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FTC Consumer Protection Updates: (2018-2024)

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For many years, the Federal Trade Commission's wonderful Lesley Fair maintained a substantive outline of FTC precedent and activity. She provided this as a CLE handout at the many conferences she attended, where she gave her FTC Review keynotes. (The worst thing for every presenter at these conferences was to have the great misfortune to follow Lesley.) Many practitioners grabbed a copy before they left, anxious to have her most recent update. Along with many changes at the FTC, this outline does not appear to be maintained and distributed any longer. As a dedication to Lesley, and to all the amazing people who have worked over the years in the FTC's Division of Consumer and Business Education, we humbly offer our compilation, looking at FTC developments over the last six years. We welcome your feedback about how the outline can be tailored and modified down the road. And of course, if you are not fans of long outlines, we can always recommend the BakerHosts AD Nauseum podcast to get your bi-monthly listening updates about the FTC and NAD.

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I. FTC AUTHORITY & PROCEDURE

a. SCOTUS Limits the Power of the FTC

- i. On April 22, 2021, the Supreme Court, in *AMG Capital Management, LLC v. FTC*, found that Section 13(b) of the Federal Trade Commission (FTC) Act does not authorize the FTC to seek equitable monetary relief. The unanimous decision criticized the Commission’s use of their Section 13(b) authority to seek monetary awards. Justice Breyer, in a unanimous decision, ruled that Congress never intended for Section 13(b)—which expressly authorizes only injunctive relief—to authorize the FTC to obtain monetary equitable relief in the form of disgorgement or restitution. The FTC can still seek monetary relief through the administrative process, but this takes longer and has a higher standard than the procedure the FTC was able to use for decades under Section 13(b).
- ii. The ruling settled a circuit split but removes a significant arrow from the quiver of FTC action. As noted by then-Acting Chairwoman Rebecca Slaughter, the FTC had used Section 13(b) to recover \$11.2 billion in funds for consumers over the preceding five years. The FTC is advocating for Congress to restore this enforcement mechanism.
- iii. In addition to the administrative process, the FTC can seek equitable relief through other rules and statutes. Alternatively, the FTC may now more frequently partner with other federal agencies or state attorneys general to seek restitution.
- iv. On April 14, 2023, the Supreme Court, in *Axon Enterprise, Inc. v. Federal Trade Commission*, found that respondents in federal administrative proceedings can assert constitutional challenges in federal district court prior to the resolution of the administrative proceeding.
- v. On June 28, 2024, the Supreme Court decided *Loper Bright Enterprises v. Raimondo*. In a decision that may have far-reaching impact on the administrative state, SCOTUS struck down the (in)famous *Chevron* doctrine (when a statute is ambiguous, a court defers to a reasonable agency interpretation). Although *Loper* may not have a dramatic effect on the FTC’s traditional law enforcement under the FTC Act, *Loper* will likely be in play when the FTC attempts to get more creative—e.g., developing new theories of liability and perhaps expanding concepts of unfairness.

b. FTC Notices of Penalty Offenses

- i. The FTC resurrected its synopsis tool, renaming it “Notice of Penalty Offenses,” and sent letters to businesses putting them on notice of prior litigated administrative decisions, which will allow the FTC to seek civil penalties against recipients of those letters for similar violations.

- ii. In October 2021, the FTC sent letters to:
 - 1. 700 of the largest consumer advertisers, detailing practices concerning use of endorsements and testimonials that it finds deceptive, including use of influencers and consumer reviews.
 - 2. 1,100 businesses that offer money-making opportunities, detailing earnings and money-making claims that it finds deceptive.
 - 3. 70 for-profit colleges and higher education institutions, detailing unlawful practices concerning unsupported earnings claims for graduates.

- c. Other FTC Updates
 - i. FTC/NLRB: Memorandum of Understanding
 - 1. In June 2022, the FTC and the National Labor Relations Board (NLRB) entered into a new Memorandum of Understanding described as “a partnership between the agencies that will promote fair competition and advance workers’ rights.” The new agreement, which allows the two entities to collaborate closely by sharing information, conducting cross-training for staff and partnering on investigative efforts, also outlines ways in which the FTC and NLRB will work together on key issues such as (i) labor market concentration, (ii) one-sided contract terms and (iii) labor developments in the “gig economy.” According to the FTC, the agreement is part of a broader initiative and commitment to labor and workers.

 - ii. Focus on Discriminatory Artificial Intelligence
 - 1. In April 2021, the FTC issued a warning via blog post that discriminatory AI may violate consumer protection laws, including Section 5 of the Federal Trade Commission Act, the Fair Credit Reporting Act and the Equal Credit Opportunity Act. The blog post’s interpretation of Section 5 of the FTC Act is broad, categorizing racially biased algorithms as an unfair or deceptive practice. The blog post outlines actions brands can take to avoid discrimination, including using balanced and unbiased data as a base, testing the algorithm for discriminatory outcomes, relying on transparency frameworks and independent standards and telling the truth about what the algorithm can and can’t do, as well as how they collect and use the data that contributes to the algorithm. Ultimately, the FTC will rely on its current standard of fairness to evaluate a brand’s use of AI and will consider a practice unfair if it does more harm than good.

 - 2. In 2023 and 2024, the FTC issued many additional blog posts

discussing the growth of publicly available AI tools and the ability of the FTC to challenge AI practices that may be deceptive or unfair.

iii. Right to Repair

1. Nixing the Fix: An FTC Report to Congress on Restrictions: in May 2021, the FTC sent a report to congress as a result of a congressional directive to report on practices related to repair markets.
2. In July 2021, the FTC voted unanimously to ramp up enforcement against repair restrictions which prevent small businesses, workers and others from fixing their own products.
3. “Nixing the Fix: A Workshop on Repair Restrictions:” The FTC hosted a workshop on repair restrictions in July 2019.

II. INFLUENCER MARKETING AND ENDORSEMENTS

Influencer Marketing and endorsements is a hot topic for the FTC. The FTC’s newly updated Guides Concerning the Use of Endorsements and Testimonials in Advertising (“Endorsement Guides”) illustrates the Commission’s reinvigorated focus on influencers. The updates broadened the definition of “endorser” to include what “appear[s] to be an individual, group, or institution.” Additionally, the FTC announced plans to update its Dot Com disclosures which provides guidance on how to make clear and conspicuous disclosures online.

a. Rules, Guidance, Workshops and Staff Reports

- i. Rule on the Use of Consumer Reviews and Testimonials: In August 2024, the FTC announced a final rule titled “Trade Regulation Rule on the Use of Consumer Reviews and Testimonials.” The Rule prohibits, among other things, fake reviews/testimonials (1) from celebrities that have not used the product or service or (2) misrepresent the experience of celebrities using the product or service. *See Consumer Reviews* for more information.
- ii. FTC Artificial Sweetener Influencer Warning Letters: Promotion of Consumption of Aspartame or Sugar: In November 2023, the FTC sent warning letters to two trade associations, twelve registered dietitians, and other online health influencers based on Instagram and TikTok posts promoting the safety of the artificial sweetener aspartame or the consumption of sugar-containing products. The letters to the trade groups expressed concerns that there was a lack of adequate disclosures that the influencers were hired to promote the safety or aspartame or the consumption of sugar-containing products. In particular, the letters emphasized that there can be situations where a #Ad disclosure is not sufficient to identify the advertiser and should be more descriptive.
 1. In the warning letters, the FTC identified specific posts in which the disclosure of material connections was not disclosed, or the

disclosure was inadequate. Furthermore, the letters included a notice of penalty offenses regarding misleading endorsements and a notice of potential civil penalties for future failures to disclose. The FTC instructed the recipients to contact agency staff within fifteen days with information concerning actions that have or will be taken to address the FTC's concerns.

- iii. E-Cigarette Advertising and Sales in the U.S. Report: On April 3, 2024, the FTC issued its third report on e-cigarette sales and advertising in the U.S., which demonstrated an increase in sales, advertising and promotion by e-cigarette companies between 2020 and 2021. The report also detailed steps taken by e-cigarette companies in 2021 to deter or prevent underage consumers from visiting their website, signing up for mailing lists/loyalty programs, or buying e-cigarette products online.
- iv. Endorsement Guides: On June 29, 2023, the FTC announced that it finalized an updated version of its Endorsement Guides. The Guides provide agency guidance to businesses and others to ensure that advertising through reviews, testimonials, or endorsements remains truthful, and they advise businesses on the kinds of practices that may be unfair or deceptive in violation of the FTC Act. The final revised Guides take the public comments received from the May 2022 request for comments into consideration. Revisions that came from the comments include:
 - 1. “1) articulating a new principle regarding procuring, suppressing, boosting, organizing, publishing, upvoting, downvoting, or editing consumer reviews so as to distort what consumers think of a product; 2) addressing incentivized reviews, reviews by employees and fake negative reviews of a competitor; 3) adding a definition of ‘clear and conspicuous’ and stating that a platform’s built-in disclosure tool might not be an adequate disclosure; 4) changing the definition of ‘endorsements’ to clarify the extent to which it includes fake reviews, virtual influencers and tags in social media; 5) better explaining the potential liability of advertisers, endorsers and intermediaries; and 6) highlighting that child-directed advertising is of special concern.”
- v. Dot Com Disclosures: How to Make Effective Disclosures in Digital Advertising. In June 2022, the FTC announced plans to update its “.com Disclosures: How to Make Effective Disclosures in Digital Advertising” to focus on issues raised by emerging technologies and sought public comment on such revisions. Specifically, the agency seemed interested in addressing disclosures in (i) dark patterns; (ii) social media; and (iii) virtual reality and the metaverse.
- vi. FTC-FDA Vaping Influencer Warning Letters: In June 2019, the FTC and FDA sent four warning letters to firms that manufacture and market flavored e-liquid products citing posts by influencers on social media sites that endorsed the target companies’ products. These posts did not have any warnings that

the products contained nicotine, a requirement by the FDA since August 2018. The lack of warnings constituted a failure to disclose material health or safety risks in advertising as required by the FTC Act’s prohibition on unfair or deceptive practices. Additionally, the warning letters included the FTC’s reminder that social media influencers must clearly and conspicuously disclose their relationships to the brands when promoting or endorsing products through social media.

1. In the warning letters, the FTC instructed the companies to evaluate how their social media policies apply to posts identified in the letters and to posts by other endorsers. If the companies lacked a social media policy, the FTC recommended implementing one.

III. INFLUENCER MARKETING AND ENDORSEMENT CASES

- i. *FTC v. NRRM, LLC*, (E.D. Mo. Jul. 31, 2024). In July 2024, the FTC filed suit against NRRM, LLC d/b/a CarShield, LLC. The FTC alleged, among other things, that CarShield used celebrities who were not CarShield customers in their advertising—all of whom represented that they were customers. CarShield, in settling FTC charges, agreed to pay \$10 million and to ensure that their endorsers’ testimonials are “truthful, accurate and not deceptive.”
- ii. *FTC v. Nudge, LLC*, (D. Utah March 21, 2024). In November 2019, the FTC filed suit against Response Marketing Group, LLC, alleging that the company, its affiliates and principals made false promises in selling consumers expensive real estate investment training programs. In March 2024, the FTC entered a settlement agreement with the company and its principals in which they will pay \$15 million and be banned from selling money-making opportunities. The \$15 million will be used for refunds to consumers. Two of the primary real estate celebrities who endorsed the training have agreed to pay \$1.7 million. The FTC is sending payments to 4,670 consumers.
- iii. *In the Matter of Google LLC and iHeartMedia, Inc.*, (F.T.C. Nov. 22, 2022). The FTC and seven state attorney generals filed suit against Google LLC and iHeartMedia, Inc. The complaint alleged that the companies violated the FTC Act by airing nearly 29,000 advertisements containing endorsements from radio personalities for Google’s Pixel 4 phone who had never actually used the phone. On February 8, 2023, the FTC finalized consent orders against the defendants. Separate state settlements required Google to pay \$9 million and iHeartMedia to pay \$400,000 in civil penalties.
- iv. *FTC v. Teami, LLC et. al.*, (M.D. Fla. Mar. 5, 2020). In March 2020, the FTC filed suit against Teami and its owners alleging that the company (a) made deceptive health claims without scientific evidence about its tea’s ability to help consumers lose weight, fight cancer, clear clogged arteries and treat colds and (b) paid for endorsements from well-known social media

influencers who failed to adequately disclose that they were compensated for their endorsement of the weight-loss product. The parties immediately entered into a settlement agreement that barred Teami from making unsubstantiated health claims or undisclosed endorsements. Teami was also ordered to pay \$15 million in monetary relief. Pursuant to the settlement, in February 2022, the FTC returned more than \$930,000 to consumers who bought tea products that Teami marketed and sold using the allegedly deceptive health claims.

- v. *FTC v. Neurometrix, Inc.*, (D. Mass. Mar. 3, 2020). In March 2020, the FTC entered into a settlement agreement with Neurometrix, the marketers of an electrical nerve stimulation device called Quell. Neurometrix agreed to pay \$4 million and to stop making deceptive claims that the device treats pain throughout the body when placed below the knee. They also agreed to stop claiming the device’s efficacy is clinically proven and that the device has been cleared by the FDA to treat pain throughout the body. The FTC is returning almost \$3.9 million to consumers.

IV. SWEEPSTAKES, CONTESTS AND GAMES

a. Rules, Guidance, Workshops and Staff Reports

- i. Report: *Protecting Older Consumers, 2022-2023, A Report of the Federal Trade Commission*: In October 2023, the FTC released an annual report to Congress on protecting older adults from fraud. The report found that older adults (60+) were more likely to report a loss to a prize, lottery or sweepstakes scam than adults ages 18–59. The report notes the impact of certain enforcement actions on older adults, such as *Publishers Clearing House* (see below). The report also details the FTC’s education and outreach efforts to provide fraud prevention resources to older adults.
- ii. Staff Perspective: *Inside the Game: Unlocking the Consumer Issues Surrounding Loot Boxes*. In August 2020, following the workshop on loot boxes (see below), the FTC staff issued a report to exam The paper calls for meaningful disclosures that allow players to make informed choices, as well as consumer education and improved industry self-regulation.
- iii. Workshop: *FTC Video Game Loot Box Workshop*. In August 2019, the FTC held a workshop on consumer protection issues related to video game loot boxes. Participants were concerned about how loot boxes are marketed to children.

b. Sweepstakes, Contests and Games Cases

- i. *FTC v. Mail Tree Inc., et al.*, (S.D. Fla. May 18, 2015). In June 2024, operators of a sweepstakes scam agreed to a settlement resulting in a permanent ban from operating sweepstakes or “making claims to consumers

about prizes they have won or may win.” The complaint against the operators of the sweepstakes scam was first filed in 2015, in which it was alleged that the defendants operated a sweepstakes operation that took more than \$28 million from consumers by falsely telling them they had won large cash prizes. To collect their cash prizes, the defendants told consumers that they had to mail a \$20–30 fee within a specified window of time. In addition to a permanent ban from involvement in sweepstakes and prize promotion, the defendants are prohibited from any further deception related to any product or service and from using consumer information obtained from the sweepstakes scam.

