

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ADOREME, INC., a corporation, also d/b/a
ADORE ME and ADOREME.COM, CORP.,

Defendant.

Case No. _____

PLAINTIFF

4.

DEFENDANT'S BUSINESS ACTIVITIES

8. Since at least January 2012, Defendant has advertised, marketed, promoted,

that can be used to purchase Defendant's apparel. Consumers who do not join the VIP program may purchase items individually from Defendant at higher prices on a "Pay As You Go" basis.

Defendant Misrepresented that Store Credit Can Be Used "Anytime"

12. From at least January 2012 to 2016, to induce consumers to join the VIP program and buy apparel, Defendant advertised that store credit could be used "anytime" to purchase its apparel. Defendant disseminated or caused to be disseminated advertisements, including but not limited to those attached as Exhibits A through D, containing such claims. For example:

A. The checkout cart or "shopping bag" of Defendant's website advertised, in pertinent part: "Each month just 'skip' before the 5th (and pay nothing) or be charged a \$39.95 credit you can use anytime[.] ☺" Ex. A.

B. A list of Frequently Asked Questions on Defendant's website advertised, in pertinent part: "**Q: What if I forget to skip the month? A: No problem!** You'll be charged a store credit to be used for any future purchase." Ex. B (emphasis in original).

C. A graphic in Defendant's promotional emails advertised, in pertinent part, "If you do not make a purchase or skip the month by the 5th, **you'll be charged a \$39.95 store credit** that can be used anytime to buy anything on Adore Me." Ex. C (emphasis in original).

D. A package insert mailed to VIPs advertised, "Your only obligation as a VIP is to visit your showroom between the 1st and the 5th of each month, then either **shop or skip the month**. If you don't take action, you'll be charged a \$39.95 store credit to shop with anytime on AdoreMe.com[.]" Ex. D (emphasis in original).

13. Although Defendant claimed in writing that store credit can be used “anytime” to purchase its apparel, Defendant’s written business policy for “Using Credits” or “Using Store Credits” from at least January 2012 to May 20, 2016 provided that “[u]nused [store] credits will be forfeited if your Adore Me membership is terminated for any reason—whether you choose to cancel or if Adore Me cancels your membership for any reason.”

14. Defendant did not clearly and conspicuously disclose the store credit forfeiture policy to consumers before enrolling consumers in the VIP program. Consumers were able to enroll in the VIP program without seeing this policy or a description or disclosure thereof. The policy appeared over 1,000 words into the terms and conditions of the VIP program, a legal document accessible from a hyperlink at the bottom of Defendant’s website. The hyperlink to this document often appeared “below the fold,” *i.e.*, below the portion of a web page that a user can see on a typical computer monitor without scrolling down the page. Similarly, the policy itself appeared “below the fold,” so consumers typically would have to scroll down the terms and conditions of the VIP program several times to find it.

15. From at least May 2015 to May 2016, Defendant enforced the policy described in

memberships in the VIP program and deemed their unused store credit to be forfeited.

Defendant thereby voided store credit that consumers paid for and otherwise could have used to purchase Defendant's apparel.

17.

cancelled after those consumers initiated chargebacks.

30. Therefore, Defendant's representation described in Paragraph 28 is false, and constitutes a deceptive act or practice, in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATION OF THE RESTORE ONLINE SHOPPERS' CONFIDENCE ACT

31. In 2010, Congress passed the Restore Online Shoppers' Confidence Act, 15 U.S.C. §§ 8401 *et seq.*, which became effective on December 29, 2010. In passing ROSCA, Congress declared that "[c]onsumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business." Section 2 of ROSCA, 15 U.S.C. § 8401.

32. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as that term is defined in the Commission's Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.2(w), unless the seller, among other things, provides a simple mechanism for a consumer to stop recurring charges. *See* 15 U.S.C. § 8403.

33. The TSR defines a negative option feature as a provision in an offer or agreement

jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

40. Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Section 5 of ROSCA, 15 U.S.C. § 8404, and the Court's own equitable powers, requests that the Court:

- A. Enter a permanent injunction to prevent future violations of the FTC Act and ROSCA by Defendant;
- B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act and ROSCA, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
- C. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

DAVID SHONKA
Acting General Counsel

Dated: 11/20/2017



EXHIBIT A

EXHIBIT B



\$39.95 VIP
\$49.95 Reg

Brn Size: Maude
Plum Size: Maude
Quantity:

