Amazon shows consumers a table comparing the "Perks of Prime" with "Without Prime." *See* Attachment O, at 5. For instance, perks of Prime include "Fast, FREE delivery on Prime eligible items," "[a]ll the music + top podcasts ad-free on Amazon Music," and "Prime Video – Enjoy award-winning Amazon Originals, movies and TV shows" whereas without Prime, a consumer has "[m]inimum order requirements," "[m]usic listening with ads," and Prime Video "[n]ot included."



86. The following text is visible at the bottom of the sticky footer, in the smallest type on the screen: "By signing up, you acknowledge that you have read and agree to the Amazon Prime Terms and . . . See all." *See* Attachment O, at 5. If the consumer continues scrolling, additional information about Prime's "Terms and Conditions" and "Shipping Benefits" becomes visible in small text beneath the "No thanks" link. A sentence in the middle of this additional text reads: "Your Amazon Prime membership continues until cancelled. If you do not wish to continue for $14.99/month plus any applicable taxes, you may cancel anytime by visiting Your Account and adjusting your membership settings."



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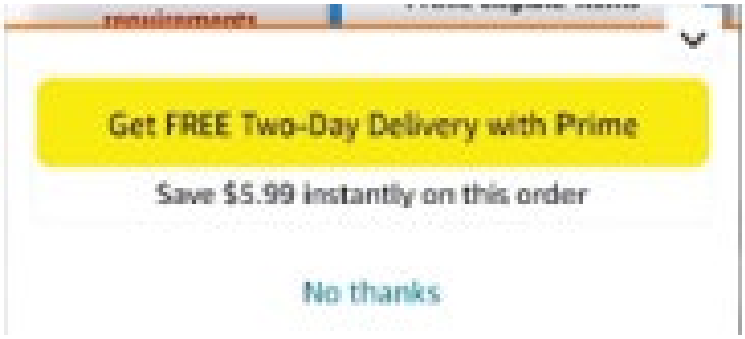
87. If a consumer clicks the downward arrow on the top right of the sticky footer, Amazon also reveals the additional text beneath the "No thanks" link. The arrow is adjacent to the yellow "Get Free Two-Day Delivery with Prime" button that will enroll the consumer in Prime. If a consumer clicks the button while attempting to click the adjacent sticky footer arrow, Amazon enrolls the consumer in Prime.



88. Consumers cannot view the full text beneath the "No thanks" link without scrolling or clicking the sticky footer arrow. However, consumers can enroll in Prime by selecting the large yellow "Get FREE Two-Day Delivery with Prime" button without scrolling. *See* Attachment O, at 5.

89. Consumers can proceed with their purchase if they select either the yellow button or the blue "No thanks" link. *See* Attachment O, at 5.

90. If the consumer selects the yellow "Get FREE Two-Day Delivery with Prime" button, Amazon brings the consumer to a final page with a yellow "Place your order" button and "Congratulations, your Prime free trial has started! We'll email you about all Prime benefits" underneath. Therefore, Amazon enrolls the consumer in Prime before the consumer has even placed the order. The final page of the flow also contains an "Order Total" that does not include Prime's price. *See* Attachment O, at 6.

91. On this final page, the consumer can change or confirm shipping and billing information, remove products from the cart, and make other changes such as adding gift receipts or providing delivery instructions. *See* Attachment O, at 6. The consumer can also select a shipping method.

92. The yellow button labelled "Place your Order" allows consumers to make their purchase. *See* Attachment O, at 6. Prime's price and auto-renewal feature do not appear on the page, the consumer cannot remove Prime, and the consumer cannot back up and choose "No thanks" to Prime on the prior page.

93. In each pathway ([redacted], and mobile), Amazon fails to provide clear and conspicuous disclosures regarding the Prime subscription program's material terms: its price, and the fact that it renews automatically unless the consumer affirmatively cancels. Furthermore, in each pathway [redacted], and mobile), Amazon does not provide any disclosures at all before Amazon collects billing information from consumers.

94. **Prime Video.** Prime Video is a distinct product from Prime. Specifically, Prime Video is a subscription-based video streaming service. Although it is possible to sign up for Prime Video alone, it is difficult to do so.

95. Amazon's webpage tricked consumers into signing up for Prime instead of Prime Video, which would be a lower-cost option.

96. In particular, Amazon initially offers Prime Video as part of the full, more expensive Prime package to consumers who reach the Prime Video homepage (or "storefront") to enroll in Prime Video. *See* Attachment P, at 1.



97. Capitalizing on some consumers' inability to appreciate the difference between "Prime" and "Prime Video," the Prime Video enrollment process fails to clarify Amazon will enroll them in Prime rather than the less expensive Prime Video, on both desktop and mobile platforms. This causes some consumers to enroll in Prime, rather than Prime Video, unknowingly.

98. Consumers can reach the Prime Video storefront through various ways, including by searching "Prime Video" in an online search engine or the Amazon search bar.

99. The initial Prime Video storefront displays the Prime Video logo at the top and an orange button labelled "Watch with Prime. Start your 30-day free trial." *See* Attachments P and V.

100. Amazon brings consumers who press the orange button to a second page and prompts them to sign in (if they have an Amazon account) to confirm billing information, or to create an account and submit billing information. This page also contains small print links to the Amazon Prime Conditions of Use and Privacy Notice at the bottom of the page. *See* Attachment V, at 2-5.

101. Amazon does not, to this point, present the consumer with any marketing regarding Prime, as opposed to Prime Video.

102. After sign in or account creation, Amazon brings consumers to a page containing, from top to bottom:

(a) the Prime logo with "Watch now, cancel anytime. Start your 30-day free trial";

(b) the email associated with the account;

(c) a table with "Confirm your details" at the top followed by the plan type, which is "Prime. Enjoy unlimited streaming of thousands of movies and TV shows plus FREE Two-Day Delivery on millions of items. $14.99/month after trial" (to get Prime Video rather than Prime, the consumer must click a gray "change" box to the right);

(d) the consumer's email, payment method, and billing address;

(e) at the bottom, "By signing up, you acknowledge that you have read and agree to the Amazon Prime Terms and Conditions and authorize us to charge your preferred card or another available credit card on file after your 30-day free trial. Your Prime membership continues until cancelled. If you don't want to continue

for $14.99/month plus any applicable taxes, you may cancel anytime by visiting Your Account and adjusting your membership settings;" and

(f) an orange button in the bottom right corner, labelled "Start your free trial." The button sits immediately above a gray area with text reading "Change or cancel plan anytime. Pay later." *See* Attachment P, at 2 and Attachment V, at 6.



