



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

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July 14, 2015

VIA E-MAIL

Louise Pentland (apentland@paypal.com)
General Counsel
PayPal
2211 North First Street
San Jose, CA 95131

Re: PayPal, FTC File No. 15-23228

Dear Ms. Pentland:

As you know, the staff of the Federal Trade Commission's Division of Marketing Practices conducted an investigation into whether PayPal requires consumers to agree to receive telemarketing calls in order to use the company's services, in violation of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

Our inquiry was based on the following language set forth in Section 1.10 of PayPal's User Agreement:

1.10 Calls to You; Mobile Telephone Numbers. You consent to receive autodialed or prerecorded calls and text messages from PayPal at any telephone number that you have provided us or that we have otherwise obtained. We may place such calls or texts to (i) notify you regarding your account; (ii) troubleshoot problems with your account (iii) resolve a dispute; (iv) collect a debt; (v) poll your opinions through surveys or questionnaires, (vii) contact you with offers and promotions; or (viii) as otherwise necessary to service your account or enforce this User Agreement, our policies, applicable law, or any other agreement we may have with you. The ways in which you provide us a telephone number include, but are not limited to, providing a telephone number at Account opening, adding a telephone number to your Account at a later time, providing it to one of our employees, or by contacting us from that phone number. If a telephone number provided to us is a mobile telephone number, you consent to receive SMS or text messages at that number. We won't share your phone number with third parties for their purposes without your consent, but may share your phone numbers with our Affiliates or with our service

providers, such as billing or collections companies, who we have contracted with to assist us in pursuing our rights or performing our obligations under this User Agreement, our policies, applicable law, or any other agreement we may have with you. You agree these service providers may also contact you using autodialed or prerecorded calls and text messages, as authorized by us to carry out the purposes we have identified above, and not for their own purposes. Standard telephone minute and text charges may apply if we contact you.

PayPal indicated that this provision would go into effect on July 1, 2015, and that customers' only option if they did not want to be contacted in this manner was to discontinue use of PayPal's services. As set forth below, the proposed language raised multiple issues under the TSR.

Telephone calls that contact consumers "with offers and promotions" are "telemarketing" calls and are therefore governed by the TSR. 16 C.F.R. § 310.2(dd). Under the TSR, neither PayPal, nor its affiliates or service providers, can place telemarketing calls to telephone numbers on the National Do Not Call Registry unless one of the exceptions set forth in the Rule apply. *Id.* § 310.4(b)(iii)(B). One of the exceptions allows telemarketing calls to numbers on the National Do Not Call Registry if the consumer has provided express written consent to receive such calls. *Id.* § 310.4(b)(iii)(B)(i). The proposed language in Section 1.10 of the User Agreement, however, does not satisfy the requirements of this exception because: (A) the consumer must specify the phone number to which such calls may be placed – calls cannot be placed to any telephone number "otherwise obtained;" (B) the request seeking the consumer's written consent must be clear and conspicuous and cannot be buried in a lengthy user agreement; and (C) any written consent provided by a consumer can only extend to a "specific party" – not to unidentified affiliates and service providers. *Id.*

In addition, the TSR has specific requirements for telemarketing calls that deliver a prerecorded message, commonly referred to as robocalls. *Id.* § 310.4(b)(v)(A). Under the TSR, telemarketing robocalls are illegal – even if placed to a number not on the National Do Not Call Registry – unless the consumer has provided the company with express written consent to receive telemarketing robocalls. *Id.* The proposed language in Section 1.10 fails to meet the robocall express written consent requirement for the same reasons set forth above. *Id.* § 310.4(b)(v)(A). In addition, the purported consent is invalid because it is a condition to use PayPal's services *Id.* § 310.4(b)(v)(A)(ii).

On June 29, 2015, PayPal revised the proposed language in Section 1.10 of the User Agreement to address our TSR concerns. The new language reads as follows:

1.10(a) Contacting You. In order to contact you more efficiently, we may at times contact you using autodialed or prerecorded message calls or text messages at the telephone number(s) you have provided us. We may place such calls or texts to (i) provide notices regarding your Account or Account Activity, (ii) investigate or prevent fraud, or (iii) collect a debt owed to us. You

agree that we and our service providers may contact you using autodialed or prerecorded message calls and text messages to carry out the purposes we have identified above. We may share your phone number(s) with service providers with whom we contract to assist us in pursuing these interests, but will not share your phone number(s) with third parties for their own purposes without your consent. Standard telephone minute and text charges may apply. We and our service providers will not use autodialed or prerecorded message calls or texts to contact you for marketing purposes at the telephone numbers(s) you designate unless we receive your prior express written consent.

1.10(b) Your Choices. You do not have to consent to receive autodialed or prerecorded message calls or texts in order to use and enjoy PayPal's products and services. Where PayPal is required to obtain your consent for such communications, you may choose to revoke your consent by contacting customer support by clicking here and informing us of your preferences.

Upon review of this matter, we have concluded that we will not recommend enforcement action at this time. We considered two primary factors in reaching this decision. First, the revised language appears to address the TSR issues identified above. Second, because this new language was implemented prior to the July 1, 2015 effective date, it does not appear that PayPal made any telemarketing calls to customers on the basis of the original proposed version of Section 1.10 of the User Agreement.

Our decision not to pursue enforcement action should not be construed as a determination that a violation did not occur, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take further action as the public interest may warrant.

Sincerely,



Lois C. Greisman
Associate Director
Division of Marketing Practices

cc: Jack Christin (via e-mail)