- ii. *FTC v. Publishers Clearing House, LLC*, (E.D.N.Y. July 21, 2023). As a result of the FTC lawsuit against sweepstakes and contests company Publishers Clearing House, the company agreed to a proposed court order requiring it to pay \$18.5 million to consumers and to enact substantial changes to how it conducts business online. The June 26, 2023, complaint alleged that defendant violated the FTC Act, and the CAN-SPAM Act. The complaint asserted that defendant employed “dark patterns throughout the consumer’s experience.”
- iii. *In the Matter of Tapjoy Inc.*, (F.T.C. Jan. 7, 2021). FTC settled with mobile advertising company Tapjoy over allegations that it failed to provide in-game rewards promised to users. Tapjoy advertised and distributed virtual currency in a variety of mobile games to users who participated in surveys or other types of third-party advertising.
- iv. *FTC v. Next-Gen, Inc. et. al.*, (W.D. Mo. Feb. 22, 2018). The FTC and the state of Missouri reached a settlement with the company Next-Gen and related defendants. The defendants sent mailers that informed consumers they had “won” but would need to pay a fee to collect a prize. Other mailers were allegedly disguised newsletter subscription solicitations and others were games of skill that involved a fee and ultimately an unsolvable puzzle between the purchaser and the prize. The settlement included \$21 million in cash plus personal property and liquidation of the companies; the full amount of \$114.7 million is suspended so long as defendants comply with the settlement. The settlement also requires that the companies be wound down and liquidated and bans the defendants from prize promotions unless the consumers sign up in-person.

V. NEGATIVE OPTION MARKETING / “ROSCA”

Negative Option Marketing encompasses a range of online practices such as automatic and continuity plans. All negative option marketing shares the same feature: a seller interprets a consumer’s silence or failure to take affirmative action as agreement to continue paying for a good or service. Negative Option Marketing is also governed by the Restore Online Shopper’s Confidence Act (“ROSCA”). The Act requires certain online sellers to disclose all the material terms of the transaction and obtain the consumer’s informed consent prior to chagrining the consumer. In 2021, the FTC issued an enforcement policy statement regarding negative option

marketing in which it adopted a stricter position as to what constitutes consumer consent. Following that policy statement, in March 2023, the FTC solicited comments on proposed amendments to its Negative Option Rule. The FTC brought several cases this year alleging unlawful negative option marketing practices and we will likely continue to see a lot of enforcement in this area. Additionally, we will continue to see overlap between negative options and dark patterns (discussed below).

a. Rules, Guidance, Workshops and Staff Reports

- i. Negative Option Rule: On March 23, 2023, the FTC solicited comments on proposed amendments to its Negative Option Rule. The amendments included a “click to cancel” provision requiring sellers to make it easier for consumers to cancel their enrollment in subscriptions and recurring payments. This proposed provision is part of the FTC’s ongoing review of its 1973 Negative Option Rule (“NPRM”). The FTC held a virtual informal hearing on January 16, 2024, on the proposed amendments to the Rule. The administrative law judge (“ALJ”) heard from five speakers about their concerns regarding the impact of the proposed amendments. Following the hearing, the judge designated two issues of disputed material fact. An additional hearing took place on January 31, 2024, during which the designated issues of fact were addressed. An expert report was admitted into evidence during this hearing. After the January 31 hearing, the ALJ ordered a third hearing on February 9, 2024, in which the expert report was discussed. Following the third hearing, the ALJ ended the informal hearing portion of the rulemaking proceeding. The Proposed Rule has still not been finalized.
- ii. Enforcement Policy Statement Regarding Negative Option Marketing. On October 28, 2021, the FTC issued a policy statement that put companies that use negative option subscriptions on notice of potential legal action if they fail to provide clear information, obtain consumers’ informed consent and make cancellation easy. The statement provides a detailed analysis of the FTC’s assessment regarding how disclosures are provided, how consent is obtained and the cancellation process. It conforms the FTC’s requirements to more aggressive state laws in many ways — requiring that consumers be able to cancel through the same medium they used to sign up, for example — and also takes arguably the strictest position in the country on consent to automatic renewal terms. The FTC asks for “unambiguously affirmative consent to the negative option feature.”

b. Negative Option Marketing/ROSCA Cases

- i. *FTC v. Legion Media, LLC, et al.*, (M. D. Fla. July 01, 2024). In July 2024, a U.S. district court in central Florida unsealed an FTC complaint charging two groups of defendants with “defrauding consumers nationwide by enrolling them, without their knowledge, into continuity plans where they are shipped and charged repeatedly for personal care products they did not agree to purchase.” The FTC’s complaint charged the defendants with violations of Section 5 of the FTC Act and ROSCA. A federal court approved a

settlement in the case that required forfeiture of assets and permanently bans all defendants from the alleged illegal conduct.

- ii. *USA v. Adobe Inc., et al.*, (N.D. Cal. July 23, 2024). In July 2024, the DOJ, upon notice and referral from the FTC, filed a complaint against Adobe for “deceiving consumers by hiding the early termination fee [(‘50% of remaining monthly payments when a consumer cancels in their first year’)] for its most popular subscription plan” and implementing numerous cancellation hurdles. Consumers alleged that, in order to cancel their subscription, they would be forced to navigate numerous pages on the website. Additionally, consumers alleged that, when reaching out to Adobe’s customer service, they were faced with resistance and delay. The complaint alleges that Adobe’s practices violate ROSCA.
- iii. *United States of America v. Cerebral, Inc.*, (S.D. Fla. Apr. 15, 2024). In April 2024, Cerebral Inc. agreed to an order that will “restrict how the company can use or disclose sensitive consumer data and require it to provide consumers with a simple way to cancel services to settle [FTC] charges that the telehealth firm failed to secure and protective sensitive health data.” The proposed order will require the company to pay more than \$7 million over charges that “it disclosed consumers’ sensitive personal health information and other sensitive data to third parties for advertising purposes and failed to honor its easy cancellation promises.” The complaint further alleges that Cerebral also violated ROSCA by failing to clearly disclose all material terms of Cerebral’s cancellation policies before charging customers. Under the proposed order, the company will pay nearly \$5.1 million, which will be used to provide partial refunds to consumers. The company will also pay a \$10 million civil penalty, which will be suspended after a \$2 million penalty payment due to the company’s inability to pay the full amount. Cerebral will also be permanently banned from using or disclosing consumers’ personal and health information to third parties for most marketing or advertising purposes and will require consumer consent for disclosing information. The company will be prohibited from misrepresenting its privacy and data security practices and from misrepresenting any negative option and cancellation policies. Cerebral will be further required to implement a comprehensive privacy and security program, to post a notice on its website alerting users to the allegations in the complaint, and implement a data retention schedule and to delete most consumer data not used for treatment, payment, or health care operations, unless there is consent for retention. Although the corporate entities settled, an amended complaint was filed against the company’s former Chief Executive Officer, among others. The amended complaint alleges that the former CEO continued to violate the FTC Act and ROSCA after leaving Cerebral by committing unfair and deceptive business practices.
- iv. *FTC v. Bridge It, Inc.*, (S.D.N.Y. Nov. 02, 2023). In November 2023, the FTC filed a complaint against Bridge It, Inc., alleging that “its promises of

‘instant’ cash advances of up to \$250 for people living paycheck-to-paycheck were deceptive and that and that the company locked consumers into a \$9.99 monthly membership” without offering a simple mechanism to cancel, as required by ROSCA. Bridge It agreed to settle the FTC’s charges, resulting in a proposed court order which would require the company to pay \$18 million to the FTC to provide refunds to consumers. The order would also prohibit the company from “misleading consumers about how much money is available through their advances, how fast the money would be available, any fees associated with delivery and consumers’ ability to cancel their service.” Finally, the order would require Bridge It to make clear disclosures about its subscription products and create a simple way to cancel.

- v. *FTC v. Amazon.com, Inc.*, (W.D. Wash. June 21, 2023). The FTC filed suit against Amazon for unfair or deceptive acts or practices under Section 5 of the FTC Act and ROSCA. The complaint alleges that Amazon employed user-interface designs known as “dark patterns” to get consumers to enroll in automatically renewing Prime subscriptions. Additionally, the complaint further explains that the FTC believes Amazon complicated the cancellation process. The FTC’s complaint requests the reviewing federal court to (i) permanently enjoin violations of the FTC Act and ROSCA by Amazon; (ii) to award monetary civil penalties; and (iii) any monetary and additional relief the court sees fit. The FTC amended its complaint on September 20, 2023, to add three senior Amazon executives to the complaint.
- vi. *FTC v. WealthPress, Inc., et al.*, (M.D. Fla. Jan. 13, 2023). The FTC filed suit against investment advice company, WealthPress. The complaint alleged that that defendant deceived consumers with unsubstantiated and false claims of providing subscribers recommendations for successful trades in financial markets. Defendants agreed to a proposed federal court order to (i) turn over \$1.2 million to the FTC to be refunded to harmed consumers; (ii) pay a \$500,000 civil penalty; (iii) be prohibited from making any earnings claims without substantive evidence; and (iv) inform consumers about the case, the court order and what consumers should know before buying an investment-related service.
- vii. *FTC v. First American Payment Systems LP, et. al.*, (E.D. Tex. July 29, 2022). The FTC filed suit against First American Payment Systems and two of its affiliates for “trapping small businesses with hidden terms, surprise exit fees and zombie charges” in violation of both the FTC Act and ROSCA. The complaint alleged that First American targeted non-English-speaking merchants, withdrew funds from accounts without authorization and made cancellation of the service onerous and expensive. The defendants agreed to a proposed federal court order that would require them to (i) stop misleading consumers; (ii) stop unauthorized bank withdrawals; (iii) stop charging early termination fees; (iv) make cancellation easier; and (v) turn over \$4.9 million to the FTC, which will be used to provide refunds to affected businesses.
- viii. *FTC v. Vonage Holdings Corp.*, (D.N.J. Nov. 3, 2022). In November 2022,

the FTC filed suit against Vonage and its affiliates. The complaint alleged that Vonage charged consumers for its phone service plans without express informed consent. Additionally, the complaint alleged that Vonage failed to provide clear and conspicuous disclosures to consumers regarding all material transaction terms and failed to provide simple mechanisms for consumers to cancel recurring charges. Under a proposed federal court order agreed to by Vonage, the company will (i) pay \$100 million to consumers harmed by its actions; (ii) simplify its cancellation process; and (iii) will stop charging consumers without their express informed consent.

- ix. *In the Matter of Dun & Bradstreet, Inc.*, (F.T.C. Jan. 13, 2022). In April 2022, the FTC finalized a settlement with the business credit reporting company Dun & Bradstreet for alleged deceptive business practices and failure to correct errors. The company allegedly used a deceptive automatic renewal scheme, “including a switcheroo that transferred customers into a much more expensive tier of service without clear notice.” The settlement requires the company to make its disclosures clearer, prohibits its existing automatic renewal structure, and requires the company to give customers the opportunity to cancel their subscriptions. The case is distinct as one of only a few relating to automatic renewal plans catered to small businesses rather than to individual consumers.
- x. *USA v. MyLife.Com, Inc., et al.*, (C.D. Cal. Jul. 7, 2020). In December 2021, the FTC and DOJ settled with an online background report website, banning the company from its allegedly deceptive negative option marketing practices with a judgment that totaled nearly \$34 million against MyLife.com and its CEO. The FTC alleged that the company used deceptive advertising to imply users had records of criminal or sexual offenses that could only be viewed if they created an account – an account that would renew automatically and could only be canceled by calling the customer service line. The company also failed to disclose that the full cost of the subscription for several months would be charged immediately, nor did it disclose the automatic renewal or cancellation terms.
- xi. *In the Matter of MoviePass, Inc., et al.*, (F.T.C. June 7, 2021). The FTC settled an action with MoviePass alleging violations of ROSCA in June 2021. The crux of the allegations focused not on the subscription elements of the service but on the fact that subscribers had a difficult time using the service to see the promised unlimited movies. The complaint also alleged MoviePass failed to take reasonable steps to secure subscribers’ personal information. The FTC’s position in this case is significant because it greatly expands the potential reach of ROSCA to include misleading representations about the underlying product or service being sold as opposed to representations only about the negative option features. This broader interpretation of ROSCA is reflected in the FTC’s recently issued policy statement as well.
- xii. *FTC v. Raging Bull.Com, LLC*, (D. Md. Dec. 14, 2020). In December 2020, the FTC alleged that RagingBull.com ran a fraudulent telemarketing scheme

that included deceptive sales practices to entice negative option subscriptions. Among other violations, the FTC alleged that RagingBull.com violated ROSCA by failing to provide a simple mechanism for consumers to stop recurring charges. The defendants entered into a settlement agreement, and, in March 2023, the FTC sent payments totaling more than \$2.4 million to consumers in this case.

