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THE FTC ISSUE

Written by Francine D. Ward

The Federal Trade Commission ("FTC") has officially taken its first action under the Health Breach Notification Rule. This policy was passed in 2009 but revised in 2018. It requires companies to notify customers when confidential information is breached. The FTC's most recent target is the pharmaceutical discount provider, GoodRx, because the company failed to inform consumers that their personal information was shared with companies, e.g., Facebook and Google.

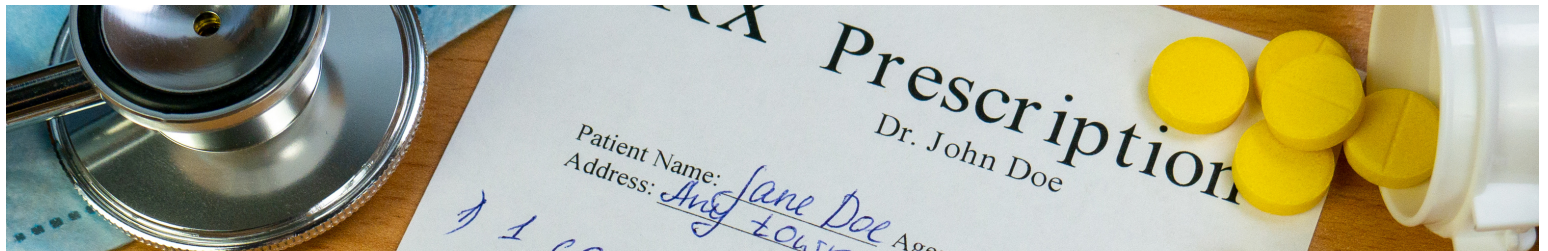
This precedential action again established how serious the FTC is about protecting our privacy, especially our health information.

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The Department of Justice initially filed the grievance, the FTC applied its ruling, and the case will go before the Federal Court for final approval. The intended result is that GoodRx pays a civil fine of \$1.5 million and is now prohibited from sharing customer information for advertising.

Terms and Conditions

I constantly urge my followers to read the fine print when presented with terms and conditions, privacy policies, or any document they are asked to sign. In reading GoodRx's terms, the California-based company claimed it would not sell or share customer information. The company breached its promise. It offered customer data to advertisers and third-party companies. And this "leak" was not an accident. Moreover, we aren't just talking about email addresses. In 2017, GoodRx shared prescription details, personal health conditions, and mobile advertising IDs so medical companies could target social media users with health-related advertisements. This action breached GoodRx's loosely drafted privacy policy and put the company out of compliance with HIPAA (Health Insurance Portability and Accountability Act of 1996).



Because GoodRx is a vendor of personal health records, it also breached the Health Breach Notification Rule. The Federal Trade Commission issued a warning in 2021, reminding healthcare-related companies about its stringent privacy and security protection regulations and subsequent actions. GoodRx purposefully shared confidential data with Facebook, Google, Criteo, Branch, and Twilio while failing to get consent. Further, once the breach occurred, GoodRX should have notified its customers.

As part of the requirements, the FTC has given GoodRx strict orders. The company must:

- Restrict the sharing of health data for marketing,
- Require user approval if sharing health data is necessary,
- Limit the time that data is retained, and
- Ensure that previously shared data is removed from third-party companies.

Do you need help writing enforceable terms of use for your company? Schedule your complimentary consultation TODAY with me, your e-Commerce and IP-Law attorney, Francine Ward.



FEDERAL TRADE COMMISSION SQUEEZES MORE OUT OF LIFELOCK

Written by Francine D. Ward

Online security has never been more scrutinized than now. Imagine sending consumers over \$26 million and having to perform a second round of refunds because there's extra money left over.

That's what the Federal Trade Commission expects the identity-theft protection agency to do based on a court ruling in 2015 when the FTC fined LifeLock \$100 million to settle charges related to online security. This is the largest fine the commission has ever doled out to date.

The original court case centered around an FTC order in 2010 that warned companies against sharing consumer information and doing so with the intent to sell customer data to advertising companies. The 2010 order doubled online privacy by prohibiting companies from deceptive or false advertising. Many known corporations will display emblems on their website to ensure customer privacy; however, the fine print of their terms and conditions reads otherwise.

What's wild about modern court-ordered refunds is that you no longer have to wait for a check. LifeLock sends payments via Paypal, and customers have 30 days to accept them. And if you're feeling old-school, you can call 1-866-898-5106 if you prefer a check.

If you have a consumer complaint, contact the FTC today.

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Free Trials, Subscriptions, And Auto-Renewals

Written by Francine D. Ward

Are you tired of getting stuck with unwanted fees after signing up for free trials online? You may have wanted temporary access but forgot to unsubscribe. It's essential to watch out for online scams, what's hidden in the fine print, and for sneaky marketing schemes that cost more than you bargained for.

The good news, the Federal Trade Commission (FTC) is offering tips to avoid being plagued by auto-renewals. Here are a few items to watch out for:

FREE TRIALS

Cancel before the deadline.

First, be careful to whom you give your credit card number. If you want account access, clarify the end of the trial period and set a reminder to cancel a few days prior.

Don't pay for shipping.

Why? Because that voids the promise that the product or trial is genuinely free. It's okay to be suspicious here; it's good to question a company's integrity.

