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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

VICTOR WALKINGEAGLE; and
NATHAN BRIGGS, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC, d/b/a YOUTUBE, a
Delaware limited liability company; and
YOUTUBE, LLC, a Delaware limited
liability company,

Defendants.

Case No. 3:22-cv-00763-MO

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR VIOLATION OF
OREGON'S UNLAWFUL TRADE
PRACTICES ACT ("UTPA"),
ORS 646.608(1)(ttt) and ORS 646.608(1)(sss)**

JURY TRIAL DEMANDED

Plaintiffs Victor Walkingeagle and Nathan Briggs (collectively, “Plaintiffs”) bring this action individually and on behalf of all others similarly situated against Defendants Google LLC, d/b/a YouTube, and YouTube, LLC, (collectively, “YouTube” or “Defendants”). Plaintiffs make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to allegations specifically pertaining to themselves and their counsel, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a putative class action lawsuit against Defendants for engaging in an illegal “automatic renewal” scheme with respect to their subscription plans for YouTube-branded products and services that are available exclusively to consumers who enroll in Defendants’ auto-renewal membership programs (collectively, the “YT Subscriptions,” enumerated below). Defendants own and operate a media-sharing platform, YouTube, which is an American online video sharing and social media platform that contains, among other things, videos created by individuals and entities that have registered with YouTube and uploaded their videos to a “channel.” YouTube is accessible as a website at youtube.com (the “YT Website”), or as a mobile application or an application on a set top streaming device (collectively, the “YT Apps”) (together with the YT Website, the “YouTube Platform”). Relevant to Plaintiffs’ allegations, when consumers sign up for the YT Subscriptions, Defendants actually enroll consumers in a program that automatically renews the YT Subscriptions from month-to-month or year-to-year and results in monthly or annual charges to the consumer’s credit card, debit card, or third-party payment account (“Payment Method”). In doing so, Defendants fail to provide the requisite disclosures and authorizations required to be made to Oregon consumers under Oregon’s Automatic Renewal Law (“ARL”), ORS 646A.295, in direct violation of Oregon’s Unlawful

Trade Practices Act (“UTPA”), ORS 646.608(1)(ttt), and under Oregon’s Free Offer Law (“FOL”), ORS 646.644, in violation of Oregon’s Unlawful Trade Practices Act (“UTPA”), ORS 646.608(1)(sss).

2. With more than 2.5 billion monthly users who collectively watch more than one billion hours of videos each day, it is the second most visited website in the world.¹ While the basic features of the YouTube Platform are free to use, Defendants offer various products and features that are only available to paid subscribers. Specifically, Defendants offer the following fee-based automatic renewal membership programs: YouTube TV, YouTube Music, and YouTube Premium (collectively, the “YT Subscriptions”). YouTube TV is a subscription-based service that provides paying subscribers in the United States access to exclusive YouTube content, premium channels, and film rentals via authorized devices. YouTube Music and YouTube Premium are subscription-based services that offer, among other things, premium and ad-free music streaming and ad-free access to all YouTube content, including exclusive content commissioned from notable YouTube personalities. Consumers may sign up for Defendants’ YT Subscriptions through the YT Website and, in some cases, the YT Apps.²

3. Through the YouTube Platform, Defendants market, advertise, and sell to consumers in Oregon paid memberships to the YT Subscriptions. To sign up for Defendants’ YT Subscriptions through the YT Website or the YT Apps, customers provide Defendants with

¹ See Statista, *Most popular social networks worldwide as of January 2022, ranked by number of monthly active users* (July 2022), <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>

² Effective March 13, 2020, “YouTube TV [no longer] accept[s] new signups through in-app subscriptions on the iPhone and iPad[.]” <https://www.macrumors.com/2020/02/13/youtube-tv-app-store-subscriptions-ending/> (citing Defendants’ email to all YouTube TV subscribers dated February 13, 2020). Thus, all subscribers who have enrolled in Defendants’ YouTube TV subscription program since then must have subscribed to YouTube TV via the YT Website. However, prior to that point, customers were able to initiate a paid YouTube TV subscription via *either* the YT Website *or* the YT Apps.

their billing information and Defendants then automatically charges their customers' Payment Method as payments are due, typically on a monthly or annual basis. Defendants are able to unilaterally charge its customers renewal fees without their consent, as Defendants are in possession of their customers' billing information. Thus, Defendants have made the deliberate decision to charge Plaintiffs and other similarly situated customers on a monthly or yearly basis, absent their consent under the ARL, relying on consumer confusion and inertia to retain customers, combat consumer churn, and bolster its revenues.

4. Pursuant to the ARL, online retailers who offer automatically renewing subscriptions to Oregon consumers must: (i) provide the complete automatic renewal offer terms in a clear and conspicuous manner and in visual proximity to the request for consent prior to the purchase, *see* ORS 646A.295(1)(a); *see also* ORS 646A.293(5)(a)-(e) (setting forth definition of "offer terms" as used in ORS 646A.295); (ii) obtain consumers' affirmative consent to the purchase prior to charging their Payment Methods in connection with the subscriptions, *see id.* § 646A.295(1)(b); and (iii) provide an acknowledgment that includes the automatic renewal offer terms and identifies a cost-effective, timely, and easy-to-use mechanism for consumers to cancel their subscriptions, *see id.* §§ 646A.295(1)(c), 646A.295(2).

5. Consumers purchasing the YT Subscriptions do so either by choosing a free trial that automatically renews with a paid subscription at the end of the trial period, or a paid monthly or annual subscription (at either the full standard recurring rate that Defendants ordinarily charge or at a promotional or discounted rate that remains static for a limited period of time and then automatically renews to the full standard rate). As will be discussed below, the enrollment process for a YT Subscription on the YT Website and Apps uniformly violates each of the core requirements of the ARL. Defendants also make it exceedingly difficult and

unnecessarily confusing for consumers to cancel their YT Subscriptions.

6. Specifically, Defendants systematically violate the ARL by: (i) failing to present the automatic renewal offer terms in a clear and conspicuous manner and in visual proximity to the request for consent to the offer before the subscription or purchasing agreement is fulfilled, in direct violation of Section 646A.295(1)(a) of the ARL; (ii) charging consumers' Payment Method without first obtaining their affirmative consent to the agreement containing the automatic renewal offer terms, in direct violation of Section 646A.295(1)(b) of the ARL; and (iii) failing to provide an acknowledgment that includes the automatic renewal offer terms and information regarding how to cancel in a manner that is capable of being retained by the consumer, in direct violation of Section 646A.295(1)(c) of the ARL. *See* ORS 646A.293(5)(a)-(e) (defining "offer terms" as used in ORS 646A.295). The acknowledgment also fails to disclose a toll-free telephone number or describe another cost-effective, timely, and easy-to-use mechanism for cancellation, and in fact Defendants make it exceedingly difficult and unnecessarily confusing for consumers to cancel their YT Subscriptions, in violation of Section 646A.295(2) of the ARL.

7. As a result, all goods, wares, merchandise, or products sent to Plaintiffs and the Class under the automatic renewal of continuous service agreements are deemed to be "unconditional gifts" under the ARL. ORS 646A.295(5).

8. For the foregoing reasons, Plaintiffs bring this action individually and on behalf of all Oregon purchasers of any of Defendants' YT Subscriptions from the YT Platform who, within the applicable statute of limitations period up to and including the date of judgment in this action, incurred unauthorized fees for the renewal of their YT Subscriptions. Based on Defendants' unlawful conduct, Plaintiffs seek damages (including statutory and punitive

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