- xiii. *FTC v. NutraClick, LLC, et. al.*, (C.D. Cal. Sept. 21, 2020). In 2016, The FTC alleged in its complaint that NutraClick lured consumers with “free samples” of supplements and beauty products and then charged them a recurring monthly subscription fee without their consent. In September 2020, the FTC filed a second complaint alleging that the company and its agents violated their FTC order by continuing to market their products deceptively. In September 2020, the company entered into a settlement agreement which imposes a negative option marketing ban and requires them to pay more than \$1 million dollars for consumer redress.
- xiv. *FTC v. Age of Learning, Inc. d/b/a ABCmouse*, (C.D. Cal. Sept. 1, 2020). In April 2021, the FTC refunded more than 200,000 people more than \$9.7 million in a settlement with ABCmouse. The FTC alleged in its complaint that when users signed up for the educational service, the company did not make it clear that certain memberships would renew automatically unless affirmatively canceled. The FTC also alleged that the company made it difficult to cancel memberships.
- xv. *FTC v. F9 Advertising LLC, et al.*, (D.P.R. Feb. 21, 2019). The FTC filed a complaint in February against a company for allegedly advertising skin products as “risk free” and “free trial” but not disclosing that the consumer would have to pay full price for the item if they did not cancel. This complaint alleged actions beyond technical violations of ROSCA, also focusing on a confusing checkout process, inability to cancel, inability to receive a refund, charging consumers for additional products, etc. ***See Junk Fees & Deceptive Pricing for more information.***
- xvi. *FTC v. AH Media Group, LLC*, (N.D. Cal. July 12, 2019). The FTC had alleged in its complaint that defendants were misleading consumers about supposedly “free trial” offers, enrolling them in unwanted continuity plans, billing them without their authorization, and making it nearly impossible for them to cancel or get their money back, for an online subscription scam pitching at least eight different product lines, primarily cosmetics and dietary supplements. The complaint alleged that defendants violated Section 5 of the FTC Act, ROSCA and the EFTA. The FTC reached a settlement agreement with AH Media, and in June 2022, the Commission sent 176,028 checks totaling more than \$5.4 million to consumers who were charged for “free trial” offers.
- xvii. *In the Matter of UrthBox, Inc.*, (F.T.C. Apr. 3, 2019). The FTC alleged that UrthBox offered consumers a “free trial” of its snack boxes which

automatically enrolled consumers who selected the free trial box into a six-month paid subscription of the same box unless they cancelled prior to the program's subscription date. UrthBox disseminated advertisements for free trial snack boxes which included statements such as "TASTY SNACK BOX FREE." The FTC alleged straightforward violations of ROSCA, pointing to insufficient disclosure of material terms describing the cost of the subsequent shipments when the free trial ended. UrthBox entered into a settlement agreement which requires it to, among other things, disclose the material terms immediately adjacent to any representation that the offer is on a free trial basis and pay \$100,000.

- xviii. *FTC v. Apex Capital Group*, (C.D. Cal. Nov. 14, 2018). The FTC obtained a temporary restraining order against an alleged national internet marketing scam. The FTC alleged that defendants marketed supposedly "free trial" offers for personal care products and dietary supplements online but charged consumers the full price of the products and enrolled them in negative option continuity plans without their consent. The complaint charged the defendants with violations of the FTC Act, the EFTA and ROSCA. Under the two court orders, the Apex Capital defendants will be barred from the illegal conduct alleged in the FTC's complaint and will surrender assets valued at likely more than \$3 million. The order also imposed substantial financial judgments against individual defendants.
- xix. *FTC v. BunZai Media Group, Inc., et al.*, (C.D. Cal. June 27, 2018). In 2015, the FTC initially charged 15 companies and seven individuals who were in the business of marketing skincare products for "risk-free trials." The parties to the case have changed several times since 2015; however, in late June 2018, the final two defendants settled with the FTC. The agreement bars the defendants from engaging in future deceptive practices and imposed a judgment of \$320,000 in favor of the FTC as equitable monetary relief. Additionally, the FTC mailed refund checks totaling over \$18 million to consumers who signed up for risk-free trials and were instead enrolled in negative option programs.
- xx. *FTC v. Triangle Media Corp., et al.*, (S.D. Cal. June 22, 2018). In May 2019, the FTC released a pair of consent orders (domestic and international), resolving a case that it filed in July 2018. In that complaint, the FTC alleged that defendants advertised "RISK-FREE" trials online for various products, which only required the consumer to pay shipping and handling. Consumers were charged, however, (up to \$98.71 in some cases) for the trial, and they were enrolled without their consent in negative option plans. In June 2020, the FTC sent refund checks totaling more than \$8.7 million to consumers defrauded by the "risk-free" trial offers.

VI. JUNK FEES & DECEPTIVE PRICING

In the past few years, the FTC has become increasingly focused on "junk fees" and deceptive pricing schemes. In October 2022, the FTC announced an Advanced Notice of Proposed

Rulemaking which seeks to crack down on junk fees. Junk fees can present themselves in different forms; however, consumers often recognize them as the hidden fees that pop up at the end of transactions that are referred to as “convenience fees” or “service charges.” As Chair Lina Khan put it, “It’s beyond frustrating to end up spending more than you budgeted because of random, arbitrary fees.”

a. Rules, Guidance, Workshops and Staff Reports

- i. Policy Statement: Franchisors’ Use of Contract Provisions: On July 12, 2024, following their earlier request for public commentary and receipt of common concerns such as fear of retaliation, or contractual relationships that favor the franchisor over the franchisee, the FTC announced a policy statement that warns that ‘franchisors’ use of contract provisions, including non-disparagement clauses that prohibit franchisees’ communications with the government, are an unfair practice that risk FTC enforcement action.
- ii. Staff Guidance: Unlawfulness of Undisclosed Fees Imposed on Franchises: On July 12, 2024, the FTC released a guidance explaining that franchisors cannot lawfully impose and collect fees from franchisees that were not previously disclosed. This was a result of franchisees reporting that constantly increasing payment processing and technology fees were impacting their ability to keep their businesses afloat, as well as concerns that undisclosed “junk fees” were increasingly commonplace from franchisors. The new guidance makes it clear that it is illegal to impose undisclosed fees and excessive costs that keep businesses from being sustainable unfairly.
- iii. CARS Rule: In December 2023, the FTC announced a finalized rule to fight two common illegal tactics consumers face when buying a car: bait-and-switch and hidden junk fees. The Combating Auto Retail Scams (CARS) Rule requires no misrepresentations about key information (such as price and cost); offering price must be provided, total payment must be provided when discussing monthly payments and consumers must be informed that add-ons are option; a prohibition against charging for any add-on that does not provide a benefit to a customer; and dealers must get express, informed consent from consumers for any charges they pay as part of a vehicle purchase. The CARS Rule also prohibits dealers from lying to servicemembers (who have an average of twice as much auto debt as civilians) and other consumers about important cost and financing information, and about whether the dealers are affiliated with the military or any governmental organization. Dealers are also prohibited from lying about whether a vehicle can be moved out of state and whether a vehicle can be repossessed.
 1. In January 2024, the FTC issued an order postponing the effective date of the CARS Rule while a legal challenge against the Rule is pending. In its order, the FTC notes that the assertions made by two industry groups rest on a mischaracterization of what the rule requires. The FTC points to a specific inaccurate argument that the

rule will increase compliance costs for car dealers, which the Commission asserts is not true for dealers who presently comply with the law.

- iv. Junk Fees Rule: On October 20, 2022, the FTC announced the advance notice of proposed rulemaking to crack down on junk fees and a proposed rule was announced one year later. Junk fees can arise at any stage of a purchase or payment process, and businesses often obtain them by imposing them on captive consumers or by using digital dark patterns and other deceptive tricks.
 - 1. In October 2023, the FTC issued for public comment a proposed Junk Fees Rule that would, among other things, generally provide that if a price or service imposes a mandatory fee, then that fee must be included in the price advertised upfront. If finalized, this Rule would have a significant impact on how prices are advertised.
 - 2. On April 24, 2024, the FTC held a virtual informal hearing on the proposed regulation. Most participating organizations voiced support for the FTC's approach. Other industry representatives urged a particularized approach from the FTC instead of a blanket ban.

b. Junk Fees & Deceptive Pricing Cases

- i. *FTC v. Invitation Homes Inc.*, (N.D. Ga. Sept. 24, 2024). In September 2024, the FTC filed a complaint alleging that Invitation Homes advertised monthly rental rates that failed to include mandatory fees that had the potential to total over \$1700 per year. Consumers only learned of these fees after, at the earliest, receiving a copy of their lease and could not opt out of paying the fees. Invitation Homes agreed to a proposed settlement requiring payment of over \$48 million in addition to requirements of more transparent pricing.
- ii. *In the Matter of Asbury Automotive Group, Inc., et al.*, (F.T.C. Aug 16, 2024). In August 2024, the FTC filed an action against the defendants alleging that defendants would charge consumers for costly add-ons not agreed to or were “falsely told were required as part of their purchase.” The FTC alleged that defendant dealerships owned by Asbury would engage in a “variety of practices to sneak hidden fees for unwanted add-ons past consumers.”
- iii. *FTC v. Panda Benefit Services, LLC, et al.*, (C.D. Cal. June 24, 2024). In June 2024, the FTC filed a complaint against several companies for operating a student loan debt relief scheme that took more than \$20.3 million from consumers by pretending to be affiliated with the Department of Education. According to the complaint, since at least June 2021, these companies have tricked consumers burdened with student loan debt into paying hundreds to thousands of dollars in illegal junk fees towards loan forgiveness that did not exist. The operators of the scheme would send mailers with urgent language and boasted loan forgiveness benefits to encourage consumers to call a

telemarketer. The telemarketer would then sign them up for what consumers believed to be a loan forgiveness program. Because the operators falsely claimed they were affiliated with the Department of Education, they were able to obtain consumers credit or debit card information and collect hundreds of dollars in illegal upfront fees. This case is the first under the Impersonation Rule, which aims to give the FTC “stronger tools to combat and deter scammers who impersonate government agencies.” The complaint further alleges that the defendants violated the FTC Act, the Telemarketing Sales Rule and the Gramm-Leach-Bliley Act.

- iv. *USA v. Adobe Inc., et al.*, (N.D. Cal. June 17, 2024). In June 2024, the DOJ, upon notice and referral from the FTC, filed a complaint against Adobe for “deceiving consumers by hiding the early termination fee (“50% of remaining monthly payments when a consumer cancels in their first year”) for its most popular subscription plan” and implementing numerous cancellation hurdles. Consumers alleged that, in order to cancel their subscription, they would be forced to navigate numerous pages on the website. Additionally, consumers alleged that, when reaching out to Adobe’s customer service, they were faced with resistance and delay. Finally, the complaint argues that Adobe’s practices violate ROSCA. ***See Negative Option Cases/ROSCA for more information.***
- v. *FTC v. Aqua Finance*, (W.D. Wis. May. 1, 2024). In May 2024, the FTC took action against Aqua Finance, Inc. (“AFI”) alleging that the company’s network of dealers deceived consumers about financing terms for water filtration/softening products. The complaint alleges that the deceptive actions taken by AFI dealers would cause consumers to face unexpected debt and huge interest payments. In settlement, AFI would have to provide \$20 million in refunds and an additional \$23.6 million in debt forgiveness. AFI would also have to cease misrepresenting finance terms, make required disclosures, and closely monitor their dealer network.
- vi. *FTC v. Doxo et al.*, (W.D. Wash. Apr. 25, 2024). In April 2024, the FTC announced that it was taking action against bill payment company Doxo and two of its co-founders based on the allegation that the company “uses misleading search ads to impersonate consumers’ billers and deceptive design practices to mislead consumers about millions of dollars in junk fees they tacked on to consumers’ bills.” According to the complaint, Doxo purchased search engine ads that appeared when consumers searched for information about companies that they owed bills to in order to deceive consumers into believing that Doxo was affiliated with these companies. Additionally, Doxo’s landing pages prominently featured the biller’s company, and occasionally logo, despite the fact that Doxo generally does not have a formal relationship with the biller. The complaint alleges that “[o]nce consumers provide their billing details, Doxo then shows a final payment amount, onto which the company tacks an extra fee that is included only at the final payment step, and even then, only in greyed-out fine print.”

Furthermore, the complaint outlines Doxo’s deceptive practice of automatically signing consumers up for a subscription program, which, although Doxo said this would save consumers on “delivery” fees, consumers were still often charge those fees. The complaint further alleges that Doxo violated the FTC Act, ROSCA, and the Gramm-Leach-Bliley Act.

- vii. *FTC v. Benefytt Technologies Inc. et al.*, (M.D. Fla. Aug. 8. 2022). In March 2024, the FTC announced that it was sending nearly \$100 million in refunds to consumers who were charged for sham health plans that Benefytt Technologies (“Benefytt”) had marketed. According to the complaint, Benefytt and its third-party partners operated deceptive websites that targeted consumers looking for health insurance plans qualified under the Affordable Care Act. Sales agents pitched the sham plans to consumers, as ACA-qualified health plans, leading to consumers being charged hundreds of dollars per month for Benefytt’s products and services that often left them unprotected in a medical catastrophe. Benefytt agreed to a settlement that required them to pay \$100 million towards refunds. The settlement further prohibited the company from lying about its products or charging illegal junk fees. Separately, the company’s former CEO and former vice president of sales were permanently banned from selling or marketing any healthcare-related products, and the former vice president was banned from telemarketing.
- viii. *FTC v. Intercontinental Solutions Inc., et al.*, (C. D. Cal. Jan. 6, 2024). In August 2023, the FTC filed a complaint against defendants, and their operators, for claiming to be affiliated with the U.S. Department of Education. The complaint asserts that the defendants were using “Biden Loan Forgiveness,” or a similar name, to lure students into signing up for their phony student debt relief scheme. The FTC claimed in the complaint that the scheme’s operators collected approximately \$8.8 million in junk fees in exchange for nonexistent student loan debt relief services. The complaint also asserts that the defendants used these misrepresentations to “illegally obtain consumers’ bank account, debit card, or credit card information, and typically collect hundreds of dollars in unlawful advance fees—sometimes through remotely created checks in violation of the Telemarketing Sales Rule.” In April 2024, the FTC announced a settlement with Marco Manzi. As part of the settlement, he will be permanently banned from the debt relief industry and is required to turn over assets. The FTC announced a similar settlement to that of Manzi with the other defendants in the case in February 2024.
- ix. *FTC v. Chase Nissan LLC, et al.*, (D. Conn. Jan. 4, 2024). In January 2024, the FTC and the State of Connecticut filed a complaint against auto dealer Manchester City Nissan (“MCN”), along with its owner and key employees, for systematically deceiving consumers about the price of certified used cars, add-ons, and government fees. First, according to the complaint, MCN advertises numerous cars as being “certified pre-owned.” Although Nissan’s

rules prohibit dealers from charging a fee for certification beyond the price of the car, the complaint alleges that the defendants regularly tacked on a certification charge for these vehicles. The complaint also alleges MCN often charges consumers extra for an inspection or repair that has already happened, but then “fails to report to Nissan that the certified car was sold, leaving consumers without the additional warranty that was promised in MCN’s advertising.” Second, the complaint alleges that MCN frequently charged consumers for bogus add-ons they did not consent to. Finally, the complaint asserts that the defendants “regularly deceive[d] consumers during the sales process about government-imposed taxes and fees, claiming that junk fees added by MCN are required by the government or deceptively inflating the actual government fees to register the car and keeping the difference as profit.” The complaint charges the defendants with violating the FTC Act and the Connecticut Unfair Trade Practices Act.

