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Ms. Parent,

I write in regard to certain “post-transaction marketing” services which have attracted widespread public concern (including multiple class-action lawsuits, multiple state attorney general lawsuits, and a Senate investigation) for a combination of deceptive tactics, including:

- interrupting users’ check-out processes to display offers entirely unrelated to the purchases users requested, at a time when users reasonably expect to interact only with the specific sites they requested;
- promising “savings” or “cash back” for what is actually a paid membership club, where few if any users achieve any actual savings;
- claiming user consent from a large and prominent button, whereas an option to decline is far harder to find;
- presenting relevant disclosures in a location, format, and style where reasonable consumers will neither notice nor understand; and
- transferring users’ payment card numbers from affiliate merchants without users ever providing their card numbers to the specific companies that in fact charge users’ cards.

I recognize that American Express cannot police all improper charges that pass through its network. But post-transaction marketers deserve special scrutiny from American Express for their haphazard treatment of users’ payment card numbers. In particular, if consumers cannot trust American Express merchants to hold their card numbers in confidence, consumers will be less inclined to pay by American Express.

American Express’s publicly-posted “Merchant Reference Guide” features multiple provisions directly on point. For example, the Rules indicate that cardmember data is confidential, and merchants “must not disclose” such data for unrelated transactions (rule 3.4). Moreover, the Rules require that a merchant “ask the Cardmember to provide” a card number (4.6). In contrast, post-transaction marketers copy card numbers from other merchants, exactly bypassing the “ask ... provide” requirement.

American Express need not sit idly by the wayside while its rules are flouted, to consumers’ detriment and to the detriment of the trust and reputation of the American Express network. I look forward to American Express taking action to protect customers from these important problems.

Respectfully,

Benjamin Edelman