103. To enroll in Prime Video (instead of Prime), the consumer must click on the "Change" button for the Plan information toward the top of the page, change the plan on the subsequent page, and then navigate back to confirm the Prime Video selection. *See* Attachment P, at 2 and Attachment V, at 6.

104. [redacted]

[redacted]

[redacted] *See* Attachment P, at 3. [redacted]

[redacted]



105. After receiving the June 30, 2022 CID, Amazon changed the Prime Video enrollment flow for Prime. Now, when consumers click "Start your free trial" Amazon shows at least some consumers a page titled "Welcome to Prime, [name]" that describes certain Prime membership services. On this page, there is no option to cancel the Prime membership. Toward the bottom are two buttons: on the left "Discover Prime benefits" (gray button) takes consumers to an overview of Prime-related services, and on the right "OK" (blue button) continues to the Prime Video storefront. *See* Attachment V, at 7-8.

106. **Prime Video (Mobile).** Consumers may also enroll in Prime through Prime Video on a mobile device.

107. Like Prime Video on desktop, Prime Video on mobile tricked consumers into signing up for Prime instead of Prime Video, which would be a lower-cost option.

108. Like desktop Prime Video, the Prime Video mobile storefront displays the Prime Video logo at the top and, toward the bottom of the page, an orange button labelled "Watch with

Prime. Start your 30-day free trial." Above the orange button, in blue text, reads "Prime" and then, in white text, "Watch for $0.00 with Prime." *See* Attachment U, at 1.



109. Amazon brings consumers who press the orange button to a "Welcome" page to sign in (if they have an Amazon account) to confirm billing information, or to create an account and submit billing information. The page also contains links to "Amazon's Conditions of Use and Privacy Notice." *See* Attachment U, at 2.

110. After sign in or account creation, Amazon then brings consumers to a page that asks consumers to "Confirm your details," and includes the following information from top to bottom:

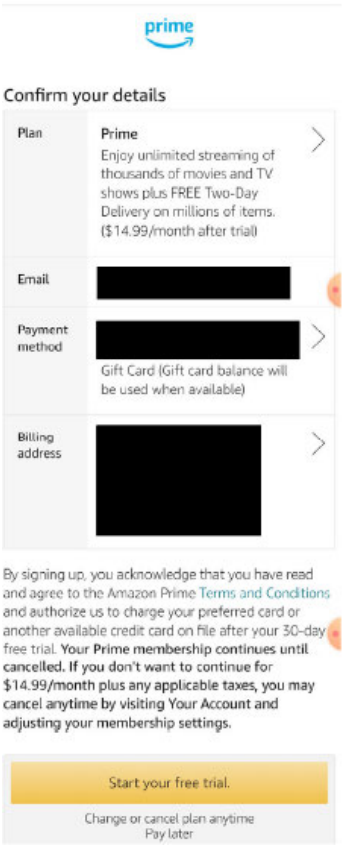
(a) Next to "Plan" reads: "Prime. Enjoy unlimited streaming of thousands of movies and TV shows plus FREE Two-Day Delivery on millions of items.

($14.99/month after trial)." Next to this text is an arrow similar to a greater-than sign (">").

(b) The page also lists consumer's email, payment method, and billing address information.

(c) There is then a link to Amazon Prime terms and conditions, as well as Prime's price and auto-renewal feature.

(d) Toward the bottom is an orange button "Start your free trial" with black text beneath: "Change or cancel plan anytime. Pay later." *See* Attachment U, at 5.



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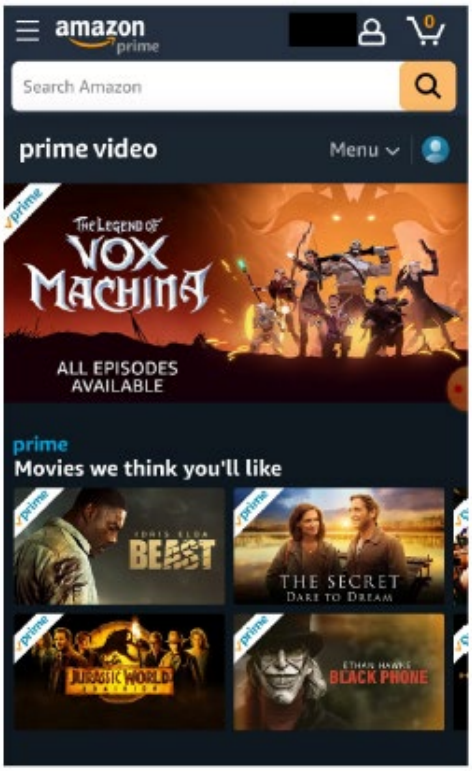
111. To enroll in Prime Video (instead of Prime), the consumer must click on the "Plan" information toward the top of the page, change the plan on the subsequent page, and then navigate back to confirm the Prime Video selection.

112. If the consumer simply clicks the orange "Start your free trial" button, Amazon enrolls the consumer in Prime—not Prime Video—but then immediately takes the consumer to the Prime Video storefront page. *See* Attachment U, at 6.



Prime's Four-Page, Six-Click, Fifteen-Option Iliad Cancellation Process

113. Under substantial pressure from the Commission, Amazon changed its Iliad cancellation process in or about April 2023, shortly before the filing of this Complaint. Prior to that point, there were only two ways to cancel a Prime subscription through Amazon: a) through the online labyrinthine cancellation flow known as the "Iliad Flow" on desktop and mobile devices; or b) by contacting customer service.

114. The Iliad Flow required consumers intending to cancel to navigate a four-page, six-click, fifteen-option cancellation process. In contrast, customers could enroll in Prime with one or two clicks.

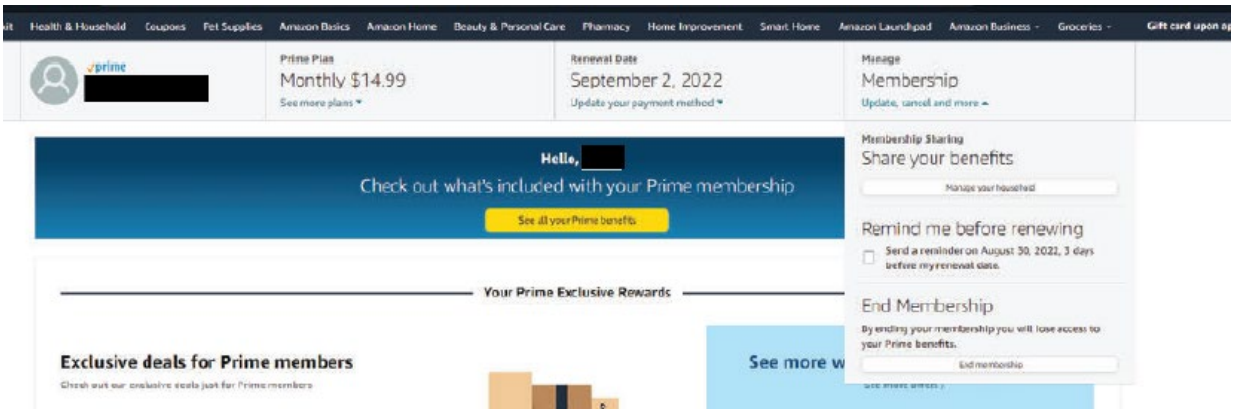
115. Although consumers may have enrolled in Prime through devices other than computers and smartphones, such as through the Prime Video application on the Amazon FireStick and Fire TV, they could not cancel via these same technologies. Instead, they had to use the Iliad Flow or call customer service.

