



January 29, 2010 release

RE: New Opportunities in Affiliate and PPC Markets

This email you find below was received on Jan 27th from a popular merchant provider we have recommended in the past.

The ONE AND ONLY real kicker is the banning of additional continuity programs on an up sell basis. The reason for this one is real simple, people abused the hidden nugget model Like we say, anything can be used for good or bad. If used for bad, and consumers are not CLEARLY aware the entire model will receive a stain on it. Which now it did! I am deeply saddened when I see people bury things in terms.

We have come so far as an industry to have this kind of thing continue. Like we say over and over, if it can be viewed as negative, turn it into a positive! But these who abused did not. They decided NOT to feature and customers were left not aware or not remembering.

Ultimately, the customer will ALWAYS WIN and that's how it should be! OK, this is NOT GOSPEL!!! It will change! Do not consider anything you see or read from me, or ANYONE else but the FTC to be gospel. Only the FTC writes the rules!

This is the second email we have received concerning the recent shake up. Remember the free trial offer is still great if executed properly (look at NetFlix, Blockbuster and others who have built incredible models with them). Remember that they are now so much more sensitive to offers that APPEAR to not be CLEAR. It seems to make it harder for some, but in the long run, this will help us all do a better job. The straight sale is still strong and providing amazing results (even better now with direct PPC and SEO campaigns – media costs are a fraction of what they were even a month ago. We can all learn from this.

Here is the copy of the email received day before yesterday by one of our main partners (to be used for illustrative purposes only)

DIRECT RESPONSE BEST PRACTICE GUIDELINES FOR MERCHANTS

TRIAL OFFERS

Marketing models that employ “Free-Trial”, “Deferred Billing” and/or “Shipping Only” are considered trial offers for purposes of this communication. Consumers must be receiving a tangible good or contracted service in exchange for charging of payment cards. Incentivized discount offers are acceptable when the cardholder is receiving goods or services in exchange for payment; however we will be unable to support accounts engaging in hidden or delayed charges and ‘free’ offers that are not truly free.

1. Avoid using terms in your marketing and offer presentation such as “Free”, “Risk Free” or any similar and potentially misleading phrases when consumers will be enrolled in a monthly continuity program at the end of a trial period, or will be paying a deferred charge for the trial period. The phrase “Free Trial” is prohibited unless there is truly no cost or obligation incurred by the consumer.
2. “Shipping & Handling Only” offers must be a fair and accurate shipping charge reasonable to be accrued by the merchant for providing the product.
3. Trial offers must be extended for a minimum of 10 days.
4. Trial periods should not begin until the product is shipped to the consumer.

MARKETING

1. Avoid creating a ‘false sense of urgency’ for the consumer. Unless the consumer’s ability to order is genuinely taken away after a specified timeframe or order count is reached, this practice is prohibited. Use of applications such as countdown clocks, tickers, or language such as “Offer Expires Today!” is also prohibited.
2. Product claims, by law, must be truthful. Claims regarding effectiveness must be substantiated by clinical research conducted to support the claims, and consistent with the formulas and ingredients in your product
3. Qualifications for trial periods of a product should follow pre-determined rules disqualifying consumers who do not meet parameters, including but not limited to: Age, Weight, Height, and Location.
4. Unreasonable claims or guarantees are prohibited. Examples of claims considered unreasonable are:
“Flushes Pounds”, ”Flushes Toxins”, ”Builds Muscles”
 - Stating that use of a product will result in permanent weight loss
 - Stating that a product will cause the consumer to lose a specified amount of weight in a specified timeframe
 - Stating that a product will cause substantial weight loss no matter what or how much the consumer eats.
 - Stating that use of a product can cause weight loss (or muscle growth) in specific body parts “Free Money”, ”Instant Money”
 - Stating that the product can substitute the income of a full time job
 - Stating that money can be earned with little to no effort or investment
 - Stating that use of a product will earn you hundreds of thousands or millions of dollarsAdditional examples include:
 - Stating that the product has been successfully used by an unrealistic or unsubstantiated number of

people

- Stating that a product will secure the consumer a job, either at the product's company or another company
- Stating or implying that a product is endorsed or in any way associated with President Obama or a government entity.

ENDORSEMENTS/TESTIMONIALS:

1. Endorsements and testimonials of user experiences must reflect the true and honest opinions of the endorsee(s).
2. Endorsements and testimonials provided must present a clear picture to consumers of realistic results of using the product. If advertisers do not have substantiation of a specific claim or endorsement, then generally expected results must be clearly disclosed and backed by substantiation of any claims.
3. Blogs used for promotional purposes must be in compliance with published FTC guidelines, representing an accurate and full representation of the endorsee, or clearly designated as a fictional story if developed internally for marketing purposes.
4. News Sites published in marketing materials must be in compliance with published FTC guidelines, and must be clearly presented to the consumer as an advertorial. Written consent should be obtained from a media outlet prior to using the logo.
5. Implied celebrity endorsement by use of an image in your marketing is prohibited without express legal written consent.