- x. *FTC v. Grand Canyon Education, et al.*, (D. Ariz. Dec. 27, 2023). In December 2023, the FTC filed suit against Grand Canyon Education (“GCE”), Grand Canyon University (“GCU”), and the CEO of GCE and GCU. The FTC alleged that the defendants had deceived prospective doctoral students about the costs of its doctoral programs. The FTC alleged that GCU and GCE provided estimates of its program that did not include additional “continuation courses” which added thousands of dollars in costs. In August 2024, the Arizona District Court held that the FTC could not prosecute FTC Act claims against GCU because of its status as a nonprofit educational institution.
- xi. *FTC v. Rhinelander Auto Center, Inc., et al.*, (W. D. Wis. Oct. 24, 2023). In October 2023, the FTC took action against Rhinelander Auto Center, its owners and former owners, and its general manager for allegedly deceiving consumers by “tacking hundreds or even thousands of dollars in illegal junk fees onto car prices” and for discrimination against American Indian customers by charging them higher financing costs and fees. The FTC and Wisconsin DOJ alleged in the complaint that Rhinelander and the general manager regularly charged many of their customers junk fees for “add-on” products or services without their consent. Discrimination against American Indian customers was alleged through additional “markup” to their interest rates and unwanted add-ons. The defendants agreed to proposed court orders that will require Rhinelander’s current owners and general manager to stop their unlawful practices and provide \$1.1 million to be used for refunds to consumers. The proposed settlement will require the company to stop deceiving consumers “about whether add-ons are required for a purchase and obtain consumers’ express informed consent before charging them for add-ons.”
- xii. *FTC v. F9 Advertising LLC, et al.*, (D. P. R. Feb. 28, 2019). In 2019, the FTC issued a lawsuit against Gopalkrishna Pai and eight companies he owned, alleging that Pai and his companies charged consumers tens of millions of

dollars in fees they didn't consent to, "noting that the supposed disclosure of these fees was hidden behind a small link on the sales websites, and that consumers' attempts to cancel were often unsuccessful, even when they returned the products unopened." The FTC also alleged in the complaint that Pai created shell companies to facilitate payment processing for his scams. In 2022, Pai pled guilty to related, but separate, charges brought by the U.S. Attorney's Office for the District of Puerto Rico. As a part of a proposed settlement order, Pai agreed to a lifetime ban on negative option marketing and will turn over his funds and assets to the FTC. The order contains a partially suspended total monetary judgment of \$34,081,6073.

- xiii. *FTC v. SL Finance LLC, et al.*, (C.D. Cal. May 8, 2023). In October 2023, a proposed settlement order was issued with SL Finance, its owners, and BCO Consulting and its owners, following a complaint issued in May 2023, asserting that the defendants "pretended to be affiliated with the U.S. Department of Education, charged illegal junk fees, and lured students with repayment programs and loan forgiveness that did not exist." The complaint also alleged that the defendants "falsely claimed that their program was a part of the CARES Act or a similar COVID-19 relief program." The proposed order would permanently ban the defendants from debt relief of any kind. The defendants would also be banned from "making any misrepresentations about financial products or services and from using false statements to collect consumers' financial information." The order against SL Finance imposes a partially suspended monetary judgment of \$5.8 million. SL Finance's owners, individual defendants, will be required to surrender assets worth approximately \$312,685. The order against BCO Consulting imposes a partially suspended monetary judgment of \$5.8 million. Additionally, the individual defendants must surrender assets worth about \$565,594.
- xiv. *U.S. v. Legacy Cremation Services, LLC*, (S.D. Fla. Apr. 22, 2023). The FTC and DOJ filed a complaint against Legacy Cremation Services, LLC and its affiliates alleging that the company made misrepresentations regarding the price and fees of cremation packages. The complaint also alleged that the company unfairly withheld the location of and refused to return cremated returns back to customers. The complaint alleged that these actions were violations of the FTC's Funeral Rule. The April 2023 proposed court order requires defendants to (i) share key facts on their website, such as general price list, and certain notices for third-party goods or services; (ii) disclose the general price list either during or immediately after the first interaction with a consumer; (iii) provide consumers with the name, address, and contact information for any third-party provider that will provide funeral goods or services; and (iv) pay \$275,000 in civil penalties.
- xv. *In the Matter of LCA-Vision Inc.*, (F.T.C. Jan. 19, 2023). The FTC finalized a final consent order against LCA-Vision with regard to allegedly deceptive ads for LASIK eye surgery. The Complaint alleged that the company misrepresented the promotional price that consumers would pay to obtain

LASIK eye surgery from respondent, and that respondent failed to disclose material information regarding the promotional price. The final order requires payment of \$1.25 million while requiring clear and conspicuous disclosures when advertising LASIK prices.

- xvi. *FTC v. ACRO Services LLC, et. al.*, (M.D. Tenn. Nov. 30, 2022). The FTC filed a complaint which alleged that defendants engaged in deceptive and unlawful tactics, such as deceptive telemarketing, making phony debt relief promises, and charging consumers with deceptive upfront fees. The May 2023 court orders (i) permanently enjoin defendants from advertising, selling, or assisting in any debt relief product or service; (ii) permanently enjoin defendants from telemarketing; (iii) enjoin defendants from deceiving consumers through any product or service they sell; and (iv) require defendants to surrender certain property interests and assets. Parts of the \$17,486,080 total monetary judgment was partially suspended based on defendants' inability to pay the full amount as well as the surrender of assets.
- xvii. *FTC v. Passport Automotive Group, Inc. et. al.*, (D. Md. Oct. 18, 2022). The FTC filed suit against Passport Automotive Group and its affiliates because the company represented specific prices in its advertisements for its inspected, reconditioned or certified vehicles; however, Passport deceptively charged consumers extra hundreds to thousands of dollars in redundant fees that should have already been included in the advertised prices. The complaint also alleged that Passport engaged in unfair practices by unlawfully discriminating on the basis of race, color and national origin by imposing higher costs on Black and Latino consumers than non- Latino White consumers. On October 21, 2022, the defendants agreed to a proposed federal court order that would require them to (i) stop misrepresenting its costs, fees and advertised prices to consumers; (ii) stop discriminating against consumers on the basis of race, color, religion, national origin, sex or marital status, age, or income (if derived from public assistance); (iii) practice appropriate fair lending compliance; and (iv) pay \$3,380,000 to be allocated to harmed consumers.
- xviii. *FTC v. First American Payment Systems LP, et. al.*, (E.D. Tex. July 29, 2022). The FTC filed suit against First American Payment Systems and two of its affiliates for “trapping small businesses with hidden terms, surprise exit fees and zombie charges” in violation of both the FTC Act and ROSCA. **See *Negative Option Marketing/ROSCA* for more information.**
- xix. *FTC v. North American Automotive Services, Inc., et al.*, (N. D. Ill. Mar. 31, 2022). In March 2022, the FTC and the State of Illinois sued Napleton Automotive Group, alleging that Napleton employees were including illegal junk fees for unwanted “add-ons,” such as payment insurance and paint protection, onto vehicle purchases and discriminating against Black customers by charging them more for add-ons and financing. The case settled in November 2022, resulting in \$8.8. million returned to consumers.

- xx. *In the Matter of Intuit Inc.*, (F.T.C. Mar. 28, 2022). The FTC issued an administrative complaint against Intuit, the maker of TurboTax, which alleged that Intuit deceived customers with its widely disseminated advertisements offering “free” tax filings. On September 8, 2023, the FTC’s Chief Administrative Law Judge ruled that Intuit violated Section 5 of the FTC Act. In January 2024, the FTC upheld the ALJ’s opinion. The FTC’s Final Order prohibits Intuit from advertising or marketing any good or service as free unless it is truly free or there is a clear and conspicuous disclaimer.
- xxi. *In the Matter of Amazon.Com, Inc.*, (F.T.C. Feb. 2, 2021). In October 2021, the FTC returned almost \$60 million to Amazon Flex drivers under a settlement alleging these drivers did not receive the full amount of tips paid by customers despite being promised they would receive “100% of the tips.” The FTC alleged Amazon reduced the hourly rate it paid to drivers, making up the difference with a portion of the tips paid by customers. The settlement also requires Amazon to obtain drivers’ permission before changing the treatment of tips going forward.

VII. CONSUMER REVIEWS

Consumer Reviews have been a major focus of enforcement for the FTC. In June 2023, the FTC published an Advanced Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials. On August 14, 2024, the FTC finalized the rule which prohibits practices such as posting fake reviews, suppressing honest negative reviews and posting reviews without disclosing the reviewers received a form of compensation.

- a. Rules, Guidance, Workshops and Staff Reports
 - i. Rule on the Use of Consumer Reviews and Testimonials: On August 14, 2024, the FTC announced a final rule entitled “Trade Regulation Rule on the Use of Consumer Reviews and Testimonials,” which prohibits certain specified unfair or deceptive practices involving consumer reviews and testimonials. Such practices include using fake reviews, suppressing honest negative reviews and paying for positive reviews. In the FTC’s Advanced Notice of Proposed Rulemaking, the FTC cited a number of examples of clearly deceptive practices that they have seen in past cases, all of which involve consumer reviews and testimonials. The rule also noted the emergence of AI and acknowledged how it will likely make it easier for dishonest business practices to continue.
 - 1. The Rule prohibits:
 - a. Fake or False Consumer Reviews, Consumer Testimonials and Celebrity Testimonials: Businesses are prohibited from creating or selling reviews and/or testimonials that contain testimonials from people who (1) do not exist; (2) have not used the product; or (3) misrepresent their experience with the product.

- b. Buying Positive or Negative Reviews: Businesses are prohibited from providing compensation or other incentives that is conditioned on a positive or negative consumer review.
 - c. Insider Reviews and Consumer Testimonials: Company insider reviews are prohibited unless they *clearly* and *conspicuously* disclose the reviewer’s material connection to the business. Officers and/or managers are prohibited from giving such reviews, and businesses are permitted from disseminating testimonials that the business should have known was by an officer, manager, employee, or agent. Additionally, certain requirements are imposed if an officer or manager solicits consumer reviews from immediate relatives or from employees or agents or directs employees or agents to solicit reviews by immediate family members.
 - d. Company-Controlled Review Websites: Businesses are prohibited from misrepresenting that a company-controlled website or entity provides independent reviews or opinions about a category including the businesses’ own products/services.
 - e. Review Suppression: Businesses are prohibited from using unfounded/groundless legal or physical threats, intimidation, or certain false public accusations to prevent/remove a negative consumer review.
 - f. Misuse of Fake Social Media Indicators: Everyone is prohibited from selling or buying fake indicators of social media influence (e.g., bot followers) if the person accused knew or should have known that the indicators were fake and misrepresent influence/importance for a commercial purpose.
- ii. Featuring Online Customer Reviews: A Guide for Platforms (January 2022): In January 2022, the FTC published this Guide which is meant to serve as a guide to businesses that operate websites or platforms that feature reviews.
 - iii. Soliciting and Paying for Online Reviews: A Guide for Marketers (January 2022): In January 2022, the FTC published this Guide which is meant to serve as a guide to Marketers. It touches on, among other things, soliciting customer reviews.
- b. Consumer Reviews Cases
 - i. *In the matter of Rytr*, (F.T.C. Sep. 25, 2024). In September 2024, the FTC filed suit against Rytr. Rytr is an AI-enabled “writing assistant,” that had the ability to create testimonials and reviews. The FTC complaint alleged that Rytr’s service would create AI-generated, false consumer reviews, and that

the service was used by some of Rytr’s subscribers to produce thousands or reviews containing false information. Two Commissioners dissented in this case and issued dissenting statements stating that the FTC’s legal theories in this case were problematic and inconsistent with the law.

- ii. *FTC v. Career Step, LLC*, (N.D. Ga. Jul. 29, 2024). In July 2024, the FTC filed a complaint against Career Step, LLP. Among other things, the complaint alleged that Career Step gave an incentive to Career Step enrollees (an extension on their training program) in return for posting a review on a third-party website. The FTC alleged that, despite Career Step’s directions to the enrollees to disclose the incentive, Career Step knew that no such disclosure was included in many reviews and did nothing to correct this. Career Step was ordered to pay \$43.5 million (in cash and debt cancellation) to resolve the FTC’s charges.
- iii. *In the Matter of the Bountiful Company*, (F.T.C. Feb. 16, 2024). In March 2024, the FTC announced that it would be sending more than \$527,000 in refunds to consumers who “bought certain Nature’s Bounty and Sundown vitamins and supplement from Amazon.com.” According to the complaint, which issued in February 2023, The Bountiful Company used features on Amazon.com to deceive consumers into thinking that some of its newly introduced supplements had “more products ratings and reviews, higher average ratings and ‘#1 Best Seller’ and ‘Amazon’s Choice’ badges.” The FTC’s February 2023 complaint was the first time the Commission challenged “review hijacking,” a practice where a marketer steals the reviews of another product to boost sales. The settlement order required the company to pay monetary relief and The Bountiful Company is prohibited from engaging in deceptive review tactics.
- iv. *FTC v. CRI Genetics LLC*, (C. D. Cal. Nov. 20, 2023). In November 2023, the FTC entered into a settlement order with CRI Genetics, LLC for charges concerning deception about the accuracy of its DNA reports. The complaint asserted that CRI posted fake reviews from “satisfied customers” on its websites and falsely claimed that there was a limited supply of tests to entice consumers to buy them quickly. Furthermore, CRI “published star rating reviews comparing CRI’s reports to other companies on the market on what appeared to be independent and unbiased websites, without disclosing that CRI owned the website.” The company will pay a \$700,000 civil penalty and is barred from a wide range of deceptive practices, such as misrepresentations about the accuracy of their DNA tests, fake consumer reviews and other misrepresentations made in connection with advertising, offering for sale, or sale of DNA testing products or reports. CRI will also be prohibited from “misrepresenting when product orders are final or complete, when charges will take place, and whether consumers can change the services they choose before being charged.” The company must also disclose “the total cost of all products or services to customers, when they will be charged. And whether they can confirm, edit, or delete products before they are charged.