116. Amazon launched the Iliad Flow in 2016, and did not substantially change it in the United States until in or about April 2023.

117. To cancel via the Iliad Flow, a consumer had to first locate it, which Amazon made difficult. Consumers could access the Iliad Flow from Amazon.com by navigating to the Prime Central page, which consumers could reach by selecting the "Account & Lists" dropdown menu, reviewing the third column of dropdown links Amazon presented, and selecting the eleventh option in the third column ("Prime Membership"). This took the consumer to the Prime Central Page.

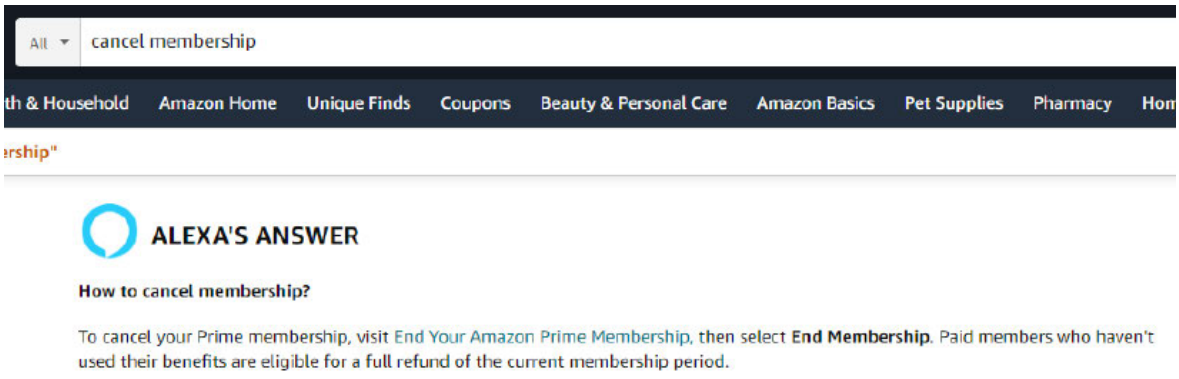
118. Once the consumer reached Prime Central, the consumer had to click on the "Manage Membership" button to access the dropdown menu. That revealed three options. The first two were "Share your benefits" (to add household members to Prime) and "Remind me before renewing" (Amazon then sent the consumer an email reminder before the next charge). *See* Attachment Q, at 1-2.

119. The last option was "End Membership." The "End Membership" button did not end membership. Rather, it took the consumer to the Iliad Flow. *See* Attachment Q, at 2-3. It was impossible to reach the Iliad Flow from Amazon.com in fewer than two clicks.

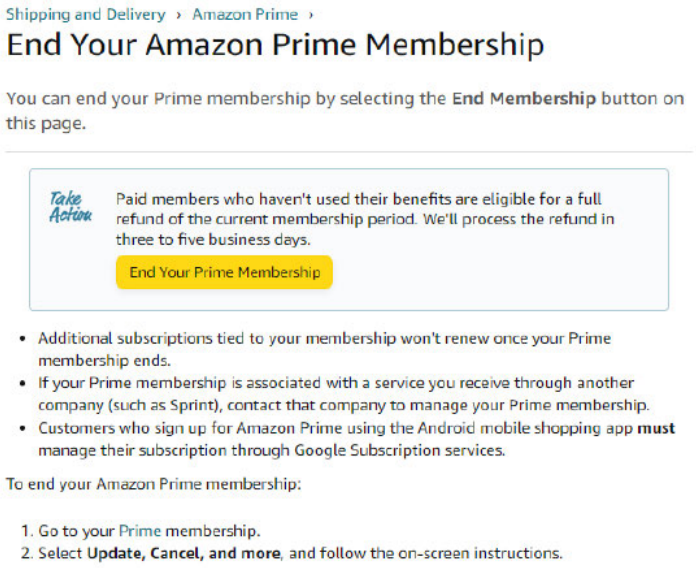


120. Consumers could also reach the Iliad Flow by contacting customer service, asking to cancel, [redacted]

121. Consumers could also reach the Iliad Flow from Amazon.com by typing "cancel membership" in the search bar. This produced an "Alexa" answer that included an "End Your Amazon Prime Membership" link. *See* Attachment T, at 2.



122. Clicking the link did not end Prime membership. Instead, it took the consumer to another page with a heading that read: "End Your Amazon Prime Membership." The page contained a button labelled "End Your Prime Membership." Pressing the button did not end Prime Membership. Instead, it took the consumer to the Iliad Flow. *See* Attachment T, at 3-4.



123. The search bar pathway to the Iliad Flow varied somewhat depending on what search the consumer ran. For instance, searching "how to turn off Prime," or "cancel prime" (rather than "how to cancel Prime") took the consumer to a page with a link to Prime Central, from which the consumer had to then locate the path to the Iliad Flow. Searching "End

Membership" took the consumer to a page with three blue links under the heading "Closing your Amazon account," and a subheading "Get information on how to close your Amazon account." The middle link was "cancel membership." Clicking "cancel membership" did not cancel membership. Instead, it took the consumer to the Iliad Flow.

124. Typing "cancel membership" in the search bar on a mobile device brought the consumer to the Iliad Flow through similar steps. *See* Attachment S.

125. Thus, to reach the Iliad Flow, consumers had to do one of the following: 1) contact customer service and inform a customer service agent that they wanted to cancel [redacted]; 2) navigate from Amazon.com to the Prime account management page (Prime Central), locate the "manage membership" dropdown, and press a button labelled "End Membership"; or 3) search "How to cancel membership" in the Amazon search bar, then move through subsequent steps to reach the Iliad Flow—frequently, selecting a link reading "End Your Amazon Prime Membership" and then pressing a button reading "End Your Prime Membership."