Edit Save

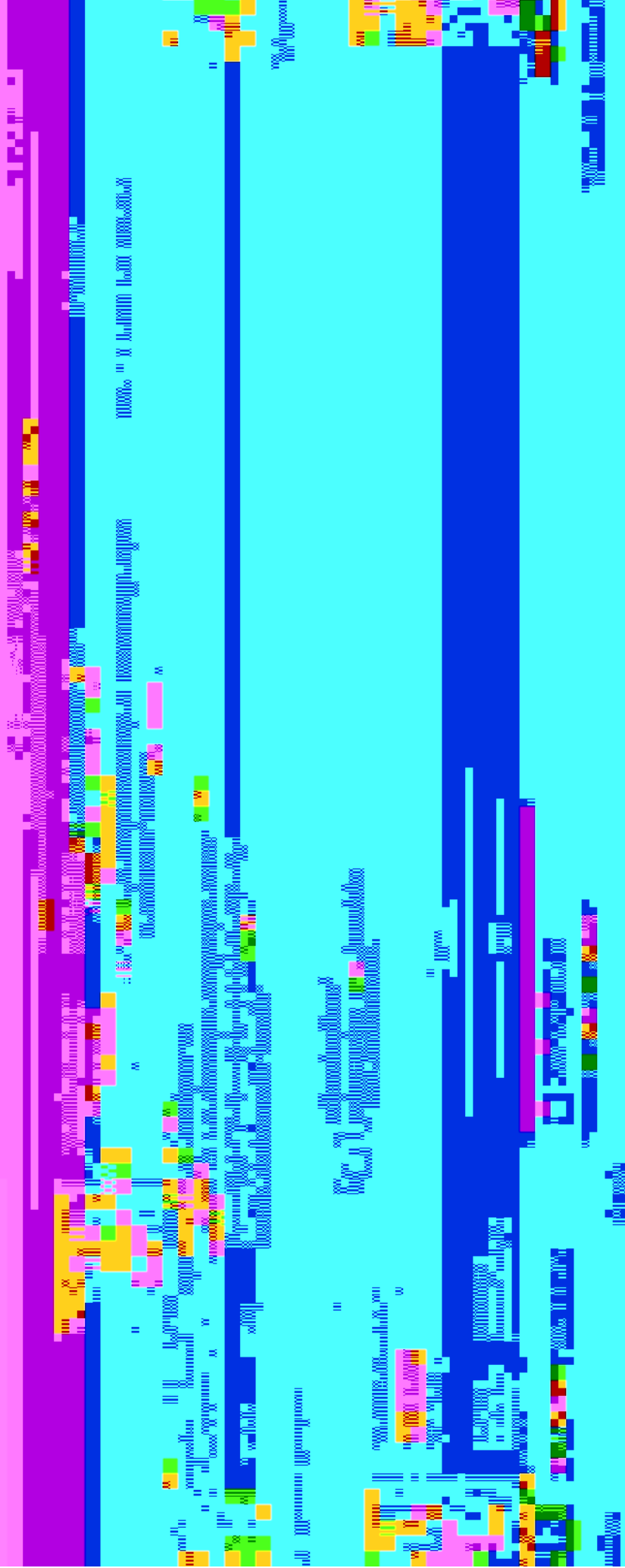
Q: Do I have to buy something every month?

A: No! You can just skip the month if you don't feel like

Select your checkout method to continue.

