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FTC Accuses Adobe of Manipulating Customers into Costly Subscriptions

Lawsuit Is Latest in Crackdown Against “Dark Patterns” Practices

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Customers worldwide use Acrobat, Photoshop, Illustrator and other Adobe software to create content and manipulate images. Now, the Federal Trade Commission (FTC) is accusing Adobe of manipulating customers into subscription plans whose terms and fees were not clearly disclosed and creating a difficult process for customers to cancel the plans.

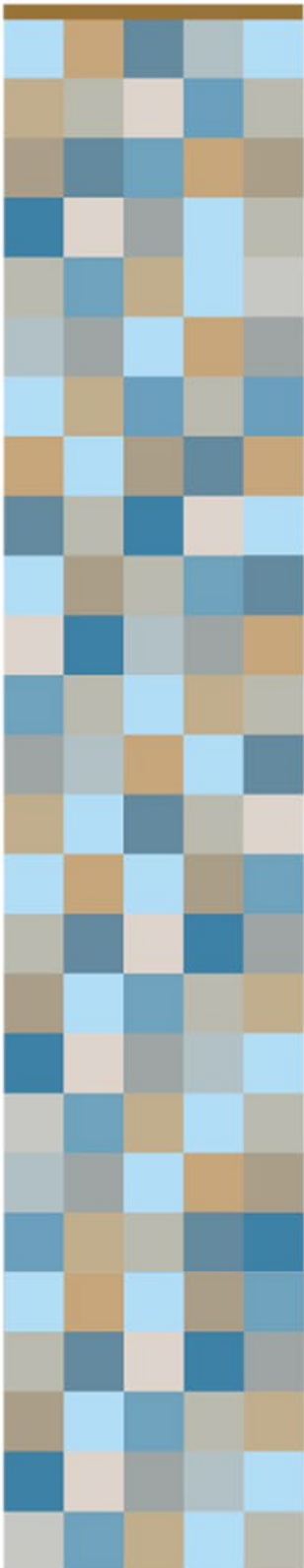
Upon notification and referral from the FTC, the Department of Justice filed a lawsuit against Adobe in the U.S. District Court for the Northern District of California in June. While the [complaint](#) does not mention the term “dark patterns,” it’s clear the case is part of the FTC’s continuing crackdown on companies accused of deceptive practices violating federal laws.

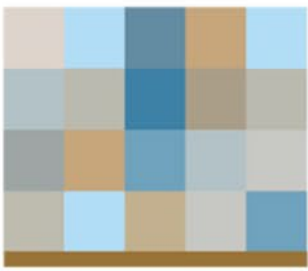
“Dark patterns” are design practices in online advertising and marketing that trick or manipulate consumers into making choices they would not otherwise have made and that may cause them harm. A number of high-profile companies have been implicated for using different dark patterns tactics. We recently provided an update on the [case pending against Amazon](#), and reported last year on the [settlement with Publishers Clearing House](#).

Allegations Against Adobe

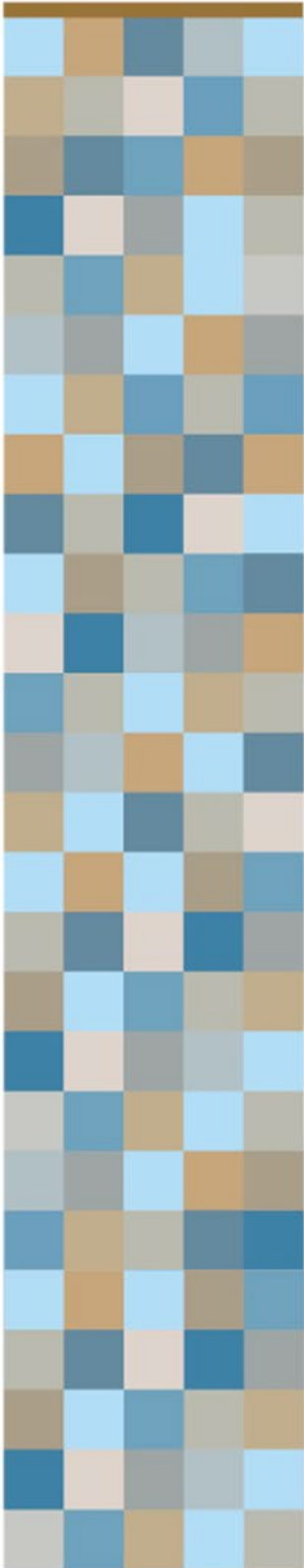
Subscriptions are a lucrative business for Adobe. The FTC lawsuit estimates that, by 2023, subscriptions generated \$14.22 billion of the company’s \$19.41 billion in total annual revenue.