126. Once consumers reached the Iliad Flow, they had to proceed through its entirety—spanning three pages, each of which presented consumers several options, beyond the Prime Central page—to cancel Prime. *See* Attachment Q.

127. On the first page of the Iliad Flow, Amazon forced consumers to "[t]ake a look back at [their] journey with Prime" and presented them with a summary showing the Prime services they used. Amazon also displayed marketing material on Prime services, such as Prime Delivery, Prime Video, and Amazon Music Prime. Amazon placed a link for each service and encouraged consumers to access them immediately, *i.e.*, "Start shopping today's deals!", "You

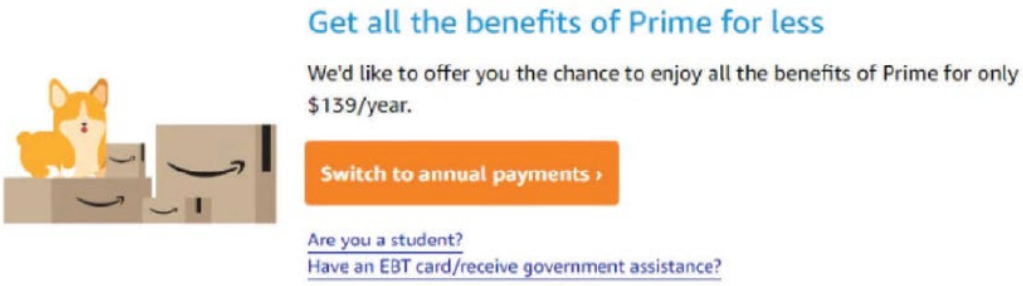
can start watching videos by clicking here!", and "Start listening now!" *See* Attachment Q, at 3. Clicking on any of these options took the consumer out of the Iliad Flow.



128. Also, on page one of the Iliad Flow, Amazon presented consumers with three buttons at the bottom. "Remind Me Later," the button on the left, sent the consumer a reminder three days before their Prime membership renews (an option Amazon had already presented the consumer once before, in the "Manage Membership" pull-down menu through which the consumer entered the Iliad Flow). The "Remind Me Later" button took the consumer out of the Iliad Flow without cancelling Prime. "Keep My Benefits," on the right, also took the consumer out of the Iliad Flow without cancelling Prime. Finally, "Continue to Cancel," in the middle, also did not cancel Prime but instead proceeded to the second page of the Iliad Flow. *See* Attachment Q, at 3. Therefore, consumers could not cancel their Prime subscription on the first page of the Iliad Flow.



129. On the second page of the Iliad Flow, Amazon presented consumers with alternative or discounted pricing, such as the option to switch from monthly to annual payments (and vice-versa), student discounts, and discounts for individuals with EBT cards or who receive government assistance. Amazon emphasized the option to switch from monthly to annual payments by stating the amount a consumer would save at the top of this page in bold. Clicking the orange button ("Switch to annual payments") or the links beneath took the consumer out of the Iliad Flow without cancelling. *See* Attachment Q, at 4.



130. Right above these alternatives, Amazon stated "Items tied to your Prime membership will be affected if you cancel your membership," positioned next to a warning icon. *See* Attachment Q, at 4.

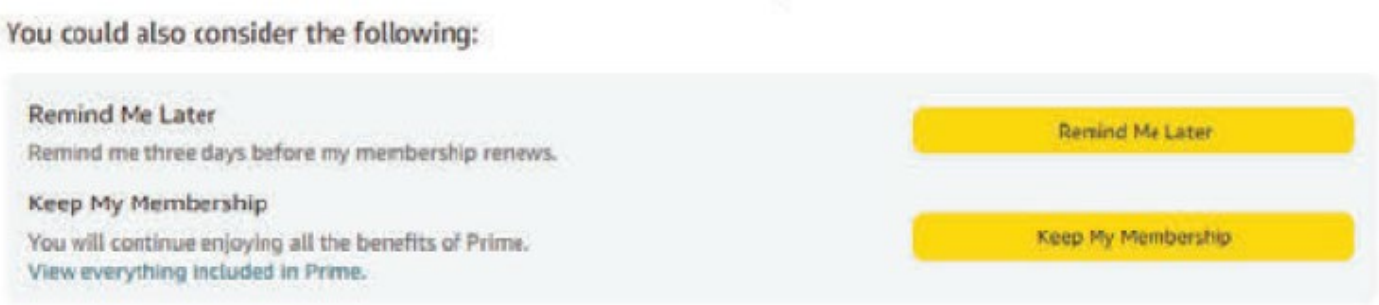
131. Amazon also warned consumers that "[b]y cancelling, you will no longer be eligible for your unclaimed Prime exclusive offers," and hyperlinked to the Prime exclusive offers. *See* Attachment Q, at 4. Clicking this link took the consumer out of the Iliad Flow without cancelling.



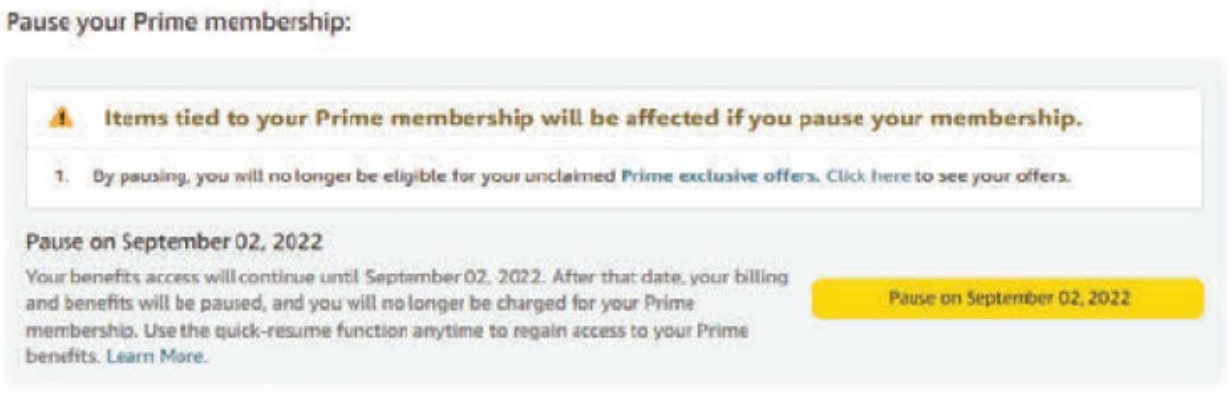
132. Finally, at the bottom of Iliad Flow page two, Amazon presented consumers with buttons offering the same three options as the first page: "Remind Me Later," "Continue to Cancel," and "Keep My Membership" (labelled "Keep My Benefits" on the first page). *See* Attachment Q, at 4. Once again, consumers could not cancel their Prime subscription on the second page of the Iliad Flow. Choosing either "Remind Me Later" or "Keep My Membership" took the consumer out of the Iliad Flow without cancelling. Consumers had to click "Continue to Cancel" to access the third page of the Iliad Flow.

