



INDUSTRY ADVISORY

Club Renewals

The purpose of this advisory is to alert licensees to legal requirements regarding subscription services or other purchasing agreements, which most commonly operate in the alcoholic beverage industry as wine clubs, beer-of-the-month clubs, and spirits clubs. Typically, members sign up over the Internet, at a manufacturer's tasting room, or at a retail location, and by agreeing to receive future shipments or deliveries of wine, beer, or spirits, they effectively become subscribers to the licensee's offering of products.

These clubs have differing rules regarding membership, but to the extent they are creating a paid subscription or purchasing agreement that is automatically renewed, they must comply with California and Federal statutes that regulate such purchasing arrangements. The Department has not received any formal complaints that any of its licensees are out of compliance with these statutes, but the Department is aware that allegations of such non-compliance have been made against one or more of its licensees. Given the prevalence of such clubs, the Department wants to ensure that its licensees are aware of the legal requirements concerning renewals, whether in clubs they manage or in clubs that are managed for them by third-party marketers. The Department does not intend this advisory to be a comprehensive set of legal guidelines pertaining to these issues, and we encourage all licensees to review the rules governing their clubs with an appropriate compliance advisor.

The following are terms defined in California Business and Professions Code section 17601:

Automatic Renewal means a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term. It also includes "free trial" offers that convert to automatic payment unless cancelled by the consumer. Automatic Renewal does not include a paid subscription or purchasing agreement that terminates after a set period unless the customer takes affirmative steps to extend or renew.

Automatic Renewal Offer Terms mean the following clear and conspicuous disclosures:

- (a) A statement that the subscription or purchasing agreement will continue until the consumer cancels;
- (b) A description of the cancellation policy that applies to the offer;
- (c) The recurring charges that will be charged as part of the automatic renewal plan; and that the amount of the charge may change (if applicable); and the amount to which the charge will change (if known);
- (d) The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer; and
- (e) The minimum purchase obligation, if any.

In order for an Automatic Renewal offer or subscription to be lawful under California law, Business and Professions Code sections 17601 and 17602 require the business operating the service do the following:

Disclosure: The business must disclose automatic renewal offer terms in a clear and conspicuous manner and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to offer. Clear and conspicuous means:

- (a) In larger type than the surrounding text, or
- (b) In contrasting type, font, or color to the surrounding text of the same size, or
- (c) Set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language.

Consent: The business must obtain affirmative consent before charging the consumer;

Acknowledgment: The business must provide a retainable acknowledgment containing the automatic renewal offer terms and cancellation information; and

Cancellation: The business must provide a toll-free number, email address, postal address, or another cost-effective, timely, and easy-to-use mechanism for cancellation; in addition, the business must allow online cancellation when the offer is accepted online.

Two entities enforcing these laws, the California Automatic Renewal Taskforce and the Federal Trade Commission, consider the affirmative consent requirement satisfied when a business provides a check-box, signature, or other substantially similar method that a consumer must click, sign, or select in order to accept the Automatic Renewal Offer Terms.

Wine, beer, and spirits clubs, as well as other subscription services, that do not comply with these requirements (and similar requirement under federal law) potentially violate the following statutes: California Automatic Purchase Renewals (Bus. and Prof. Code § 17600 et seq.), California Unfair Competition law (Bus. and Prof. Code § 17200 et seq.), and the Federal Restore Online Shopper's Confidence Act (15 USC § 8401, et seq.). These statutes have enforcement mechanisms that can result in substantial penalties, damages, and injunctive relief. In addition, licensees who violate these provisions are subject to potential disciplinary action by the Department for engaging in sales that violate provisions of the California Alcoholic Beverage Control Act relating to prohibited sales and marketing activities. (Bus. and Prof. Code § 24200.)

If you have any questions regarding this advisory, please contact your compliance professional or the Department's Trade Enforcement Unit at (916) 419-2500.