- v. *FTC v. Hey Dude, Inc.*, (D. Nev. Sept. 11, 2023). In September 2023, online shoe retailer Hey Dude agreed to settle FTC “charges that the company mislead consumers by suppressing negative reviews.” The complaint alleged that, before June 2022, the company’s written policies and procedures “instructed staff to publish certain types of reviews only if they were positive.” The Commission also alleges that the company violated the Mail, Internet, or Telephone Order Merchandise Rule by “(1) failing to issue shipping delay notices when it could not timely fulfill consumers’ orders; (2) failing to cancel consumers’ orders and issue prompt refunds after failing to issue such notices; and (3) issuing consumers gift cards instead of sending prompt refunds of the original payment for merchandise ordered but not shipped. The proposed court order will require the company to change its conduct and will bar Hey Dude from future violations of the Mail Order Rule. Additionally, the company will be required to publish all reviews it receives, with the limited exception of moderating inappropriate content. Hey Dude will also be required to pay the FTC \$1.95 million towards consumer refunds. ***See Mail Order Rule for more information.***
- vi. *FTC et al. v. Roomster Corp. et al.*, (S.D.N.Y, Aug. 30, 2022). The FTC, along with six states (California, Colorado, Florida, Illinois, Massachusetts and New York), filed a lawsuit against rental listing platform Roomster Corp. and its owners for allegedly paying for fake “positive” reviews, claiming to offer “verified” and “authentic” listings, and charging for access to phony listings to attract paid users alleged that the company and its owners took tens of millions of dollars from largely low-income and student prospective renters who needed reliable housing and duped consumers who were seeking affordable housing. Roomster entered into a settlement agreement. The company was required to pay \$100,000 to the states, will be permanently banned from selling or misrepresenting consumer reviews or endorsements, and must notify the app stores about the fake reviews.
- vii. *In the Matter of Fashion Nova, LLC*, (F.T.C. Jan. 25, 2022). In January 2022, the FTC filed a complaint against Fashion Nova in which it alleged that the fashion retailer was suppressing negative customer reviews of its products. In March 2022, the retailer entered into a settlement agreement which prohibits it from suppressing customer reviews of its products. Additionally, Fashion Nova was required to pay \$4.2 million to settle the allegations.
- viii. *U.S. v. Vision Path, Inc., d/b/a Hubble Contacts*, (D.C. Cir. Jan. 25, 2022). The FTC alleged that Hubble Contacts compensated customers for leaving reviews by making offers such as a free month of contact lenses in exchange for leaving a review. In January 2022, the company agreed to pay \$3.5 million and inform customers that they must disclose any incentive they receive for leaving a review. Notably, the settlement also included monitoring provisions requiring that the company confirm that customers follow that instruction.
- ix. *FTC v. Wellco, Inc.*, (S.D.N.Y. Mar. 15, 2021). The FTC settled with Wellco

and its CEO regarding advertising of TV antennas and signal amplifiers that promised buyers could cancel their cable services and get channels for free. One of the prohibited marketing tactics going forward is misuse of consumer reviews on a company's website. The FTC alleged Wellco had copied reviews from other websites promoting competing products and misrepresented them as endorsements of its own products.

- x. *In the Matter of Shop Tutors, Inc. d/b/a/ LendEDU*, (F.T.C. May 26, 2020). In May 2020, the FTC finalized a settlement with LendEDU over allegations that it promoted deceptive rankings of financial products for a fee and posted fake positive reviews of its website. According to the agency's administrative complaint, LendEDU misled consumers to believe its website provided objective product information, when in fact it offered higher rankings and ratings to companies that paid for placement. The final order settling the FTC's charges prohibits LendEDU from making misrepresentations about its content and rankings and requires the company pay \$350,000.
- xi. *FTC v. Position Gurus, LLC*, (W.D. Wash. May 12, 2020). In May 2020, the FTC settled a case against Position Gurus and Top Shelf Ecommerce and their owners for \$1.2 million. The complaint alleged that the company included provisions in its contracts prohibiting customers from sharing negative reviews or otherwise complaining about the company online. ***See Financial Deception for more information.***
- xii. *FTC v. SLAC, Inc.*, (C.D. Cal. Mar. 9, 2020). The FTC filed a complaint against three debt relief companies and its owner in which it alleged that the companies falsely promised to lower or eliminate consumers' student loans for an illegal upfront fee. The FTC also alleged that the companies and Owens failed to disclose that they paid consumers for positive Better Business Bureau (BBB) reviews. ***See Financial Deception for more information.***
- xiii. *FTC v. Devumi LLC/German Calas*, (S.D. Fla. Oct. 18, 2019). In October 2019, the FTC announced an action against a company that sold fake indicators of social media influence. This was the FTC's first-ever complaint challenging the sale of fake indicators of social media influence. Devumi settled the case. Devumi had previously settled with the Attorneys General of Florida and New York. In July 2020, the FTC issued a report to Congress on Social Media Bots and Advertising discussing its *Devumi* action and noting the growing prevalence of social bots to increase likes and clicks to boost ad revenue.
- xiv. *In the Matter of Sunday Riley Modern Skincare/Sunday Riley*, (F.T.C. Oct. 18, 2019). In October 2019, Sunday Riley Modern Skincare, LLC and its CEO agreed to settle an FTC complaint charging them with misleading consumers by posting fake reviews of the company's products on a major retailer's website, at the CEO's direction, and by failing to disclose that the reviewers were company employees.

- xv. *In the Matter of UrthBox, Inc.*, (F.T.C. Apr. 3, 2019). In May 2019, the FTC approved a final order settling charges that UrthBox misrepresented that customer reviews of their product were independent when in fact the company provided those customers with free products and other incentives to post positive reviews online. The FTC’s final approved order bars the defendants from engaging in similar misleading conduct and requires the defendants to pay \$100,000 to the FTC, which will be used to compensate the consumers deceived by the defendants’ trial offers. **See *Negative Option Marketing/ROSCA* for more information.**

c. Consumer Review Fairness Act Cases

- i. Since 2017, the FTC has brought a number of complaints against businesses that illegally use non-disparagement provisions in consumer form contracts in the course of selling their respective products in violation of Section 2(c) of the CRFA.

- 1. *In the Matter of Shore to Please Vacations LL*, (F.T.C. June 3, 2019) & *Staffordshire Property Management, LLC*, (F.T.C. June 3, 2019). In May and June 2019, the FTC announced its first actions exclusively enforcing CRFA, including cases involving a Pennsylvania-based HVAC and electrical provider, a Massachusetts-based flooring firm, a Nevada-based horseback trail riding operation, a Florida-based vacation rental company, and a Maryland company managing rental properties.

- a. Notably, in one of the cases, the challenged terms of use did not expressly prohibit customers from posting reviews but contained a confidentiality clause which prohibited customers from disclosing anything related to the substance of the contract. The FTC interpreted that clause as violative of the CRFA. The other two clauses at issue directly prohibited customers from making disparaging or negative comments. All three companies also included liquidated damage clauses in the terms of service that were challenged. Each agreed to separate Commission orders barring them from using such non-disparagement clauses in form contracts for goods and services and requiring them to notify consumers who signed such contracts that the prohibited text is not enforceable. The FTC’s actions illustrate that even subtle restrictions on customers’ abilities to speak negatively about a company’s products or services can run afoul of the CRFA.

- ii. *FTC v. Seller’s Playbook*, (D. Minn. 2018). The FTC and Minnesota AG sought a temporary restraining order against the defendants’ programs, which lured consumers into buying its expensive “system” that would earn them “big bucks on Amazon.” As part of its claim, the FTC alleged that the defendant’s attempt to restrict consumers’ ability to post reviews of their

products, services, or conduct in their form contracts violated the CRFA. This matter was settled in December 2018. The settlement, among other things, imposed a \$20.8 million judgment against the defendants.

VIII. “MADE IN USA” CLAIMS

The FTC published its final rule for “Made in the USA” labeling in July 2021. At its core, the rule prohibits companies from falsely claiming a product is made in the USA. This continues to be a strong area of enforcement for the FTC.

- a. Rules, Guidance, Workshops Staff Reports
 - i. Made in USA Rule: The FTC published its final rule for “Made in the USA” labeling on July 14, 2021. While this rule imposes no new requirements on businesses, it codifies the FTC’s long-standing enforcement policy regarding claims pertaining to U.S. origin and allows the agency to recover civil penalties for rule violations. In July 2024, the FTC published additional guidance clarifying compliance with the “all or virtually all” standard, and stated that unqualified “Made in USA” claims must rely on a reasonable basis to support the claim that “all significant processing that goes into the product” happens in the U.S., or “all or virtually all ingredients or components” are made and sourced in the U.S. This guidance also provided general information about the U.S. Customs and Border Protection’s requirement that all products of a foreign origin imported into the U.S. be marked with the name of their country of origin and clarified that not requiring a country-of-origin sticker does not necessarily mean the product can be marketed as Made in USA.
 - ii. Workshop: Made in the USA: An FTC Workshop. The FTC hosted a public workshop to enhance its understanding of consumer perception of “Made in USA” and other U.S.-origin claims.
 - iii. “Made in the USA” Closing Letters: From 2023–2024, the FTC issued a suite of closing letters on several businesses with “Made in the USA” claims. In the letters, the FTC explained “Made in the USA” FTC guidelines and noted that the companies either removed the claims or implemented action plans to remedy any misleading claims.
- b. “Made in USA” Cases
 - i. *United States of America v. Williams-Sonoma, Inc.*, (N.D. Cal. April 22, 2024). Williams-Sonoma will be required to pay a record civil penalty of \$3.175 million for “violating a 2020 Federal Trade Commission order requiring the retailer to tell the truth about whether the products it sells are Made in USA.” The complaint charges that the company listed multiple products for sale as being “Made in USA” when they were actually made in China and other countries. In 2020, the FTC sued Williams-Sonoma, charging that the company advertised multiple product lines as being all or

virtually all made in the USA when they were not. The company agreed to an FTC order that required them to stop their deceptive claims and follow “Made in USA” requirements. The complaint notes that the FTC became aware that Williams-Sonoma was marketing mattress pads under its PBTeen brand as made in America from domestic and imported materials when, in reality, the mattress pads were made in China. Six other products were found to be deceptive in violation of the 2020 order. In addition to the civil penalty, the settlement imposes requirements and reinforces requirements from the 2020 FTC order. These requirements include that the company (i) stop making unqualified U.S.-origin claims for any of its products; (ii) include any qualified “Made in USA” claims in a clear and conspicuous disclosure; and (iii) ensure when claiming a product was assembled in the U.S. it is substantially transformed in the U.S., its principal assembly took place in the U.S. and that U.S. assembly operations are substantial.

- ii. *United States of America v. Kubota North America Corp. et al.*, (N. D. Tex., Jan. 22, 2024). In January 2024, the Department of Justice, on the FTC’s behalf, filed a stipulated court order, which will prohibit the company from making deceptive claims in addition to requiring them to pay a \$2 million civil penalty for falsely labeling some of its replacement parts as being “Made in USA” even though they were made entirely overseas. Furthermore, after the company moved manufacturing for some parts to other countries, it failed to update the products’ labeling to reflect that change, leaving them labeled as “Made in USA”, according to the complaint. The stipulated court order against Kubota, in addition to the penalty, requires the company to (i) stop making unqualified U.S.-origin claims for any of its products; (ii) include any qualified “Made in USA” claims in a clear and conspicuous disclosure; and (iii) ensure when claiming a product was assembled in the U.S. it is substantially transformed in the U.S., its principal assembly took place in the U.S. and that U.S. assembly operations are substantial.
- iii. *In the Matter of EXOTOUSA LLC and Austin Oliver*, (F.T.C. Dec. 6, 2023). In December 2023, the FTC announced that it was taking action against EXOTOUSA LLC (d/b/a Old Southern Brass) for falsely claiming that certain products were manufactured in the United States and that the company was operated by veterans and that 10% of its sales were donated to military service charities. According to the complaint, Old Southern Brass “made many claims on its website and advertising that the products it sold were made in the United States.” Despite this, the complaint charges that many of the company’s products were imported from China or contained significant imported content. Old Southern Brass further claimed to be affiliated with the U.S. military, despite not being operated by a veteran, and the products it sold as being used by the U.S. military were not actually used by the U.S. military. Furthermore, the complaint “charged that the company did not donate 10% of sales to veterans’ charities as it claimed.” In January 2023, the FTC finalized a consent order settling the charges. The final order requires the company to pay \$150,000 to the FTC, stop making false claims

and comply with specific requirements relating to future country-of-origin claims. Additionally, the order includes a monetary judgment of \$4,572,137.66, which was partially suspended based on the defendants' inability to pay the full amount.

- iv. *In the Matter of Chaucer Accessories, Inc.*, (F.T.C. June 26, 2023). The FTC filed a complaint against Chaucer Accessories and associate companies for advertising their products as being “Made in USA” or “Hand Crafted in USA” when some products were imported or incorporated significant imported components. The FTC’s order against the company proposed a consent order requires defendants to (i) stop making unqualified U.S.-origin claims for any of its products; (ii) include any qualified “Made in USA” claims in a clear and conspicuous disclosure; and (iii) ensure when claiming a product was assembled in the U.S. it is substantially transformed in the U.S., its principal assembly took place in the U.S. and that U.S. assembly operations are substantial. The order also included a monetary judgment of \$191,481.
- v. *In the Matter of Cycra Inc. et. al.*, (F.T.C. June 2, 2023). The FTC filed a complaint against Cycra, a motocross and ATV parts maker, and its officer alleging that the company falsely claimed its products were made in the USA, when much of the significant parts or accessories were imported from Asia or Europe. The FTC’s order requires defendants to (i) stop making unqualified U.S.-origin claims for any of its products; (ii) include any qualified “Made in USA” claims in a clear and conspicuous disclosure; and (iii) ensure when claiming a product was assembled in the U.S. it is substantially transformed in the U.S., its principal assembly took place in the U.S. and that U.S. assembly operations are substantial. The order also included a monetary judgment of \$872,577; however, respondents were only required to pay \$22,385.66 to the FTC because of an inability to pay. In May 2024, the FTC announced that it would be sending more than \$180,000 in refunds to 889 customers who were harmed by the false “Made in USA” claims.
- vi. *In the Matter of Instant Brands LLC*, (F.T.C. Mar. 1, 2023). The FTC filed a complaint alleging that Instant Brands made false or misleading representations regarding its measuring cups being made in the U.S. when some were imported from China. The FTC order (i) requires payment of a \$129,416 judgment; (ii) includes a prohibition on unqualified claims; and (iii) requires a clear and conspicuous disclosure about the extent to which USA made products contain foreign parts.
- vii. *In the Matter of Lions Not Sheep Apparel, LLC*, (F.T.C. May 11, 2022). The FTC brought an action under the Made in USA Labeling Rule against an apparel and accessories company (and its owner) which promoted its products as the “BEST DAMN AMERICAN MADE GEAR ON THE PLANET.” The owner of the company posted a video on social media, however, showing how to hide shirts that are made in China by replacing the origin tags. The settlement includes a \$211,335 civil penalty and prohibits

unsubstantiated claims. Additionally, in May 2023, the FTC announced that it was returning \$176,000 to consumers.

