

Client Alert

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Judge Rules that Amazon Unfairly Billed Parents for Their Kids' In-App Purchases

On Tuesday, April 27, 2016, a federal district court judge in the Western District of Washington ruled that the Federal Trade Commission ("FTC") had proven that Amazon.com had engaged in unfair business practices in billing Amazon account holders for in-app charges without express, informed consent to such charges. At the same time, the judge denied the FTC's request for a permanent injunction against Amazon, finding no cognizable danger of a recurring violation. The judge ordered additional briefing on calculating monetary relief.

The case arose from Amazon's evolving disclosures, starting in November of 2011, of the ability to make in-app purchases through apps sold in Amazon's Appstore. According to the opinion, the apps, many of which were geared toward and used by children, were either free to download or available for a fee, but permitted in-app purchases ranging from \$.99 to \$99.99. The opinion details the manner in which Amazon communicated the presence of in-app purchases to consumers over time, initially including voluntary parental controls and information in app description paragraphs, then moving to password prompts for larger purchases, disabling in-app purchasing on Amazon's child-directed Kindle FreeTime service and, ultimately, to requiring passwords for such purchases.

The FTC filed its lawsuit against Amazon in July 2014, seeking an order requiring Amazon to refund consumers for the in-app charges. The FTC also asked the court to permanently ban Amazon from billing account holders for in-app charges without their consent. That same year, the FTC reached settlements with Apple Inc. and Google Inc. related to similar practices and requiring the companies to offer over \$50 million in customer refunds.

In finding liability, the court found that all three prongs of the FTC's "unfairness" test had been met:

1. Amazon's billing customers without express permission caused substantial consumer injury that was not offset by Amazon's offer of refunds; in fact, the court found that the time spent pursuing refunds constituted additional injury.
2. Consumers could not reasonably avoid their injuries because Amazon did not adequately disclose the presence of in-app purchases, nor did it require affirmative assent to the charges.
3. The court was not convinced that Amazon's goal of a streamlined mobile experience would be disrupted by offering password prompts for in-app purchases. Rather, the court concluded that clear disclosures and authorization requests on the front-end might have improved customers' experience. Nor did the court accept Amazon's argument that requiring affirmative assent would have stifled innovation.

The court's finding applies to "all in-app charges made by account users without express, informed authorization," and directed the parties to submit more detailed information on damages. Finally, the court declined to impose a permanent injunction against Amazon, finding no evidence that Amazon would engage in such behavior in the future.

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