133. On the third page of the Iliad Flow, Amazon showed consumers five different options, only one of which, "End Now"—presented last, at the bottom of the page—immediately cancelled a consumer's Prime membership. *See* Attachment Q. Pressing any of the first four buttons took the consumer out of the Iliad Flow without immediately cancelling.

134. On the third page of the Iliad Flow, the first and second options—"Remind Me Later" and "Keep My Membership"—were substantially identical to the buttons on the Iliad Flow's first two pages. Therefore, Amazon forced consumers who reach the Iliad Flow's last page to view the "Remind Me Later" option four times (including once to enter the Iliad Flow) and the "Keep My Membership" option three times. *See* Attachment Q, at 5.



135. The third option, "Pause on [date]," would "pause" or put on hold—but not cancel—a consumer's Prime membership. Amazon did not charge "paused" members for Prime but made it simple for "paused" members to re-join Prime through a single "quick-resume" click. Amazon presented the "pause" option adjacent to a warning icon and text stating that, "[b]y pausing, [consumers] will no longer be eligible for [their] unclaimed Prime exclusive offers," and provided links to "Prime exclusive offers" (which if clicked exit the Iliad Flow without canceling). *See* Attachment Q, at 5.

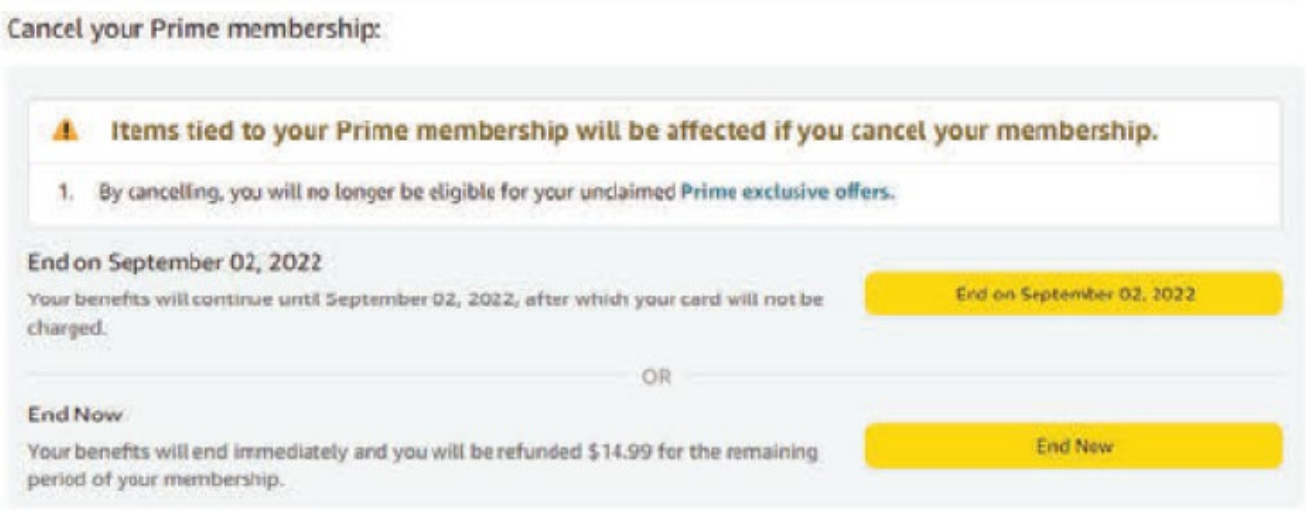


136. [redacted]

137. Above the fourth and fifth options—the "End on [date]" and "End Now" options—Amazon also added a warning icon and text that states "[b]y cancelling, [consumers] will no longer be eligible for [their] unclaimed Prime exclusive offers." *See* Attachment Q, at 5.

138. The fourth option, "End on [date]," turned off Prime's auto-renew feature. It did not immediately cancel the consumer's membership. Instead, the membership would end when the current billing cycle concluded, and the consumer would not receive a refund. *See* Attachment Q, at 5.

139. The fifth and final option, "End Now," immediately cancelled a consumer's Prime membership (and Amazon refunded a pro-rated amount for the balance of the billing cycle). Thus, only one of the five options presented immediately cancelled a consumer's Prime membership. *See* Attachment Q, at 5.



140. Therefore, to complete the Iliad Flow and cancel a Prime membership, the consumer needed to click a minimum of six times from Amazon.com: Prime Central → "Manage Membership" → "End Membership" → "Continue to Cancel" → "Continue to Cancel" → "End Now." *See* Attachment Q.

141. Amazon limited refunds available through the Iliad Flow to one monthly charge, although Amazon did not disclose this to subscribers entering the flow. Consequently, a Nonconsensual Enrollee who discovered Prime charges after a few months could not obtain a full refund online. [redacted]

[redacted]

142. The Iliad Flow was also accessible through a mobile device. Similar to the Iliad Flow on desktop, the Iliad Flow on mobile was also difficult for consumers to locate and presented a complex array of options across multiple pages. Cancelling via the Iliad Flow on a mobile device was an eight-page, eight-click minimum process.

143. On a mobile device, a consumer entered the Iliad Flow by 1) tapping on "My Account," 2) selecting "Manage Prime Membership" from a dropdown menu on the second page, 3) selecting "Manage membership" on the third page, 4) selecting "Manage membership" on the fourth page, and 5) selecting "End my Membership" on the fifth page. *See* Attachment R, at 1-5.

144. On the sixth page, the consumer seeking to cancel began the mobile equivalent of the Iliad Flow. Specifically, on this page, Amazon presented benefits information similar to the desktop Iliad Flow, and stated at the top of the page "[Name], thank you for being a member with us. Take a look back at your journey with Prime." *See* Attachment R, at 6. Amazon included the same three options—"Keep My Benefits," "Continue to Cancel," and "Remind Me Later"—although consumers had to scroll down to view them. None of these options ended the Prime membership. Consumers who selected "Continue to Cancel" proceeded to a seventh page. *See* Attachment R, at 6.