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Watch out for affiliates.

Companies are known to pay influencers and bloggers to market their products and will often use these platforms for advertising in a misleading way. Research the product before you click - it may keep you from running into a scam.

Check the Terms and Conditions.

It might be good practice if you get a free diet product trial vs. a Dodge Ram! Read the Terms.

Research the company.

Take it a step further - look at the company's website and use your favorite search engine to look up company reviews.

Know how to cancel before you sign up!

Testing the product for "half-off" may be tempting, but do your due diligence by looking up how to cancel before you need to.

Monitor your bank statements.

Check your debit or credit card purchases after you cancel a free trial to confirm that the subscription has been canceled.



AUTO-RENEWALS

1. Look for renewal notices. Companies offering free trials or ongoing subscriptions must send you a renewal notice. Confirm that these renewals are legitimate and that they aren't asking for confidential information.
2. Confirm the cost. Make sure you're paying the agreed-upon price. If the fee has changed, it may be because a promotional rate has expired. This information is usually found in the terms and conditions.
3. Fill out the form slowly. Watch out for checkboxes containing smaller prints that lure you into unwanted options.

In summary, I encourage you to research, uncheck the boxes and find out how to cancel before you get lured into a subscription nightmare.

Until next time, I'm Francine D. Ward, helping you avoid scams and unwanted auto-renewals!



FEDERAL TRADE COMMISSION SEEKS TO BAN NONCOMPETES

Written by Francine D. Ward

In January 2023, the Federal Trade Commission boldly proposed a new rule that would keep companies from making non-compete clauses mandatory. This action came with a hefty cost savings of \$300 billion in workers' earnings per fiscal year and job expansion for 30 million Americans.

A non-compete agreement is generally an agreement between an employee and an employer. Usually, an employee agrees not to engage in a business similar to its employer when the working relationship ends. The non-compete agreement might also restrict where a former employee can work. It's a classic power move by large corporations with the bargaining power to retain great talent.

The proposal to ban non-competes is based on the FTC's claim that forcing employees to sign a non-compete agreement violates Section 5 of the Federal Trade Commission Act. The claim is that such agreements are unfair and stifle competition. These agreements block "workers from freely switching jobs, depriving them of higher wages and better working conditions." This rule protects workers' rights and promotes diversity and innovation through competition.

The FTC also claims that stifling competition impacts wages. Further, the Office of Policy Planning claims that non-competes restrict worker mobility, reduce competitive wage bargaining, limit worker opportunities, and prevent workers from starting their own businesses.

The FTC doesn't just want to ban non-competes. It wants to make it illegal for companies to represent that a non-compete clause can be enforced. The FTC has already started ruling on the companies that illegally impose non-competes on workers.

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An estimated*
18%
of U.S. workers
are covered by
noncompetes.

That's 30 million people.

The FTC estimates that banning noncompetes may:

- ▶ Increase workers' earnings by nearly \$300 billion
- ▶ Save consumers up to \$148 billion on health costs each year
- ▶ Double the number of companies in the same industry founded by a former worker

Researchers estimate that banning noncompetes nationwide may close racial and gender wage gaps by 3.6-9.1%.**



The FTC invites comments on its preliminary proposal ftc.gov/noncompetes



**FEDERAL TRADE
COMMISSION**

*Source: Starr, Prescott & Bishara, Noncompete Agreements in the U.S. Labor Force (2021)

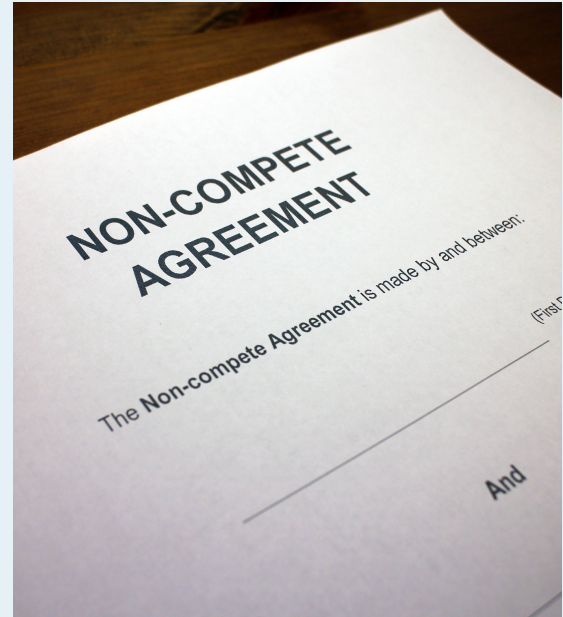
**Source: Johnson, Lavetti & Lipsitz, *The Labor Market Effects of Legal Restrictions on Worker Mobility* (2020)



Additionally, the FTC proposal would apply to backdated non-competes. In addition, it would apply to employees and independent contractors. The proposed ruling only applies to other documents if they include non-compete provisions within those agreements.

Where is the proposal now? The rule has gone through the initial step in rule-making and has now been opened to public comment through March 20, 2023.

Want to keep up with how FTC rulings protect you? Sign up for the FTC news and events and my monthly newsletter, or subscribe to my weekly legal blog. I'm Francine D. Ward, here to help you protect what's yours.



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DAY 1 of 31

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