

LEGARRETA Y ASOCIADOS, S.C.
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Mexico City, February 12, 2018.

RE: NEGATIVE OPTION IN MEXICO.

Dear Clients and Friends:

I hope that you are doing very well. The referenced topic is important for our clients in Mexico. We made some questions and answers in this regard, hoping that the same be of your interest:

Is Negative Option/automatic billing acceptable in Mexico?

In general no, it depends on how the terms and conditions are drafted. The customer has to expressly accept either in writing or by electronic means the terms and conditions under which automatic billing will occur. No charges may be applied without the prior consent of the consumer, or which are not derived from the agreement executed with the consumer (article 10 Federal Consumer Protection Law ("FCPL"). Under NOM-035-SCFI-2003, paragraph 3.4 lack of response from a consumer to the offer of a good or service cannot be considered as an acceptance of the same.

Are there any required notice periods for cancelling subscriptions once an individual asks to do so?

No, however pursuant to general rules of commerce, if no specific term is set forth for the compliance of an obligation the term of ten calendar days shall apply.

Are there any specific online service cancellation requirements in Mexico to be aware of (e.g., cancelation methods, response time)?

The agreement is perfected five business days after the delivery of the goods or the signature of the agreement, whatever occurs later. During this term, the consumer has the right to revoke his/her consent without any liability whatsoever. The revocation shall be made through a notice or by delivering/returning the goods personally, by registered mail or any

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other evident means. Revocation made in compliance with these requirements leaves the transaction without any effect. In this case, all freight and insurance costs shall be paid by the consumer.

Is it acceptable for advertising and service terms and conditions to solely be available in English?

No, they have to be in Spanish, in clear and legible characters, in uniform font that is visible at plain sight, and any deceitful practices shall be avoided. The information provided to the consumer shall be clear and sufficient, and shall not include obligations for the consumers that are disproportionate, abusive, or non-equitable.

Are negative option free trial offers acceptable? – e.g., first 3 months free, after which the subscription converts to a monthly paid subscription unless user cancels before the end of the 3 month period. For these trial offers an individual must enter their credit card information prior to starting the free trial offer.

Yes, they are valid, however, as mentioned above, express consent is required. As a general rule, charges to a credit or debit card may only be made until the purchased goods are received, or the services rendered, unless the company has previously obtained the consumer's express consent indicating that delivery of the purchased goods and/or services can be made after the corresponding price is charged (art. 15 FCPL). It would be suggested to include in the terms and conditions the express consent of the customer to be charged prior to the delivery of the magazines. The delivery or supply of goods to the address of a consumer without his consent, if he has not accepted the purchase does not create any obligation for the consumer and the seller shall be responsible for the use, or destination given to any such products.

Pursuant to NOM-035 when a payment will be made with a credit card or other electronic medium of payment, the seller shall confirm with the consumer the transaction at the time the order is made, and indicate if the charges will be made automatically, the consumer may cancel as indicated above in which case the seller shall reimburse to the consumer the amount paid through the same means by which payment was initially made in a term that shall not exceed 15 business days as of the cancellation of the service, or the return of the goods. The seller shall provide to the consumer

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a code or password which shall be kept for at least one year with a registry of the date, time, amount and form of payment.

In terms of article 76 Bis 1 of the FCPL, any company offering or commercializing goods or services through electronic means or any other technology has to comply with the standards issued by the Ministry of Economy which shall include at least the following information: i) the specifications, characteristics, conditions and/or terms applicable to the products offered; (ii) mechanisms that allow the consumer to verify that the transaction reflects its intent to purchase the products and all the terms and conditions; (iii) mechanisms that allow the consumer to accept the terms and conditions; (iv) mechanisms that provide evidence of the transaction; (v) technical security mechanisms that are appropriate and trustworthy and guarantee the protection and confidentiality of the personal information of the consumer and the transaction; (vi) mechanisms for the consumers to file petitions, claims, questions or concerns, (vii) mechanisms to identify the customer, to perform payment and determine the form of delivery.

Yours,

Legarreta y Asociados, S.C.