AFFILIATE MARKETING (CPA) NETWORKS

A significant contributing factor to Historical Excessive chargeback violations has been the utilization of CPA Networks. Transactions generated from internet traffic and all other lead sources must be managed and monitored for potential fraud using an approved system. Third Party service engagement may be a requirement for account approval.

1. CPA Networks should contractually be held accountable for monitoring traffic generated from participating marketers.
2. Merchants must have monitoring plans in place to detect suspect traffic and monitor Affiliate and Sub-Affiliate performance.

BILLING TERMS DISCLOSURE

The FTC has recently published guidelines regarding "Negative Option" enrollment programs and is taking a very aggressive position against merchants utilizing/employing this business practice. Recommendations taken in part from the FTC's website may include but are not limited to the following:

1. Negative Option disclosures must be clear and conspicuous to the consumer and comply with published FTC principals.

2. The full price of products sold must be within reasonable “fair market value”
3. Under no circumstances should consumers be billed for a product or service not disclosed.
4. Consumers must be required to validate understanding of the terms of the offer twice during order submission. The first validation can take place with the initial offer presentation prior to submission of credit card information, and the second during the checkout process. The confirmation order page must also require consumers to acknowledge that they agree to the Terms & Conditions and authorize the merchant to charge the credit card for the disclosed dollar amount. Terms must be displayed adjacent to the “submit”, “confirm” or any other “call to action” button confirming the order. The price must be within 100 pixels of the submit”, “confirm” or any other “call to action” button.
 - Terms must be in a minimum 12-point “easy to read” font.
 - Avoid visually distracting graphics from the display of terms.
 - Pre-checked boxes must never be used.
 - Consumers should be required to actively and individually select each offer or bonus during the checkout process when there are multiple offers or up sells presented. No offers or up sells should be pre-selected or pre-checked.
 - Consumers should not be able to move forward in the offer or checkout until the box acknowledging the terms is checked.
 - Verbiage must clearly disclose the enrollment into an ongoing membership with no distraction. An example of an acceptable disclosure is: “By clicking “Submit” you acknowledge that you understand you are being enrolled in a 10 day trial for \$4.95, and after expiration of the 10 day trial period you will be charged \$59 per month until you cancel your service”
 - All products or services purchased when the call-to-action button is clicked should be billed as a single charge unless the order is fulfilled at different times requiring multiple charges.
 - Shipping and Handling should not be billed separate from charges for the product or service.

BILLING TIMEFRAMES

1. A merchant may not bill a consumer the full price twice in a 30-day span. An acceptable billing cycle example would be:
 - Day 1 – Consumer signs up for a 10 day trial offer with paid shipping of \$4.95 charged at the time of order.
 - Day 11 – The first monthly order is shipped and the consumer is billed the full price of \$59.
 - Day 41 – The second monthly order is shipped and the consumer is billed the full price of \$59.
2. Consumers should not be billed prior to shipment of products.

REFUND POLICIES

Merchants must not make it difficult for consumers to exercise the disclosed cancellation procedures and all cancellation requests must be honored in accordance with the stated terms of the transaction.

1. Refund policies must be disclosed prior to the sale completion. Establish a clear, concise statement of your refund and credit policy. Your policy should be consistent with the objectives of your business and the products or services sold.
2. Merchants must not require return of any trial offer product samples in order for the consumer to receive a refund, or cancel their ongoing subscription.
3. “Full Money Back” or “Full Satisfaction” guarantees are considered false and prohibited unless the offer provides a full refund on all products, including but not limited to Shipping & Handling charges.

4. Refunds should be for the full amount charged including shipping and handling
5. All future billing to a customer should be canceled when a refund is issued.
6. All future billing to a customer should be canceled when a chargeback is received.

BACK END OFFERS, AKA UP SELLS OR CROSS SELLS:

All sales should be directly between the business entities (merchants) processing the transactions and the consumer, with consumer authorization for all purchases.

1. Under no circumstances can consumer data be shared with another company as this is a violation of Brand Regulations, including but not limited to the Payment Card Industry Data Security Standard.
2. Forced and hidden up sells are strictly prohibited
3. Up Sells with recurring charges are prohibited, regardless of consumer opt-in or acknowledgement of the offer.
4. A one-time bonus offer may be extended to the consumer for an additional product offered by the same company as the initial transaction. The price of the bonus offer must be clearly disclosed and the consumer must acknowledge the terms of the sale prior to providing credit card information for completion of the sale, and again at order confirmation/ submission.