145. On the seventh page, Amazon presented alternate payment options similar to those in the desktop Iliad Flow: Amazon placed the three options at the bottom of the page in

the same order. *See* Attachment R, at 7. Pressing "Continue to Cancel" did not end the membership. It took the consumer to an eighth and final page. *See* Attachment R, at 7.

146. On the eighth and final page, Amazon presented five buttons. The first three were "Pause on [date]," "Keep My Membership," and "Remind Me Later." The consumer had to scroll down to view the fourth and fifth. The fourth ("End on [date]") turned off auto-renew, but did not immediately cancel, and consumers who chose this option did not receive a refund. Only the fifth and final button ("End Now") immediately cancelled the membership. Amazon refunded consumers who pressed this button a pro-rated amount for the balance of the monthly billing cycle. *See* Attachment R, at 8.

147. Amazon designed the Iliad Flow (both desktop and mobile) to inform consumers about a) Prime benefits they would lose by cancelling Prime, and b) alternative payment methods available to them to keep Prime.

148. Amazon did not design the Iliad Flow to be simple or easy for consumers. The Iliad Flow inhibits or prevents many consumers who intend to cancel from cancelling their membership.

149. [redacted]

The [redacted] for the Prime Enrollment Flow

150. Although consumers can enroll in Prime through many entry points, a [redacted] prospective Prime members begin subscriptions by enrolling in free trials that Amazon offers during its ecommerce shopping checkout process. [redacted]

151. [redacted]

152. [redacted]

153. [redacted]

154. [redacted]

155. [redacted]

156. [redacted]

157. [redacted]

158. [redacted]

159. [redacted]

160. [redacted]

[redacted]

161. [redacted]

[redacted]

162. [redacted]

[redacted]

Amazon's Knowledge of Nonconsensual Enrollment

163. Amazon knows that Nonconsensual Enrollment is widespread. [redacted]

[redacted]

164. [redacted]

[redacted]

[redacted]

165. Nonconsensual Enrollment is both so widespread and well-understood at Amazon [redacted]

[redacted]

166. In fact, [redacted], consumers do not always carefully study their credit card activity or notice an Amazon charge for Prime (especially when they are expecting other Amazon charges for routine purchases). [redacted]

167. When dissatisfied consumers call Amazon's customer service to cancel their Prime membership, [redacted]

[redacted]

(a) [redacted] meaning Amazon has charged them once without consent.

(b) [redacted] meaning that Amazon has charged them three times without consent.

(c) [redacted] meaning that Amazon has charged them six times without consent.

(d) [redacted] meaning that Amazon has charged them twelve times without consent.

168. Amazon [redacted]

169. [redacted]

170. [redacted]

171. [redacted] Prime checkout enrollment flow contains design elements that trick people into signing up. [redacted]

172. [redacted]

[redacted]

173. [redacted]

[redacted]

Amazon's [redacted] Decision to [redacted]

174. [redacted]

[redacted]

175. [redacted]

[redacted]

176. [redacted]

[redacted]

[redacted]

177. [redacted]

[redacted]

178. [redacted]

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[redacted]

181. [redacted]

Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580
(202) 326-3320

[redacted]

182. [redacted]

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Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580
(202) 326-3320

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186. [redacted]

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187. [redacted]

[redacted]

Amazon's [redacted] Decision to [redacted]

188. [redacted]

[redacted]

189. [redacted]

[redacted]

[redacted]

190. [redacted]

[redacted]

191. [redacted]

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Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580
(202) 326-3320

[redacted]

Amazon's [redacted] Decision to [redacted]

195. [redacted]

196. [redacted]

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202. [redacted]

Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580
(202) 326-3320

[redacted]

203. [redacted]

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204. [redacted]

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205. [redacted]

Amazon's [redacted] Decision to [redacted]

206. [redacted]

207. [redacted]

Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580
(202) 326-3320

208. [redacted]

209. [redacted]

210. [redacted]

211. [redacted]

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600 Pennsylvania Ave., NW
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[redacted]

212. [redacted]

213. On March 16, 2021, the FTC issued a CID to Amazon seeking information necessary to evaluate whether the Prime enrollment process and the Iliad Flow violated the Restore Online Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. §§ 8401-05. [redacted]

214. [redacted]

215. [redacted]

216. [redacted] As discussed above, *see* Paragraphs 113 and 116, Amazon made changes to the Iliad Flow in the United States in or about April 2023.

Manipulative Designs in the Checkout Enrollment and Iliad Flows

217. The manipulative designs (sometimes called dark patterns) Amazon uses, or has used, in its Prime enrollment flows and the Iliad Flow include the following elements:

(a) Forced Action. "Forced Action" is a design element that requires users to perform a certain action to complete a process or to access certain functionality.

(i) Amazon uses Forced Action in the [redacted] version of its Prime enrollment flow, during which Amazon forces the consumer to choose whether to enroll in Prime before allowing the consumer to complete her purchase. In fact, [redacted], Amazon knew that [redacted].

(ii) Amazon also uses Forced Action in its Iliad Flow by forcing the consumer to proceed through multiple screens to cancel their subscription. The presence of Forced Action complicates the Iliad Flow.

(b) Interface Interference. "Interface Interference" is a design element that manipulates the user interface in ways that privilege certain specific information relative to other information.

(i) Amazon uses Interface Interference in its Prime checkout enrollment flow, most versions of which reveal the terms and conditions of Prime only once during the purchase process, and then only in a small, easy-to-miss font. Amazon also uses repetition and color to direct consumers' attention to the words "free shipping" and away from Prime's price, which leads some consumers to enroll without providing informed consent.

(ii) Amazon also uses Interface Interference in the Iliad Flow by emphasizing options that divert the consumer from the flow without cancelling and by employing warning icons near the option to cancel, which evokes anxiety and fear of loss in consumers. The presence of Interface Interference complicates the Iliad Flow.

(c) Obstruction ("Roach Motel"). "Obstruction," also known as the "roach motel" technique, is a design element that involves intentionally complicating a process through unnecessary steps to dissuade consumers from an action.

(i) Amazon uses Obstruction throughout its Prime checkout enrollment flows by making the option to decline enrollment difficult to locate. In fact, since at least 2018, Amazon has known that some consumers cannot find the less prominent "No Thank You" link to decline enrollment.

(ii) Amazon also uses Obstruction in its Iliad Flow by: (1) making the ingress to the Iliad Flow difficult for consumers to locate; and (2) forcing consumers who have already expressed an intent to cancel by locating and entering the Iliad Flow to view marketing and reconsider options other than cancellation. The presence of Obstruction complicates the Iliad Flow.

(d) Misdirection. "Misdirection" is a design element that focuses a consumer's attention on one thing to distract from another.

