

Banking and Finance Law Daily Wrap Up, ENFORCEMENT ACTIONS— **CFPB alleges ACTIVE Network used dark patterns to collect millions in** **junk fees, (Oct. 19, 2022)**

Banking and Finance Law Daily Wrap Up

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By Patricia K. Ruiz, J.D.

The lawsuit alleges that, despite generating more than \$300 million in fees, few consumers redeemed their membership benefits.

The Consumer Financial Protection Bureau has filed suit against ACTIVE Network, a payment platform used by families through the U.S. to sign up for community activities, the agency [announced](#). The [lawsuit](#) follows a CFPB investigation that found ACTIVE Network engaged in a yearslong campaign using dark patterns to include junk fees in the annual bills of families signing up for community activities.

“The CFPB is suing ACTIVE Network for illegally charging hundreds of millions of dollars in enrollment fees through its use of digital dark patterns and online trickery,” CFPB Director Rohit Chopra said in the release announcing the lawsuit. “People who thought they were just signing up to run in a charity race found out too late that the company was running away with their money.”

Violations of federal law. An amended complaint, filed in the U.S. District Court for the Eastern District of Texas, alleges that ACTIVE violated the Consumer Financial Protection Act by driving up enrollments using sophisticated design techniques to enroll families in Active Advantage memberships they did not want. It alleges that, for years, ACTIVE automatically and unlawfully enrolled families into its discount club by using dark patterns, or hidden tricks or trapdoors that companies build into their websites to get consumers to inadvertently click links, sign up for subscriptions, or purchase products or services. As a result, consumers who believed they were only registering for a community event actually ended up being enrolled in a costly membership club. While Active Advantage memberships include a 30-day free “negative option trial membership,” the memberships automatically begin charging annual membership fees of \$89.95 at the end of the trial period if consumers do not cancel their membership during the 30-day trial. Further, the CFPB alleged ACTIVE failed to notify Active Advantage members of fee increases in writing and including the date of the new payment at least 10 days before charging members, in violation of the Electronic Fund Transfer Act and its implementing regulations.

Junk fees. The complaint alleges ACTIVE generated more than \$300 million in fees from about 3 million Active Advantage memberships since July 21, 2011. In that time, members who signed up through the inserted enrollment offers redeemed only a fraction of alleged membership benefits. The CFPB seeks to require ACTIVE to change its unlawful enrollment practices, reimburse customers, and pay a penalty. A separate [statement](#) by Director Chopra on the complaint said that the lawsuit illustrates several areas of focus for the CFPB: (1) the employment by financial services firms of digital dark patterns; (2) reduction of unwanted junk fees; and (3) a safe and fair payments system that allows Americans to make payments seamlessly and know how much they are transferring and to whom.

State sanctions. Previously, Iowa and Vermont separately sanctioned ACTIVE for violating state consumer financial protection laws, resulting in settlements that only applied to ACTIVE’s enrollment schemes in those individual states.

Companies: ACTIVE Network

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