

Chase/Trilegiant Settlements Raise the Compliance Bar on Continuity Plans

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On December 12, 2006, sixteen state attorneys general jointly announced a \$14.5 million dollar settlement agreement with Chase Bank and Trilegiant Corp. concerning direct mail practices. A variety of programs were covered by the settlements, but one of the more notable types of solicitation at issue was the use of a live check in a direct mail solicitation. Here's how the solicitation worked: A consumer would receive an actual check for a small amount of money made out in his or her name. When a consumer endorsed the check and deposited it into their account, the he or she was enrolled in a membership club (usually a discount buying club), with future membership charges billed to the consumer's mortgage statement or credit card bill unless they canceled their membership within a trial period. The programs generated significant regulatory scrutiny because consumers claimed that they did not understand that by endorsing they check they were also entering into a contractual arrangement with the membership club. Other complaints were that consumers did not appreciate the long-term nature of the relationship, or did not appreciate the negative option aspect of a trial offer. This article seeks to highlight five of the many important provisions that should be considered by marketers in light of the settlements.

Membership Club Program Disclosures

The settlements require exact language to appear in specific portions of the marketing materials regarding the membership club being promoted. The required language covers the price of the program, whether the program being offered is affiliated with Chase, details regarding the trial period and automatic renewal feature and, perhaps most importantly, that cancellation requires an affirmative act on the part of the consumer. These disclosures must be made in designated locations in the mailing. There is also an affirmative disclosure requirement to tell the consumer to keep the materials.

Live Check Provisions

Live checks are mailings that contain an actual, cashable check. These checks typically contain language on the endorsement setting forth the terms of the offer. While controversial, this marketing technique has been long accepted by the Federal Communications Commission in the field of long-distance telephone service changes. Under the settlement, this type of promotion is permitted, although with certain restrictions. New requirements include specific language that must appear on the front of the check and in the endorsement, both essentially informing that by depositing or cashing the check, the consumer is purchasing a membership program.

Enjoining the Term "Join"

The settlements ban marketers from utilizing commonly accepted marketing terminology in connection with the various disclosures. For example, marketers are barred from utilizing the terms "free", "complimentary", "risk free" or referencing a "Cash Disbursement Office" on the face of the check. Marketers are barred from utilizing the terms "refund", "rebate", "reward" or other benefit to describe the marketing program unless a true rebate is included as part of the offer. What is most puzzling, however, is the ban on the terms "activate", "enroll", "register", or even "join" in connection with the requisite disclosures, which terms would seem to clearly describe the transaction being entered into.

Welcome Package

Along with the fulfillment materials, the settlements require a welcome letter, which is to be transmitted in an outer envelope that has printed in 14-point or larger bold type the statement: "Materials For Membership You Ordered". The actual welcome letter must inform the consumer in more conspicuous type that he or she has purchased a membership in the particular program, the terms and conditions of the trial offer, the billing process, an explanation of the cancellation process, and a statement that the consumer should keep the materials.

Renewal Notices

In addition to the welcome package, the settlements require the transmittal of renewal notices to be sent depending on the billing cycle and whether there are any changes in the billing program. Here too, the outer envelope (or postcard face) must contain a specific statement - "Membership Renewal Notice" - in 14-point or larger type and inside, indicate the amount of the charge, a toll-free method of cancellation and the cancellation deadline.

Conclusion

While the Chase/Trilegiant settlements are expressly binding only on those two companies, and implicitly on any marketers doing business with them, they are of critical importance to any direct marketer engaged in the marketing of continuity programs because they provide keen insight as to what regulators believe are the proper methods to market such programs.