(i) Amazon uses Misdirection in its Prime checkout enrollment flow by presenting asymmetric choices that make it easier to enroll in Prime than not. Additionally, certain versions of Amazon's checkout enrollment flow offer consumers only a less prominent blue link to decline Prime.

(ii) [redacted]

[redacted] Amazon also uses Misdirection in certain versions of the Prime checkout enrollment flow [redacted].

(iii) Amazon also uses Misdirection in its Iliad Flow by presenting consumers with asymmetric choices that make it easier to abandon an attempted Prime cancellation than to complete it. In particular, Amazon uses attractors such as animation, a contrasting color blue, and text to draw consumers' attention to "Remind me later" and "Keep my benefits" options rather than "Continue to Cancel." Amazon further misdirects consumers who have entered the Iliad Flow by presenting visually appealing options to perform acts other than cancel, such as exploring the benefits of the subscription service (thereby exiting the Iliad Flow). The presence of Misdirection complicates the Iliad Flow.

(e) Sneaking. "Sneaking" is a design element that consists of hiding or disguising relevant information, or delaying its disclosure. Amazon uses Sneaking by failing to clearly and conspicuously disclose Prime's terms and conditions during its enrollment checkout flow, including its price and auto-renew attribute. Amazon also employs Sneaking by failing to show Prime's price or its auto-renewal feature in the consumer's cart.

(f) Confirmshaming. "Confirmshaming" is a design element that uses emotive wording around the disfavored option to guilt users into selecting the favored option.

[redacted]

Amazon used [redacted] confirmshaming despite [redacted]

[redacted]

Amazon's Other Subscription Programs Have Similar Features

218. Amazon operates other subscription services including Audible (audiobooks and podcasts), Kindle Unlimited (eBooks and digital media), Amazon Music Unlimited (streaming music), and Subscribe & Save (regularly-scheduled delivery of consumer goods). These other subscription services also use similar manipulative design elements that trick consumers into signing up and thwart their cancellation attempts.

219. [redacted]

[redacted]

220. [redacted]

Amazon's Misuse of [redacted]

221. Amazon and its executives, including Lindsay, Grandinetti, and Ghani, [redacted]:

(a) Amazon and its executives, including Lindsay, Grandinetti, and Ghani, [redacted]. Amazon and its leadership [redacted]

(b) Amazon and its executives, including Lindsay and Ghani, [redacted]

[redacted]

(c) Amazon and its executives, including Lindsay, Grandinetti, and Ghani, [redacted]

222. Amazon, Lindsay, Grandinetti, and Ghani [redacted]

223. [redacted] Amazon, Lindsay, Grandinetti, and Ghani [redacted]

224. [redacted] Amazon, Lindsay, Grandinetti, and Ghani [redacted] Amazon, Lindsay, Grandinetti, and Ghani [redacted]

Amazon's Other Attempts to Delay the Commission's Investigation

225. On March 16, 2021, the Commission issued a CID to Amazon seeking information regarding the enrollment and cancellation practices associated with Prime. The CID directed Amazon to respond by April 15, 2021. [redacted]

226. Amazon has over 1.5 million employees—*i.e.*, potential document custodians—and its internal communications are replete with acronyms and other jargon—*i.e.*, potential search terms—not readily identifiable to outsiders. Accordingly, as with any discovery process, the Commission had to, and did, rely on Amazon to participate in good faith in the discovery planning process, including by identifying appropriate custodians and search terms.

227. [redacted] Amazon's counsel assured the FTC's counsel that, [redacted] Amazon's counsel also told the FTC's counsel [redacted] These assurances are consistent with any opposing counsel's obligation to engage in good faith discovery planning. As detailed below, however, Amazon did not follow through on these assurances, [redacted]

228. In the context of the customary need to rely on opposing counsel to act in good faith, Amazon counsel's significant experience working on FTC investigations, [redacted] the massive amount of potential document custodians and search terms (many of which were unknowable to the Commission), and [redacted]

assurances [redacted] throughout the Subject Period, the Commission agreed to rely on Amazon to provide—in the first instance—a sufficient response to the CID, including reasonable search terms and custodians, to enable the Commission to fairly evaluate Amazon's Prime enrollment and cancellation practices. However, the Commission always reserved its right to ask for additional responsive information and additional search terms and custodians.

229. Accordingly, during the Subject Period, in response to Amazon's assurances [redacted] the Commission temporarily accepted [redacted]

230. By March 14, 2022, one year later, Amazon had produced only a small amount of material—fewer than [redacted] documents—[redacted]

231. On March 14, 2022, *Business Insider* published information leaked from current and former Amazon employees regarding the problems with Amazon's Prime checkout enrollment flow and the Iliad Flow. The Commission quickly ascertained that Amazon had failed to disclose much of the now-leaked documents and information to the Commission, despite the fact that at least some of it was responsive to the outstanding CID. Amazon withheld the information [redacted]

[redacted]

232. [redacted]

[redacted]

233. Pursuant to its reservation of rights, on April 19, 2022, the Commission issued an extensive follow-up demand for additional information. Amazon did not comply with this demand, [redacted]

234. On June 30, 2022, the Commission issued an additional CID to Amazon as well as CIDs to various current and former employees seeking documents and testimony. Amazon also did not comply with the June 30, 2022 CID.

235. Instead, on August 5, 2022, Amazon and certain individual CID recipients (including executives Lindsay, Ghani, and Grandinetti) petitioned the Commission to quash the June 2022 CIDs. On September 21, 2022, the Commission denied the petition in every material respect. Three Commissioners noted with respect to one legal question Amazon raised as a basis to delay or avoid providing testimony: "The issue raised by this dispute is just one of many challenges facing FTC staff when pursuing complex investigations of targets that may perceive benefits to prolonging discovery." Although the Commission ordered Amazon and the individual petitioners to fully comply, they did not.

236. Amazon's effort to delay the Commission's investigation included [redacted]

237. Amazon largely failed to timely produce the documents the CIDs require. Although Prime is the world's largest subscription program, Amazon produced fewer than [redacted] documents during the entire two-year investigation. Small businesses routinely produce more material to Commission investigators. Moreover, Amazon did not produce most of those documents before October 2022—eighteen months after the Commission's initial CID.

238. Amazon's [redacted] assurances described in Paragraphs 225 through 237 constituted intentional misconduct meant to delay the Commission's investigation and this Complaint. Furthermore, these [redacted] assurances misled the Commission and affirmatively concealed the causes of action asserted herein during the Subject Period. Amazon's wrongful conduct foreseeably caused, and did in fact cause, delay of the Commission's investigation.