- viii. *U.S. v. Lithionics Battery LLC*, (M.D. Fla. Apr. 12, 2022) The FTC issued its first order under the new Made in USA Labeling Rule on April 12, 2022. The FTC alleged that Lithionics made “Made in USA” claims for its batteries while not satisfying the “all or virtually all” standard. It settled with the company and its owner for over \$100,000. Notably, the owner was named individually, is jointly and severally liable for the penalty amount and is subject to injunctive provisions.
- ix. Crate and Barrel Closing Letter (February 15, 2022): Crate and Barrel received a closing letter from the FTC related to “Made in USA” claims. The company agreed to receive appropriate documentation from manufacturers before making any “Made in USA” claims and to contractually require vendors to update substantiation as circumstances require.
- x. *In the Matter of Resident Home LLC*, (F.T.C. Oct. 8, 2021). In July 2023, the FTC settled with Resident Home LLC for \$753,000. Resident Home’s subsidiary, Nectar Brand LLC, had agreed to a 2018 order over allegations it falsely advertised products as “Assembled in USA.” The FTC alleged that Resident Home LLC made untrue “Made in USA” claims. While normally this may be a straightforward violation of a previous consent order resulting in civil penalties, this scenario was complicated by the change in corporate structure.
- xi. *In the Matter of Gennex Media LLC*, (F.T.C. Mar. 1, 2021). The FTC alleged in its complaint against Gennex Media, which sells customizable promotional products such as wristbands and temporary tattoos, that the company’s claims that their products were all or virtually all made in the United States were false. In April 2021, the FTC settled with Gennex. Under the proposed settlement, Gennex and its owner are prohibited from making deceptive claims and must pay a monetary judgment of \$146,249.24.
- xii. *In the Matter of Chemence, Inc.*, (F.T.C. Dec. 22, 2020). The FTC filed suit against Chemence, a cyanoacrylate glue maker and its president for supplying pre-labeled and pre-packaged glues with deceptive “Made in USA” claims. In February 2021, the FTC settled with Chemence for \$1.2 million, the highest monetary judgment ever for a “Made in USA” case.
- xiii. *In the Matter of Williams-Sonoma, Inc.*, (F.T.C. Mar. 30, 2020). In July 2020, the FTC approved a final consent order settling charges against Williams-Sonoma, Inc. Williams-Sonoma agreed to stop making false, misleading or unsubstantiated claims that all its Goldtouch Bakeware products, its Rejuvenation-branded products and Pottery Barn Teen and Pottery Barn Kids-branded upholstered furniture products are all, or virtually all, made in the United States. As part of the proposed settlement, Williams-Sonoma is required to pay \$1 million to the FTC.

- xiv. *In the Matter of Underground Sports, Inc. d/b/a Patriot Puck*, (F.T.C. Sept. 12, 2018) & *In the Matter of Sandpiper of California, Inc. and PiperGear USA, Inc.*, (F.T.C. Sept. 12, 2018). The FTC announced settlements in two separate actions – one against a seller of hockey pucks (Patriot Puck) and the other against two companies selling recreational and outdoor equipment, Sandpiper and PiperGear.
1. In the *Patriot Puck* case, the FTC alleged that Patriot Puck claimed its hockey pucks were “Made in America”, “Proudly Made in the USA”, “100% American Made!” and “The only American Made Hockey Puck!” when in fact, the hockey pucks were wholly imported from China.
 2. In the *Sandpiper* and *PiperGear* cases, the FTC alleged that the companies falsely claimed that their backpacks, travel bags, wallets and other products were all, or virtually all, made in the United States when in fact 95% of Sandpiper’s products were imported as finished goods and approximately 80% of PiperGear’s products either were imported as finished goods or contained significant imported components. Under the terms of the proposed settlement orders, these companies are prohibited from making unqualified U.S.-origin claims for their products, unless they can show that the products’ final assembly or processing, and all significant processing, takes place in the United States, and that all or virtually all ingredients or components of the product are made and sourced in the United States.
- xv. *In the Matter of Bollman Hat Company d/b/a SaveAnAmericanJob, LLC*, (F.T.C. Apr. 17, 2018). In January 2018, the FTC filed a complaint against Bollman Hat Company alleging that Bollman falsely used taglines like “Made in USA”, “Choose American” and “Made in USA since 1868”—and “SaveAnAmericanJob”—when in fact about 70% of Bollman’s hats were made in foreign countries. Bollman’s settlement, among other things, requires Bollman, when it makes qualified claims, to clearly disclose how many foreign parts the labeled product includes.
- xvi. *U.S. v. iSpring Water Systems, LLC*, (N.D. Ga. Apr. 10, 2019). iSpring, a Georgia-based distributor of water filtration systems, agreed to pay a \$110,000 civil penalty to settle charges that it violated a 2017 FTC administrative order by making false claims that wholly imported Chinese water filtration systems were made in the United States. In 2018, the defendants began using “designed and crafted in USA” and similar claims. These were different than the “built in USA” claims that led to the initial consent order, but the newer claims still fell under its scope by violating the “Made in USA” standard.

IX. MAIL ORDER RULE

The FTC’s Mail, Internet or Telephone Order Merchandise Rule (“Mail Order Rule”) sets out

detailed requirements for a seller to follow about delivery time claims, refunds and consumer notice and consent.

a. Rules, Guidance, Workshops and Staff Reports

i. Mail Order Rule:

1. If a seller specifies a delivery time frame, the seller is expected to deliver within that time. If the seller does not specify a delivery time, the seller is expected to deliver within 30 days.
2. If a seller cannot meet these deadlines, the Mail Order Rule requires the seller to notify the customer of the delay and present “an option either to consent to a delay in shipping or to cancel the [customer’s] order and receive a prompt refund.” For a delay that is 30 days or less, if the consumer does not respond to the notice, consent to the delay is presumed. For a second delay, or if the first delay is more than 30 days, the seller must cancel the order unless the consumer affirmatively consents to the delay.
3. The seller must have a reasonable basis to believe it can meet any delivery or shipment promises made.

b. Mail Order Rule Cases

- i. *FTC v. Vroom, Inc., et al.* (S.D. Tex. Jul. 2, 2024). The FTC filed suit against Vroom, an online used car dealer. The complaint alleged that Vroom misrepresented its examination procedures of the used cars, failed to obtain consumer’s consent to shipment delays and failed to provide prompt refunds when the cars were not delivered in the 14 days promised in its advertising and website. The complaint alleged that Vroom violated the Used Car Rule, Pre-Sale Availability Rule, the Mail, Internet and the Telephone Order Rule (MITOR). In a proposed settlement, Vroom agreed to pay \$1 million in refunds to consumers who were harmed by these practices. The order also prohibits Vroom from making misleading claims about inspections or shipping, requires them to document all claims regarding promised shipping times and requires them to follow MITOR, the Used Car Rule and the Pre-Sale Availability Rule.
- ii. *FTC v. Hey Dude, Inc.*, (D. Nev. Sep. 11, 2023). The FTC reached a settlement agreement with online shoe retailer Hey Dude. The Commission also alleged that the company violated the Mail Order Rule by “(1) failing to issue shipping delay notices when it could not timely fulfill consumers’ orders; (2) failing to cancel consumers’ orders and issue prompt refunds after failing to issue such notices; and (3) issuing consumers gift cards instead of sending prompt refunds of the original payment for merchandise ordered but not shipped.” The proposed court order, if approved by the court, will require the company to change its conduct and will bar Hey Dude from future

violations of the Mail Order Rule. Additionally, the company will be barred from making misrepresentations about consumer reviews by requiring it to publish all reviews it receives, with the limited exception of moderating inappropriate content. Hey Dude will also be required to pay the FTC \$1.95 million towards consumer refunds. *See Consumer Reviews for more information.*

- iii. *FTC v. American Screening*, (E.D. Mo. Aug. 4, 2022). The FTC filed suit against American Screening when it deceptively represented that it would ship PPE, such as masks, gloves and hand sanitizer, within 24 to 48 hours after processing. The PPE was advertised as “in stock” and/or “available to ship;” however, it would often take weeks or months for the PPE to ship. Many consumers did not ever receive their PPE, and American Screening routinely ignored consumer questions and refund demands. In the order granting the motion for summary judgment, the FTC secured a \$14 million judgment.
- iv. *FTC v. Frank Romero, d/b/a Trend Deploy*, (M.D. Fla June 29, 2021). The FTC announced a summary judgment victory in a case charging Frank Romero with violations of the Mail Order Rule. This follows the FTC’s June 2021 complaint that alleged that defendant preyed on consumers’ fear of COVID-19 by advertising the availability and quick delivery of PPE, even though defendant had no basis to make these promises within the time periods advertised. The complaint further alleged that the defendant failed to allow consumers consent to delay or cancel their orders and failed to cancel orders even after receiving cancellation and refund requests pursuant to the FTC’s Mail Order Rule. The court permanently enjoined the defendant from selling any protective goods or services. *See COVID-19 Regulation for more information.*
- v. *FTC v. QYK Brands LLC*, (C.D. Cal. Apr. 12, 2021). The FTC succeeded on its motion for summary judgment. The complaint alleged that QYK Brands made false promises about the availability of personal protective equipment (PPE), resulting in consumers waiting weeks or even months for their orders to be fulfilled, if they were fulfilled at all. In granting the FTC’s motion for summary judgment, the court stated that the defendants failed to offer the “prompt refund” that the rule requires or give the buyers the option of waiting for their product or receiving money back due to the prolonged shipping times.
- vi. *In the Matter of Fashion Nova, Inc.*, (C.D. Cal. Apr. 20, 2020). In April 2020, the FTC announced a \$9.3 million settlement with Fashion Nova, Inc. for failing to comply with multiple requirements of the Mail Order Rule. The FTC alleged that the defendants made quick shipping promises that they could not keep and offered refunds for delayed shipments in the form of gift cards rather than cash. The Mail Order Rule requires that refunds be issued via cash, check, money order or credit charge reversal.

X. CHILDREN’S ADVERTISING / COPPA

The Children’s Online Privacy Protection Act of 1998 (“COPPA”) regulates the online collection of personal data from children under the age of 13. In the past few years, the FTC has demonstrated a huge interest in strengthening its enforcement actions with respect to COPPA. The FTC also published a staff report and hosted a workshop dedicated to learning how to prevent children from “stealth advertising.”

In 2024, an updated version of COPPA (“COPPA 2.0”) was sent to the House of Representatives, after passing the U.S. Senate. If passed, the major changes would include raising the age of coverage for some provisions from those under 13 years of age to those under 17 years of age, strengthening personal data protection, prohibiting targeted advertising to children and teens and minimizing data collection of children and teens.

At the agency level, COPPA protections are also likely to be strengthened. In December 2023, the FTC sought comment on proposed changes to the COPPA rule, to account for the evolving ways that children’s information and data is used, collected and disclosed. The proposed rule would require separate opt-ins for targeted advertising, prohibit the conditioning a child’s participation on collection of personal information, limit the support for the internal operations exception, establish limits on nudging children to stay online, codify current guidance on the prohibition of commercial use of children’s information as collected by education technology resulting in increasing accountability for Safe Harbor programs, strengthening data security requirements, strengthening data security requirements and imposing limits on data retention. The proposed rule changes received over 700 comments during the comment period and is pending promulgation as a final rule.

- a. Rules, Guidance, Workshops and Staff Reports
 - i. Staff Perspective: Protecting Kids from Stealth Advertising in Digital Media. In September 2023, the FTC published a Staff Perspective paper which highlighted several issues that were raised during the workshop (mentioned below) on children’s advertising.
 - ii. Workshop: Protecting Kids from Stealth Advertising in Digital Media. In October 2022, the FTC hosted a workshop aimed at exploring how children were being advertised to digitally and online and what measures should be taken to protect them from manipulation.
 - iii. Workshop: The Future of the COPPA Rule: An FTC Workshop. In October 2019, the FTC hosted a public workshop to explore whether to update COPPA in light of the changing business practices in the online children’s marketplace.
 - iv. COPPA FAQs: The FTC added a new section to its COPPA FAQ page in 2021 to consolidate questions about COPPA’s application to AdTech companies collecting personal information of children. In short, whether a third party (an ad network or plug-in, for example) is deemed to have

acquired “actual knowledge” that it has collected personal information from users of a child-directed site or service is fact specific. The Commission notes two situations where it believes the “actual knowledge” standard would be met: “(1) where a child-directed content provider directly communicates the child-related nature of its content to the ad network; or (2) where a representative of your ad network recognizes the child-directed nature of the content.”

v. Nicotine Marketing: E-Cigarettes/Vapes

1. FTC/FDA Warning Letters: Nicotine Products Appealing to Kids: In May 2018, the FTC and the FDA sent 13 warning letters to manufacturers, distributors and retailers who the FTC claims misleadingly labeled or advertised e-liquids used in e- cigarettes to mimic products that appeal to kids. The FTC argued that marketing e-liquids in packaging that resembles kid-friendly food products could present an unwarranted risk to the health or safety of children in violation of Section 5 of the FTC Act. The warning letters are part of the FDA’s continuing Youth Tobacco Prevention Program, which is aimed at addressing concerns with youth access to tobacco products.

b. Children’s Advertising / COPPA Cases

i. *United States of America v. ByteDance Ltd., et al.* (C.D. Cal. Aug. 02, 2024). In August 2024, upon referral from the FTC, the DOJ filed a complaint against TikTok Inc., ByteDance Ltd. and their affiliates for alleged violations of COPPA. The complaint alleged that from 2019–present, defendants knowingly permitted children to create regular TikTok accounts—“collect[ing] and retain[ing] a wide variety of personal information from [the children]” without notifying or obtaining parental consent. The complaint alleged that accounts created in “Kids Mode” (a version of TikTok for children under 13 years of age) allowed defendants to unlawfully collect and retain children’s personal information.

ii. *FTC v. NGL Labs, LLC* (C.D. Cal. July 9, 2024). The FTC filed a suit against NGL Labs and two of its co-founders for multiple COPPA violations related to marketing their anonymous messaging app to children and teens. The complaint alleges that both NGL and its co-founders marketed their service to children and teens. The complaint also alleged that NGL falsely claimed that their AI technology would filter out bullying and other harmful messages. The proposed settlement order will require defendants to pay \$5 million.

iii. *U.S. v. Microsoft Corp.*, (W.D. Wash. June 5, 2023). The FTC filed a complaint against Microsoft alleging that it collected personal information through its Xbox Live online service from children under 13 years of age without notifying parents or obtaining parental consent. The proposed order will require Microsoft to: (i) properly inform parents regarding certain

privacy protections; (ii) obtain parental consent for accounts created before May 2021 if the account holder is still a child; (iii) establish and maintain systems of deletion; and (iv) notify video game publishers when it discloses personal information from children that the user is a child. Microsoft paid \$20 million to settle the charges.