Adobe offers three subscription options to consumers: monthly, annual paid monthly, and annual prepaid. The lawsuit contends that when consumers signed up for subscriptions for products on the company website:





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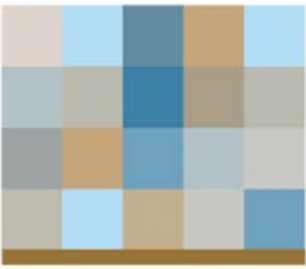


- The “annual paid monthly” subscription had already been pre-selected for them as the default option. (Pre-selected boxes, by the way, are a common dark patterns tactic.)
- The monthly cost for this option was noted prominently, but the early termination fee associated with it was easily missed. This disclosure was in small print on the website or mentioned when hovering over small icons.
- Early termination fees were substantial – 50 percent of the payments remaining. So, if a customer cancelled the “annual paid monthly” option at six months, they were charged 50 percent of subscription fees for the remaining six months.
- Adobe was aware of complaints to the FTC and Better Business Bureau from consumers who said they did not realize that the “annual paid monthly” plan required a year’s commitment and that an early termination fee was involved.
- Early termination fees were not the only method Adobe used to discourage cancellations. Cancelling online required navigating through multiple screens, while consumers who contacted customer service directly to cancel have reported resistance and delays.

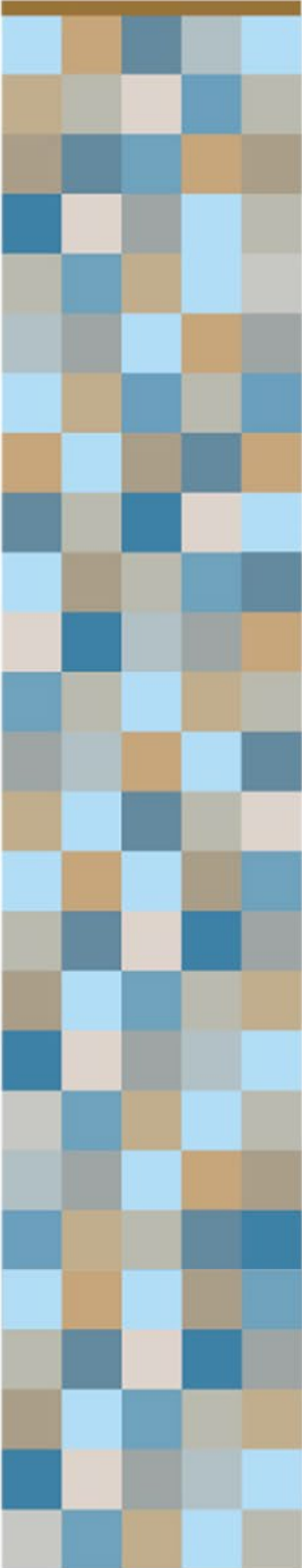
“Adobe trapped customers into year-long subscriptions through hidden early termination fees and numerous cancellation hurdles,” said Samuel Levine, director of the FTC’s Bureau of Consumer Protection, in a press release announcing the lawsuit. “Americans are tired of companies hiding the ball during subscription sign-up and then putting up roadblocks when they try to cancel....”

The lawsuit accuses Adobe and two executives – Maninder Sawhney, senior vice president of Digital Go To Market & Sales, and David Wadhvani, president of its Digital Media Business – of unlawful practices. The company and executives allegedly violated the Restore Online Shoppers’ Confidence Act (ROSCA) and the FTC Act by failing to disclose material terms of the transaction clearly and conspicuously, for example, subscription billing and renewal terms, and also by failing to obtain the express informed consent of consumers before charging their credit cards, debit cards or other accounts. Additionally, the company is accused of violating both Acts by failing to provide simple mechanisms for consumers to stop recurring charges.

ROSCA prohibits charging consumers for goods or services sold in transactions on the Internet through a negative option feature unless the seller has fulfilled certain requirements. A negative option feature is defined 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.” To avoid a ROSCA violation, the seller must: clearly and conspicuously disclose all material terms of the transaction before obtaining the consumer’s billing information; obtain the consumer’s express informed



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consent before making the charge; and provide consumers simple mechanisms to stop recurring charges. The very requirements that Adobe is accused of failing to meet.

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