239. At all times, the Commission acted diligently. Among other things, during the Subject Period, the Commission reviewed material Amazon produced and provided feedback to Amazon Counsel through correspondence and teleconferences. The Commission also made supplemental requests and, to expedite Amazon's response, demanded that the company accept a timeline for its production.

240. Amazon's bad faith response to the Commission's CID constitutes an extraordinary circumstance beyond the Commission's control. But for Amazon's effort to frustrate the Commission's investigation, the Commission would have filed this action many months earlier. Amazon's [redacted] assurances described in Paragraphs 225 through 237 delayed the Commission's investigation during the period from April 15, 2021 (the initial CID return date) and March 14, 2022 [redacted].

241. Amazon's largely unsuccessful petition to quash delayed the Commission's investigation during the period of its pendency, from August 5, 2022 until September 21, 2022.

242. Based on the facts and violations of law alleged in this Complaint, the FTC has reason to believe that Defendant is violating, and is about to violate, laws enforced by the Commission because Defendant has engaged in ROSCA violations repeatedly and knowingly for years. Those violations are ongoing. Even if Amazon halts or has halted some problematic conduct, Amazon has [redacted]

243. Additionally, until shortly before the Commission filed this Complaint, Amazon used the Iliad Flow to persuade consumers to keep their Prime subscriptions. Amazon only revamped Iliad in response to pressure from the Commission, and without such pressure—including this lawsuit—Amazon would likely restore Iliad. Furthermore, the revamped cancellation process still contains problematic elements because the cancellation process remains difficult to locate on both desktop and mobile. Amazon still requires five clicks on desktop and six on mobile for consumers to cancel from Amazon.com. And both flows still require consumers to proceed through extraneous information unnecessary to the cancellation process

and presented solely to discourage cancellation. The continued presence of these problematic elements illustrates that, although the form of the cancellation flow recently changed, Amazon's mindset has not.

244. Indeed, Amazon considers changes to Prime enrollment and cancellation mechanisms as "[redacted]" decisions, meaning that those changes can be undone at any time.

245. Amazon is one of the world's largest and most well-resourced companies. It has extensive legal resources including in-house and outside counsel with expertise in the FTC Act, ROSCA, and the company's other consumer protection obligations. Amazon embedded in-house counsel within the Prime Organization, and key decisionmakers Lindsay, Ghani, and Grandinetti [redacted]

246. Accordingly, Amazon has actual knowledge or knowledge fairly implied on the basis of objective circumstances that its actions are unfair or deceptive and are prohibited by ROSCA.

VIOLATIONS OF THE FTC ACT

247. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

248. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid

themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT I

Unfairly Charging Consumers Without Consent

249. In numerous instances, as described in Paragraphs 2 through 224 above, Defendant has charged consumers without their express informed consent.

250. Defendant's actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

251. Therefore, Defendant's acts or practices as set forth in Paragraph 249 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), (n).

VIOLATIONS OF THE RESTORE ONLINE SHOPPERS CONFIDENCE ACT

252. In 2010, Congress passed the Restore Online Shoppers' Confidence Act, 15 U.S.C. §§ 8401-05, which became effective on December 29, 2010. Congress passed ROSCA because "[c]onsumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business." Section 2 of ROSCA, 15 U.S.C. § 8401.

253. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as that term is defined in the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310(w), unless the seller: (a) clearly and conspicuously discloses all material terms of the

transaction before obtaining the consumer's billing information; (b) obtains the consumer's express informed consent before making the charge; and (c) provides simple mechanisms to stop recurring charges. *See* 15 U.S.C. § 8403.

254. The TSR defines a negative option feature as: "in an offer or agreement to sell or provide any goods or services, a provision under which the consumer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer." 16 C.F.R. § 310.2(w).

255. As described in Paragraphs 2 through 224, Defendant has created and manages several negative option features as defined by the TSR, 16 C.F.R. § 310.2(w), including Prime.

256. Pursuant to Section 5 of ROSCA, 15 U.S.C. § 8404(a), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of ROSCA constitutes a violation of a rule under section 18 of the FTC Act, 15 U.S.C. § 57a, and constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

257. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of up to $50,120 for each violation of ROSCA, 16 C.F.R. § 1.98(d).

COUNT II

Violation of ROSCA—Inadequate Disclosures

258. In numerous instances, in connection with charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as

described in Paragraphs 2 through 224 above, Defendant failed to clearly and conspicuously disclose all material terms of the transaction, including the price of Prime, its auto-renewal provision, and cancellation requirements, before obtaining the consumer's billing information.

259. Defendant's practices as set forth in Paragraph 258 are violations of Section 4 of ROSCA, 15 U.S.C. § 8403(1), and are therefore violations of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a, 15 U.S.C. § 8404(a), and therefore constitute an unfair or deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

260. Defendant committed the violations set forth in Paragraph 258 with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

COUNT III

Violation of ROSCA—Nonconsensual Enrollment

261. In numerous instances, in connection with charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as described in Paragraphs 2 through 224 above, Defendant failed to obtain the consumer's express informed consent before charging the consumer's credit card, debit card, bank account, or other financial account for the transaction.

262. Defendant's practices as set forth in Paragraph 261 are violations of Section 4 of ROSCA, 15 U.S.C. § 8403(2), and are therefore violations of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a, 15 U.S.C. § 8404(a), and therefore constitute an unfair or deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

263. Defendant committed the violations set forth in Paragraph 261 with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

COUNT IV

Violation of ROSCA—Failure To Provide Simple Cancellation Mechanism

264. In numerous instances, in connection with charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as described in Paragraphs 2 through 224 above, Defendant fails to provide simple mechanisms for a consumer to stop recurring charges for the good or service to the consumer's credit card, debit card, bank account, or other financial account.

265. Defendant's practices as set forth in Paragraph 264 are violations of Section 4 of ROSCA, 15 U.S.C. § 8403(3), and are therefore violations of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a, 15 U.S.C. § 8404(a), and therefore constitute an unfair or deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

266. Defendant committed the violations set forth in Paragraph 264 with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

CONSUMER INJURY

Consumers are suffering, have suffered, and will continue to suffer substantial injury as a result of Defendant's violations of the FTC Act and ROSCA. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers and harm the public interest.

PRAYER FOR RELIEF

Wherefore, Plaintiff requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act and ROSCA by Defendant;

B. Award Plaintiff monetary civil penalties from Defendant for every violation of ROSCA;

C. Award monetary and other relief within the Court's power to grant; and

D. Award any additional relief as the Court determines to be just and proper.

Respectfully submitted,

Dated: June 21, 2023

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