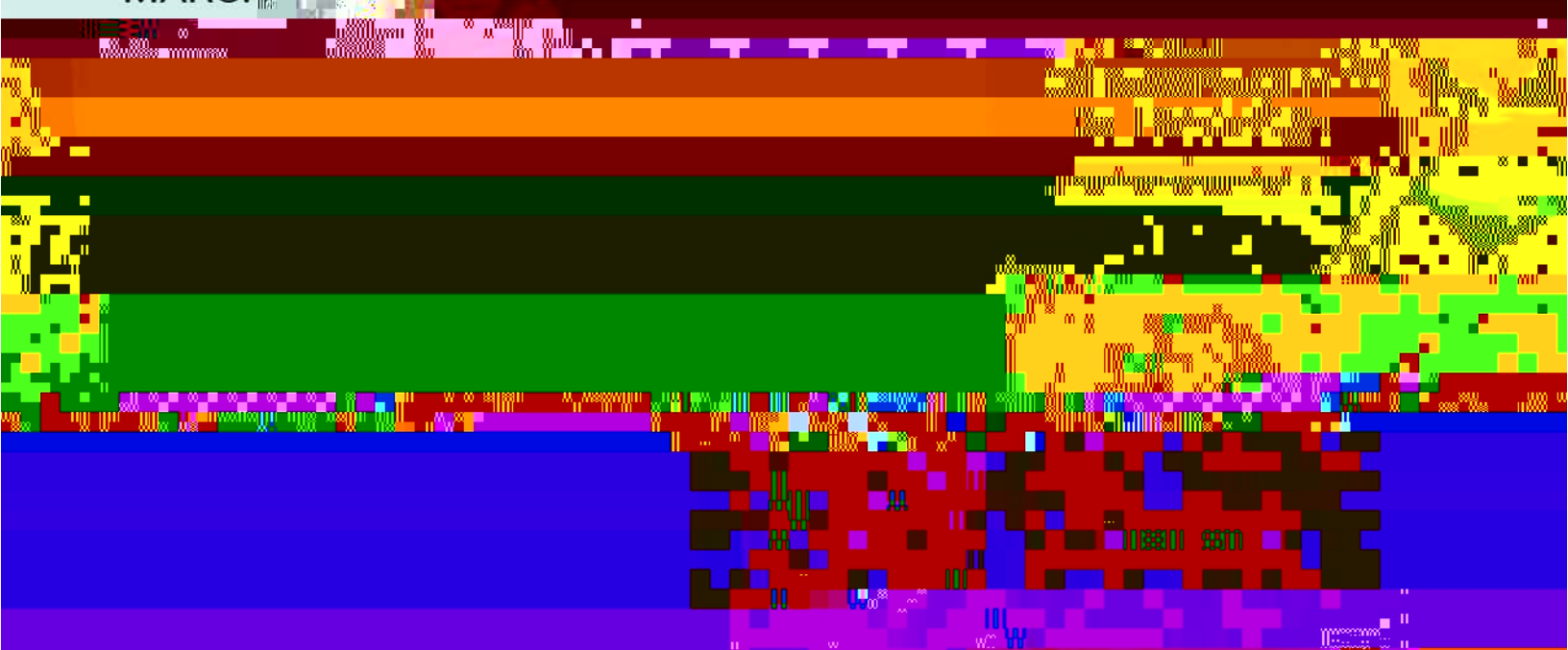
Q: Will I be charged every month?

A: Not at all! Simply show us when you want to shop.

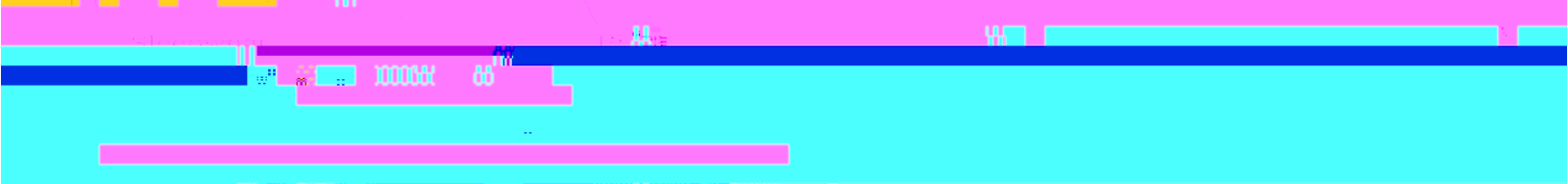
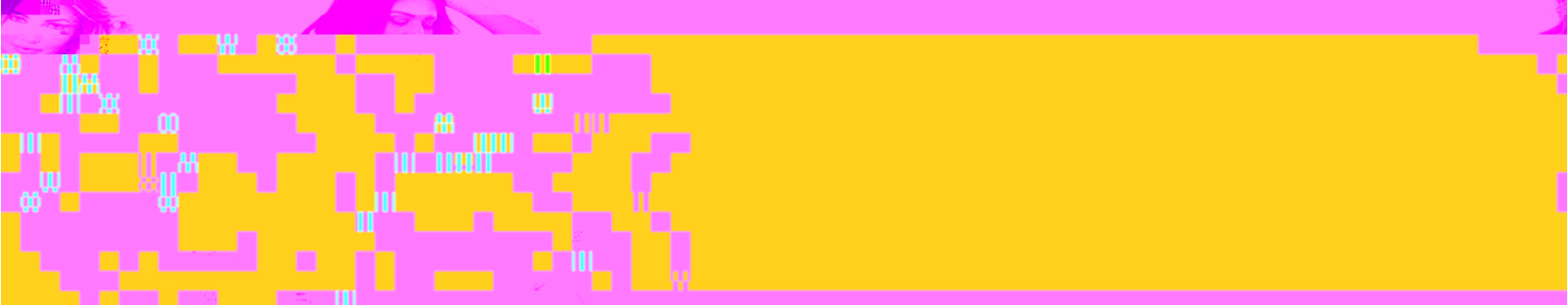


ADORE ME

EXHIBIT C



New Arrivals



www.marco.com