- iv. *U.S. v. Amazon.com, Inc.*, (W.D. Wash. May 31, 2023). The FTC filed suit against Amazon in which it alleged that its voice assistant service, Alexa, retained the personal information of thousands of children in violation of COPPA's prohibition on retaining children's personal information longer than is reasonably necessary to fulfill the purposes for which the information is collected. Additionally, the complaint asserts that Amazon failed to delete users' voice information and geolocation information upon request. The proposed stipulated federal court order requires: (i) deletion of inactive child accounts and certain voice recordings and geolocation information; (ii) prohibiting the use of such data to train Amazon's algorithms; (iii) payment of \$25 million in civil penalty; (iv) notifying users about the FTC-DOJ action against the company; and (v) notifying users of its retention and deletion practices and controls, among other proposals.
- v. *U.S. v. Edmodo, LLC*, (N.D. Cal. May 22, 2023). The FTC filed suit against education technology platform, Edmodo. The complaint alleged that Edmodo collected personal data from U.S. students under 13 years of age without providing direct notice to parents or obtaining parental authorization and retained children's data longer than reasonably necessary to fulfill the purpose of collection. The FTC's proposed order included: (i) a \$6 million monetary penalty; (ii) prohibitions on Edmodo's data collection uses; and (iii) a ban against Edmodo using schools as intermediaries in the parental consent process.
- vi. *U.S. v. Epic Games, Inc.*, (E.D.N.C. Dec. 19, 2022). The FTC filed a complaint against Epic Games, a video game developer, in which it alleged that Epic employed dark patterns, such as privacy-invasive default settings and deceptive interfaces, that tricked Fortnite users (including children) into making purchases. Additionally, it resulted in locked accounts of customers who disputed these unauthorized charges. In March 2023, the FTC finalized its order against Epic which required Epic to pay a total of \$520 million in relief, which included civil penalties (\$275 million).
- vii. *U.S. v. Kurbo and WW International*, (N.D. Cal. Feb. 16, 2022). The FTC filed a complaint against WW/Kurbo, which alleged that the company offered weight management services to children online and collected data related to such services, all without notice to or consent from parents. The settlement order requires WW International and Kurbo to delete personal information illegally collected from children under 13 years of age, destroy any algorithms derived from the data and pay a \$1.5 million penalty.
- viii. *U.S. v. OpenX Technologies, Inc.*, (C.D. Cal. Dec. 15, 2021). The complaint

alleged that the OpenX Technologies, a California-based online advertising company, collected personal information from children under 13 years of age without parental consent. Additionally, the complaint alleged that OpenX collected geolocation information from users who specifically asked not to be tracked. The company entered into a settlement agreement in which it agreed to pay \$2 million.

- ix. *Aristotle International*, (August 2021). The FTC removed Aristotle International from its approved list of Safe Harbor self-regulatory organizations. FTC staff warned Aristotle earlier in 2021 that it was concerned the company was not sufficiently monitoring member companies to ensure COPPA compliance.
- x. *U.S v. Kuuhuub Inc.*, (D.C. Cir. June 30, 2021). In July 2021, the FTC announced a settlement with Kuuhuub, an online coloring book app. The complaint alleged that the company had collected personally identifying information from kids without obtaining verifiable parental consent. The settlement included a \$3 million monetary penalty provision and required deletion of data from children under 13 years of age. Additionally, the order required the company to offer refunds to customers who were under the age of 18 when they signed up for the app.
- xi. *U.S. v. HyperBeard, Inc.*, (N.D. Cal. June 3, 2020). The complaint alleged that HyperBeard, Inc., a developer of apps popular with children, allowed third-party ad networks to collect personal information through persistent identifiers without parental notification or obtaining verifiable parental consent. As a result, the ad networks used identifiers to target ads to children using HyperBeard's apps. In June 2020, HyperBeard settled with the FTC through a \$150,000 payment and deletion of personal information the company illegally collected from children under 13 years of age.
- xii. *In the Matter of Miniclip S.A.*, (F.T.C. May 19, 2020). In May 2020, Miniclip S.A., a maker of online and digital games, settled FTC allegations that it falsely claimed it was a member of CARU's COPPA safe harbor program. Miniclip terminated its participation in the CARU safe harbor program in 2015 but continued to claim compliance until 2019.
- xiii. *In the Matter of Retina-X Studios, LLC*, (F.T.C. Oct. 22, 2019). In March 2020, the FTC gave final approval to its settlement with Retina-X Studios, developer of three alleged "stalking" apps. The complaint alleged that the company and its owner failed to secure the data collected from children (and adults) by the apps and to ensure the data was only retained for legitimate purposes.
- xiv. *FTC and People of the State of New York v. Google LLC and YouTube LLC*, (D.C. Cir. Sept. 4, 2019). The FTC and the State of New York filed a complaint against Google and its subsidiary YouTube for allegedly collecting personal information from viewers of child-directed channels,

without notifying parents or obtaining their consent. In September 2019, the FTC and the New York attorney general announced the then largest financial penalty for violations of COPPA, \$170 million.

- xv. FTC Letter to Wildec LLC (May 1, 2019). In May 2019, Ukraine-based Wildec LLC, which operates the apps Meet24, FastMeet and Meet4U, removed the apps from Apple’s App Store and Google’s Google Play Store following allegations by the FTC that the apps allowed children as young as 12 years of age to access them and appeared to be in violation of COPPA and the FTC Act.
- xvi. *U.S. v. Unixiz d/b/a i-Dressup.com*, (N.D. Cal. Apr. 24, 2019). In April 2019, the FTC settled with Unixiz, Inc. The i-Dressup.com website allowed users, including children, to play dress-up games, design clothes and decorate their online spaces. i-Dressup collected personal information from children without parental consent. Additionally, i-Dressup stored and transmitted users’ personal information in plain text and failed to perform vulnerability testing of its network, implement an intrusion detection and prevention system and monitor for potential security incidents, which led to a security breach. i-Dressup and its owners agreed to pay \$35,000 in civil penalties and are prohibited from selling, sharing or collecting any personal information until they implement a comprehensive data security program.
- xvii. *U.S. v. Musical.ly, Inc.*, (C.D. Cal. Feb. 27, 2019). A group of child privacy advocates filed a complaint against TikTok with the FTC, in which it alleged that the video app violated an agreement to protect children on its platform. TikTok paid a \$5.7 million fine to the FTC in February 2019 over allegations that an earlier version of its app, called Musical.ly, violated COPPA by allowing users younger than 13 years of age to sign up without parental consent. Under the terms of the agreement, TikTok also agreed to remove all videos previously uploaded by anyone under the age of 13.
- xviii. *FTC v. VTech Electronics Ltd. Inc. et. al.*, (N.D. Ill. Jan. 1, 2018). The FTC alleged in its complaint that VTech’s privacy policy links for both the kids’ and parents’ apps were not prominently displayed or clearly labeled and that the policy failed to provide required information about VTech itself. The Commission also alleged that VTech did not have a security plan and failed to train its employees to safeguard sensitive information. VTech agreed to pay a \$650,000 civil penalty and is required to create a “comprehensive security plan” that will be audited every other year for the next 20 years.

XI. ENVIRONMENTAL/SUSTAINABILITY/GREEN CLAIMS

The FTC’s Guides for the Use of Environmental Marketing Claims (“Green Guides”) are designed to protect consumers who are hoping to buy “green products” and are deceived when companies tout false environmental marketing claims. The first Green Guides were issued in 1992 and were revised in 1996, 1998 and 2012. The FTC announced in December 2022 that it was seeking public comments on potential updates and changes to the Green Guides.

- a. Rules, Guidance, Workshops and Staff Reports
 - i. Green Guides: In December 2022, the FTC announced that it was seeking public comment on potential updates and changes to the Green Guides for the Use of Environmental Claims.
 - ii. Workshop: Talking Trash at the FTC: Recycling Claims and the Green Guides: In May 2023, in connection with the review of the Green Guides, the Commission held a workshop entitled “Talking Trash at the FTC”. The workshop contained panels on—the “Current State of Recycling Market and Claims”, the “Consumer Perception of Recycling Claims” and the “Future of the Green Guides”.
 - iii. Energy Labeling Rule: After a public comment period, the FTC updated on October 3, 2022, its Energy Labeling Rule in order to allow consumers to more accurately compare the estimated annual energy consumption of appliances before they buy them. In January 2024, the FTC announced it was seeking public comment to again update and expand the rule to better allow customers to reduce energy costs. The notice of proposed rulemaking includes four basic categories: 1) new product labels for cleaners, dryers, miscellaneous refrigeration products and portable spas; 2) changes to labels for existing products; 3) revisions to the requirements for labeling showroom models; and 4) other minor amendments to improve the rule.
 - iv. Penalty Offense Authority: In May 2022, the FTC separately sued Walmart and Kohl’s, using its penalty offense authority, for marketing rayon textile products as bamboo. Both companies were charged with making deceptive environmental claims, specifically touting that “bamboo” textiles were made using ecofriendly processes, when bamboo conversion into rayon actually requires toxic chemicals and results in hazardous pollutants. Both companies settled and agreed to stop making deceptive “green” claims or using other misleading advertising and to pay penalties of \$2.5 million and \$3 million, respectively.

XII. DATA PRIVACY AND CYBERSECURITY

Data Privacy and Cybersecurity has become an increasingly important topic for the FTC. The FTC issued an Advanced Notice of Proposed Rulemaking on Commercial Surveillance and Data Security which focuses on how data is collected from consumers and then monetized. The FTC has also brought several cases focused on health data. In May 2023, the FTC proposed amendments to strengthen and modernize the Health Breach Notification Rule; these amendments were incorporated into the final Rule in April 2024. In March 2024, the FTC released its Privacy and Data Security Update for 2023 detailing the key work related to data privacy in 2023.

- a. Rules, Guidance, Workshops and Staff Reports
 - i. Updated Health Breach Notification Rule (HBNR): On May 18, 2023, the FTC proposed amendments to strengthen and modernize the HBNR. After a

notice-and-comment period, the changes were promulgated on April 26, 2024. The changes emphasize the HBNR’s applicability to health apps and other technologies. The changes are meant to respond to the increase in the amount of health data collected and the incentives that businesses face to use or disclose the sensitive data for marketing purposes.

- ii. PrivacyCon 2024: The FTC hosted its eighth annual PrivacyCon on March 6, 2024. The panels featured speakers from a diverse range of interested groups from government officials to consumer privacy advocates to industry representatives and included timely subjects such as the ways technology is enhancing consumer privacy, consumer attitudes and behaviors related to data breaches and other privacy concerns, the economics of data privacy, health and hospital privacy after *Dobbs*, artificial intelligence and its projected impact on the future of privacy, mobile device security and emerging deepfake technology.
 - iii. Advanced Notice of Proposed Rulemaking (“ANPR”): Commercial Surveillance and Data Security. On August 22, 2022, the FTC announced a proposed rulemaking to “crack down on harmful commercial surveillance and lax data security.” While the ANPR sought comment on 95 different questions, the overall themes focused on how data is collected from consumers and how that data is then monetized. Specifically, the FTC seemed interested in how emerging technology has affected the way companies surveil, target and/or potentially discriminate against consumers.
 - iv. Commercial Surveillance and Data Public Forum: On September 8, 2022, the FTC held a public forum to discuss these issues. Key topics raised by industry stakeholders and the FTC alike included data minimization and the prevention of secondary uses of data, particularly in the context of behavioral advertising.
 - 1. The FTC highlighted three key questions among the 95 posed to the public: (a) Which commercial surveillance measures are most prevalent in the industry; (b) How should the FTC identify and evaluate commercial surveillance harms or potential harms; and (c) Which harms has the FTC failed to previously address.
 - v. Policy Statement: Education Technology and COPPA: On May 19, 2022, the FTC announced that it will crack down on education technology companies if they illegally surveil children when they go online to learn. The Commission explained that it is against the law for companies to force parents and schools to surrender their children’s privacy rights in order to do schoolwork online or attend class remotely. *See Children’s Advertising/COPPA for more information.*
- b. Data Privacy and Cybersecurity Cases
- i. *U.S. v. Verkada, Inc.*, (N.D. Cal. Aug. 30, 2024). Upon referral from the FTC,

the DOJ issued a complaint against Verkada, Inc. The complaint alleged that the company had failed to provide reasonable security for personal information regarding Verkada’s own customers and personal information collected through Verkada’s live camera feeds (placed in sensitive areas such as elementary schools, prison cells, women’s health clinics, etc.). The FTC alleged that—despite promises to keep data safe—Verkada allowed a hacker to gain access to its customers personal health information and to live camera footage. In a proposed settlement, Verkada agreed to pay \$2.95 million and to implement a security program to address data security failures.

