

## Advertising, Marketing & Promotions Alert

November 2022

# Vonage to Pay FTC \$100 Million to Settle Dark Patterns Suit

Internet telephone services provider Vonage agreed to pay the Federal Trade Commission (FTC) a hefty \$100 million to settle the agency's lawsuit alleging Vonage used dark patterns to deter customers from canceling its service. The FTC said in a Nov. 3 [statement](#) that the money will be used to refund consumers that Vonage illegally continued to charge.

The FTC defines "dark patterns" as user interface design practices that trick or manipulate consumers into making choices they would not otherwise have made and that may cause consumers harm.

### Customer Harm Alleged

Vonage automatically bills consumer and small-business customers on a monthly basis for its services, known as Voice over Internet Protocol (VoIP). In a [complaint](#) filed in a New Jersey federal court, the FTC accused Vonage of providing several ways for customers to easily sign up for service while deliberately making the cancellation process difficult. As a result, customers were forced to continue paying for service they no longer wanted.

The elimination of the cancellation options harmed customers, according to the FTC. Starting in 2017, the company allowed customers to cancel their service only by talking to a live agent on the phone, and Vonage made that cancellation process difficult by failing to post the phone number in a prominent place on its website and failing to consistently transfer customers to that number from the main customer service number. The company also reduced the hours that line was available and failed to call back customers as promised.

The FTC alleged Vonage also sprang junk fees on customers when they tried to cancel, including an early termination fee that was not clearly disclosed when they



signed up for Vonage service, and continued to charge customers even after they canceled their service. When customers called to complain about the continuing charges, Vonage gave only partial refunds of the unauthorized charges.

### Settlement Reached

The FTC alleged Vonage violated Section 53(b) and Section 57b of the Federal Trade Commission Act and Section 5 of the Restore Online Shoppers' Confidence Act (ROSCA). The agency sought a permanent injunction and a monetary judgment.

Vonage agreed to settlement terms laid out in a [proposed order](#) that require the company to:

1. Cease unauthorized charges and obtain consumers' express, informed consent to all charges.
2. Implement a simplified cancellation process that is easy to find, easy to use and available through the same method that the consumer used to enroll, for example, a website or email address.
3. Stop using dark patterns to block consumers' cancellation efforts.

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4. Clearly disclose upfront the terms of any negative option subscription plans, including any action that must be taken to avoid being charged and the timeline within which that action is required.
5. Pay \$100 million to the FTC to provide refunds to consumers harmed by Vonage's practices.

## Shedding Light on Dark Patterns

In September, the FTC issued a report, "[Bringing Dark Patterns to Light](#)," that identifies common dark pattern design elements and the harm dark patterns can cause consumers. Common dark patterns include design elements that:

- Induce false beliefs. Examples include advertisements deceptively formatted to look like independent, editorial content; purportedly neutral comparison-shopping sites that actually rank companies based on compensation; countdown timers on offers that are not actually time-limited; and claims that an item is almost sold out when there is actually an ample supply.
- Hide or delay disclosure of material information. Examples include burying key limitations of the product or service in lengthy Terms of Service documents that consumers don't see before making the purchase.
- Lead to unauthorized charges. In a common dark pattern resulting in unauthorized charges, a company offers a free trial period that is followed by an undisclosed recurring subscription charge if the consumer fails to cancel. A related dark pattern makes it difficult for consumers to cancel subscription services, resulting in ongoing recurring charges.
- Obscure or subvert privacy choices. Dark patterns that subvert consumer privacy preferences often take the form of an illusion of choice that actually nudges consumers toward increased data sharing. For example, such dark patterns do not allow consumers to definitively reject data collection or use; repeatedly prompt consumers to select settings they don't want; present confusing toggle settings that lead consumers to make unintended privacy choices; purposely obscure consumers' privacy choices and make them difficult to access; highlight a choice that results in more information collection while graying out the option that limits such practices; and present default settings that maximize data collection and sharing.

The settlement is significant in illustrating the aggressive approach taken by the FTC with respect to investigating dark patterns and also the potential costs for companies allegedly engaging in these practices. Because the FTC provides no bright line test for when a user interface may be considered manipulative and unlawfully subverts the will of consumers, companies should be aware of the dark pattern design elements that have been identified by FTC. Companies should also carefully review their user interfaces and make sure that consumers can easily understand how their information is used and easily understand and exercise their choices.

To learn more about dark patterns, read our recent alert, [here](#).

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## Related Professional

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