DESCRIPTORS

1. ALL MERCHANTS DEFINED AS OFFERING A DIRECT MARKETING PRODUCT WILL BE ASSIGNED A DESCRIPTOR FORMATTED TO COMPLY WITH VISA REQUIREMENTS, TO INCLUDE AN *.
2. Billing descriptor should be consistent with the website name, marketing materials, purchase confirmation, and shipping notification (if any) sent to the consumer.

FULFILLMENT

1. Orders must be fulfilled in a timely manner. It is recommended that all products be shipped within 48 hours (2 business days) from the date of order.
2. A confirmation email should be provided for all online orders with physical shipment, within the prior 5 days to shipment or 2 days following shipment, including the following information:
 - Merchant contact information (at minimum a consumer service phone number)
 - Order information including purchaser's name, unique order or customer ID, summary of item(s) purchased
 - Terms of the order, including initial amount billed and future billing schedule (this should be stressed)
 - Cancellation and refund policy
 - Delivery confirmation / tracking information

3. An invoice should be included with the product including the following information:

- Merchant contact information (at minimum a consumer service phone number)
- Terms of the order, including initial amount billed and future billing schedule
- Cancellation and refund policy

CUSTOMER SERVICE:

1. Multiple methods of cancellation must be provided for consumers to cancel or request refunds, including at least two options of contact. Example of acceptable service channels include: phone, email, mail, and online chat. Phone support is strongly recommended as one of the options.
2. "Contact Us" information including contact methods and hours of availability should be prominently displayed in all marketing, offer and payment pages, as well as included in purchase confirmations, invoices and any other communication with consumers.
3. Customer Service must be easily accessible and available during reasonable business hours
4. Refund and Cancellation Policies must be followed as disclosed to the consumer at the time of order
5. Hold times to reach Customer Service must be less than 2 minutes.
6. After hours voice mail should include a greeting that properly identifies the merchant to the consumer, provides hours of Customer Service availability and an expectation for call back.

RESOURCES:

The FTC has published the regulations along with many resources online for businesses and consumers. A few helpful links are included below:

Commercial Practices Part 425, Use of Prenotification Negative Option Plans:

<http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=16&PART=425&SECTION=1&TYPE=TEXT>

Prenotification Negative Option Plans:

<http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro09.pdf>

Advertising and Marketing on the Internet:

<http://www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus28.pdf>

Dot Com Disclosures:

<http://www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus41.pdf>

Direct Response industry publications have provided articles with some clarification regarding these guidelines:

<http://www.responsemagazine.com/resources/legal-resources/legal-review-getting-strict-with-negative-option-marketing-1351>

<http://www.dmnews.com/get-comfortable-with-new-ftc-regs/article/136023/>

So to summarize, there are a LOT of nervous people right now because they are unsure of what is really going to happen.

However, here are the things we know will NOT be changing. (NOT legal advice here)

1. Survey interactions work
2. Consumers DO NOT NEED FREE to click!
3. Consumers will pay full price for security now (after so many freaked them with trials)
4. Follow up systems outlined in our initial system setups are now more important than ever!
5. Up Sells will probably always be ok, just be sure they know what they are doing!
6. Media Rates are going down! HUGH DEAL HERE FOR PROPERLY DONE CAMPAIGNS
7. Last year I sounded paranoid to many marketers, this year, everyone sees why
8. There will be HUGE opportunity for those who are willing to spend the time building real follow up systems!
10. Processing is still VERY possible and now, we will see merchs taking even GREATER care of those who play by the rules
11. CPA Networks will still be HUGE.. they and the advertisers will just have to practice more responsibility and accountability.
12. The bad practices will not disappear overnight, so while this is a step in the right direction, it's not over yet! (Just today someone asked me to promote a site that had a flog.. I said "are you serious", "I never would before, why the heck would I start now!". Needless to say, the answer was a HUGE NO!

So What is it for 2010?

TO START OFF 2010

1. Surveys rule the world
2. Straight sale is coming back post survey and REAL follow up
3. Video will rise as the king
4. Many will want to promote through banners like we have been
5. Many will leave the online space
6. Some will blame everyone else for their failures

If I can leave you with ONE THING... It's this.

The internet changes constantly as it "grows up". Don't hold on to what anyone said, even if it was just last week, because things change fast! And while you may want to hold on to a certain method, those who adapt their methods first, succeed faster.

The direct sale model is stronger now, once consumer confidence strengthens, the successful free trial models will return with redesigned formats (as we often discuss with you). So let's go make money giving the public what they really want!

Thanks Mike for your assistance!

Here's to a great year!

Marty