- ii. *In the Matter of Avast Ltd.*, (F.T.C. Feb. 22, 2024). In February 2024, the FTC filed suit against Avast Ltd., alleging that while claiming that its software would protect consumers’ privacy by blocking third party tracking, Avast was selling consumers’ detailed, re-identifiable browsing data to more than 100 third parties through its subsidiary. In June 2024, the FTC finalized an order banning Avast from selling or licensing web browsing data for advertising and requiring the company to pay \$16.5 million.
- iii. *U.S. v. Cerebral, Inc.*, (S.D. Fla. Apr. 15, 2024). The DOJ, upon notification and referral from the FTC, filed suit against Cerebral, Inc. in April of 2024. The suit alleged that Cerebral, an online mental health service, “violated its customers’ privacy by revealing their most sensitive mental health conditions across the Internet and in the mail.” *See Negative Option Marketing / “ROSCA” for more information.*
- iv. *U.S. v. Monument, Inc.*, (D.D.C. Apr. 11, 2024). In April 2024, the DOJ, upon notification and referral from the FTC, filed a complaint and stipulated order against Monument, Inc. Monument offers users access to support groups, community forums, therapy and access to physicians that assist in treating alcohol addiction. The complaint alleged that after Monument collected user personal information the company “disclos[ed] users’ personal health data to third-party advertising platforms . . . without consumer consent” while making promises to not disclose user information and claims of compliance with HIPAA. The stipulated order will ban Monument from disclosing health information for advertising and order them to obtain users’ affirmative consent before sharing health information with third parties. The order also proposes a civil penalty of \$2.5 million.
- v. *In the Matter of Blackbaud, Inc.*, (F.T.C. Feb. 1, 2024). In its February 2024 Complaint, the FTC alleged that Blackbaud, Inc. failed to implement appropriate safeguards to secure and protect clients’ personal data collected as part of its services. The FTC claimed that despite promises of safeguards, Blackbaud deceived users by failing to put in place adequate safeguards. In May 2024, the FTC finalized an order requiring Blackbaud to delete data that it no longer needs to provide its products or services and, additionally, prohibits Blackbaud from misrepresenting data security/retention policies. Blackbaud was also ordered to develop an information security program and data retention schedule that would address the FTC’s concerns.

- vi. *In the Matter of InMarket Media, LLC*, (F.T.C. Jan. 18, 2024). The FTC filed suit against InMarket Media, a data aggregator, alleging that the company “did not fully inform consumers and obtain their consent before collecting and using their location data for advertising and marketing.” The proposed order will ban InMarket from selling or licensing precise location data and will require the company to take several steps to strengthen consumer protection.
- vii. *In the Matter of X-Mode Social, Inc.* (F.T.C. Jan. 9, 2024). The FTC charged X-Mode Social, and its successor, Outlogic, LLC, with failing to put in place sufficient safeguards on the use of sensitive, consumer location information by third parties. The FTC alleged that X-Mode Social/Outlogic would sell the un-anonymized data in association with unique mobile device identifiers—without removing sensitive locations from the raw data sold (e.g., places of worship, medical and reproductive health clinics, domestic abuse shelters, etc.). In April 2024, the FTC finalized an order which prohibited X-Mode/Outlogic from sharing/selling any sensitive location data in conjunction with imposing several other preventative requirements.
- viii. *U.S. v. Amazon.com, Inc.*, (July 21, 2023). The FTC filed suit against Amazon, under Section 5 of the FTC Act, and COPPA. The May 31, 2023, complaint alleges Amazon’s voice assistant service, Alexa, retained the personal information of thousands of children in violation of COPPA’s prohibition on retaining children’s personal information longer than is reasonably necessary to fulfill the purposes for which the information is collected. **See *Children’s Advertising/COPPA* for more information.**
- ix. *U.S. v. Easy Healthcare Corp.*, (N.D. Ill. June 26, 2023). The FTC alleged in its complaint that Easy Healthcare, developer of fertility app “Premom”, falsely promised Premom users in their privacy policies that defendant would not share personal data with third parties and that any data collected was non-identifiable. The complaint also asserts that the company failed to implement reasonable privacy and data security measures to address risks created by its use of third-party automated tracking tools. The proposed order requires, among other things, the company pay a \$100,000 civil penalty and the company is barred from sharing users’ personal health data with third-party advertisers.
- x. *In the Matter of IHealth.io Inc. d/b/a Vitagene, Inc.*, (F.T.C. June 16, 2023). The FTC filed a complaint alleging that IHealth, a genetic diagnostic testing company, deceived consumers about their ability to delete their data and their genetic samples, left sensitive genetic and health data unsecured under industry-standard security practices and unfairly adopted material retroactive privacy policy changes. The company entered into a settlement agreement in which it agreed to pay \$75,000 and it agreed to, among other things, stop sharing health data and adopt a comprehensive information security program.

- xi. *FTC v. Ring LLC*, (D.C. Cir. May 31, 2023). The FTC filed a complaint against Ring, a home security and smart home device company, in which it alleges that Ring compromised its customers' privacy and sensitive video data by permitting every employee to have full access to every customer video, without customer consent. The complaint also alleges that Ring failed to implement basic measures to monitor and detect inappropriate access to such data as well as giving employees no security training or responsibility to report instances of bad behavior. In a proposed order, the FTC requires Ring to: (i) delete data products such as data, models and algorithms derived from videos it unlawfully reviewed; (ii) implement a privacy and security program with stringent security controls; and (iii) pay \$5.8 million which is to be refunded to consumers.
- xii. *In the Matter of BetterHelp, Inc.*, (F.T.C. Mar. 2, 2023). The FTC issued a proposed order to ban the online counseling platform BetterHelp from sharing consumers' health data, including sensitive information about mental health challenges, for advertising purposes. The proposed order requires BetterHelp to pay \$7.8 million to consumers to settle its charges. Additionally, the order includes a prohibition on disclosing health data for advertising and the company must obtain affirmative express consent from its consumers before disclosing personal information to certain third parties for any purpose.
- xiii. *U.S. v. GoodRx Holdings, Inc.*, (N.D. Cal. Feb. 1, 2023). The FTC filed a complaint against GoodRx alleging that the company failed to notify consumers of its unauthorized disclosures of consumers' personal health information and failed to implement sufficient preventative policies for the improper disclosure of sensitive health information. The company entered into a settlement agreement in which it agreed to pay a \$1.5 million civil penalty for violating the HNBR. The company is also prohibited from sharing users' health data with certain third parties for advertising purposes.
- xiv. *In the Matter of Chegg, Inc.*, (F.T.C. Oct. 31, 2022). The FTC filed a complaint against Chegg, a direct-to-student educational products and service provider, alleging that Chegg failed to protect the personal information it has collected from its users and employees. As a result, the company experienced four data breaches that exposed that personal information. On January 25, 2023, the FTC finalized an order requiring Chegg to: (i) implement a comprehensive information security program; (ii) limit the data it can collect and retain, offer users multifactor authentication to secure their accounts and allow users to request access to and deletion of their data; and (iii) issue timely compliance reports to the FTC.
- xv. *In the Matter of Drizly, LLC*, (F.T.C. Oct. 24, 2022). The FTC filed a complaint against Drizly, an online alcohol e-commerce platform, alleging that the company and its CEO failed to employ basic reasonable security measures to protect consumers' personal information. These failures were

alleged to have led to a breach and exposing of 2.5 million consumers' personal information. On January 9, 2023, the respondents agreed to an order requiring: (i) the destruction of any personal data collected that was not necessary for providing products or services; (ii) public disclosure on its website of a retention schedule of the information it collects and why such data is necessary; (iii) the implementation of adequate training and security safeguards to prevent security incidents outlined in the complaint; and (iv) the submission of compliance reports.

- xvi. *FTC v. Kochava Inc.*, (D. Idaho Aug. 29, 2022). In August 2022, the FTC filed suit against Idaho-based Kochava alleging that the data broker sold geolocation data from hundreds of millions of mobile devices that could be used to track individuals to and from sensitive locations. The FTC complaint detailed that the data could be used to identify and track individuals at locations such as reproductive health clinics, places of worship, homeless and domestic violence shelters and addiction recovery centers.
- xvii. *In the Matter of Support King, LLC, d/b/a SpyFone.com, et. al.*, (F.T.C. Aug. 26, 2021). In September 2021, the FTC proposed an order to ban SpyFone and its CEO from the surveillance business over allegations that the stalkerware app company secretly harvested and shared data on people's physical movements, phone use and online activities with a hidden device hack.
- xviii. *In the Matter of Flo Health, Inc.*, (F.T.C. Jan. 13, 2021). In June 2021, Flo Health settled FTC allegations that the company had shared health information about its users with outside data analytics providers after making promises to consumers that such information would be kept private. As part of the settlement, Flo Health will be required to obtain the affirmative consent of its users before sharing their personal information with others. Additionally, the company must obtain an independent review of its privacy policies.
- xix. *In the Matter of Everalbum, Inc.*, (F.T.C. Jan. 11, 2021). In May 2021, the FTC finalized its settlement with Everalbum, a photo app, over allegations that the developer misled users about its use of facial recognition technology and its retention of photos and videos from users who deactivated their accounts.
- xx. *In the Matter of Zoom Video Communications, Inc.*, (F.T.C. Nov. 9, 2020). In February 2021, the FTC gave final approval to a settlement with Zoom Video Communications over allegations that it misled consumers about the level of security it provided for its Zoom meetings and compromised the security of some Mac users. The final order requires Zoom to implement a comprehensive security program and to review any software updates for security flaws.
- xxi. *In the Matter of SkyMed International, Inc.*, (F.T.C. Dec. 16, 2020). In

February 2021, the FTC finalized its settlement with SkyMed International over allegations that it failed to take reasonable steps to secure sensitive consumer information, including health records. The complaint alleged that the company sold travel emergency membership plans but kept unsecured databases with home addresses and health information of its members, despite displaying a “HIPAA Compliance” seal on its website.

- xxii. *In the Matter of Ascension Data & Analytics, LLC*, (F.T.C. Dec. 15, 2020). The FTC settled with Ascension Data & Analytics over allegations that the company failed to ensure that one of its vendors had secured personal data about tens of thousands of mortgage holders adequately.
- xxiii. *U.S. v. Facebook, Inc.*, (D.C. Cir. July 24, 2019). Facebook settled with the FTC for a history-making \$5 billion penalty for alleged violations of a 2012 FTC order. The FTC alleged Facebook deceived users about their ability to control the privacy of their personal information, including that Facebook shared users’ personal information with third-party apps that were downloaded by the user’s Facebook “friends.” The settlement imposes new restrictions and a modified corporate structure. In 2023, the FTC proposed changes to the settlement order after alleging that the company failed to comply with the earlier settlement order. As part of the proposed changes, the company would be prohibited from profiting from data it collects from users under the age of 18.
- xxiv. *In the Matter of Cambridge Analytica, LLC*, (F.T.C. July 24, 2019). The FTC filed an administrative complaint with Cambridge Analytica’s former chief executive and an app developer who worked with the company. The complaint and settlements alleged that the company and individuals employed deceptive tactics to harvest personal information from tens of millions of Facebook users for voter profiling and targeting. The FTC granted final approval to a settlement with two of the defendants—app developer Aleksandr Kogan and former Cambridge Analytica CEO Alexander Nix—on December 18, 2019. As part of the settlement, they agreed to administrative orders restricting how they conduct any business in the future and requiring them to delete or destroy any personal information they collected.
- xxv. *FTC v. Equifax, Inc.*, (N.D. Ga. July 22, 2019). Equifax, Inc. agreed to pay at least \$575 million, and potentially up to \$700 million, as part of a global settlement with the FTC, the Consumer Financial Protection Bureau (CFPB) and 50 U.S. states and territories to settle allegations that the credit reporting company failed to take reasonable steps to secure its network. The complaint alleged that the company’s failure to take reasonable steps led to a data breach in 2017 that affected 147 million people and exposed millions of names, dates of birth, SSNs and other personal information.
- xxvi. *In the Matter of James v. Grago, Jr. individually and d/b/a ClixSense.com*, (F.T.C. Apr. 24, 2019). The FTC settled with ClixSense. The company had a

website with inadequate security that ultimately allowed hackers to gain access to consumers' sensitive information through the company's network. As a result of ClixSense's data security failures, the hackers downloaded a document from ClixSense that contained clear text information regarding 6.6 million consumers, including some 500,000 U.S. consumers. The hackers then published and offered for sale, on a website known for posting security exploits, personal information pertaining to approximately 2.7 million consumers, including full names and physical addresses, dates of birth, gender, answers to security questions, email addresses and passwords, as well as hundreds of Social Security numbers. As part of the settlement, Grago, the operator of ClixSense, is prohibited from misrepresenting the privacy, security, confidentiality or integrity of personal information it collects and is also subject to other compliance requirements.

XIII. DARK PATTERNS

Dark Patterns have become an increasingly hot topic in recent years for the FTC. The FTC hosted a workshop and published a staff report "Bringing Dark Patterns to Light" that seeks to define dark patterns and elucidate consumer protection concerns. The FTC has begun to use the term dark patterns in enforcement actions focused on negative option marketing, as the two often go hand in hand.

- a. Rules, Guidance, Workshops and Staff Reports
 - i. International Consumer Protection and Enforcement (ICPEN) Review: In July 2024, the FTC and two other international consumer protection networks announced the results of a review of 642 websites and apps that offered subscription services. Nearly 76% of the sites and apps employed at least one possible dark pattern and nearly 67% used multiple.
 - ii. Staff Report: Bringing Dark Patterns to Light. In September 2022, following the Dark Pattern workshop, the FTC released a staff report which defines dark patterns, describes common dark patterns and consumer protection concerns and provides visual examples of different types of dark patterns. Additionally, Appendix A of the Staff Report includes a chart featuring a compilation of digital dark patterns.
 - iii. Workshop: Bringing Dark Patterns to Light; An FTC Workshop. In April 2021, the FTC hosted a virtual workshop to examine digital dark patterns. This workshop featured researchers, legal experts, consumer advocates and industry professionals to examine what dark patterns are and how they affect the marketplace.
 - iv. FTC's Enforcement Policy Statement Regarding Negative Option Marketing. In October 2021, the FTC published a policy statement on negative option marketing. While the enforcement statement does not use the term "dark pattern," the press release states that the enforcement policy is meant to stop companies from deploying "illegal dark patterns." *See Negative Option*

Marketing / ROSCA for more information.

b. Dark Patterns Cases

- i. *In the matter of H&R Block*, (F.T.C. Feb. 23, 2024). In February 2024, the FTC took action against H&R Block. The complaint alleges that H&R Block’s online tax filing products lead consumers into more expensive products. The complaint also alleges that H&R Block fails to state what products cover which tax filing situations which caused customers to begin completion of their tax filings in more expensive products than they needed. The complaint continues that H&R Block would then make it difficult for consumers to downgrade once consumers realized they did not need the more expensive product.
- ii. *USA v. Adobe Inc., et al.*, (N.D. Cal. June 17, 2024). In June 2024, the DOJ, upon notification and referral from the FTC, filed suit against Adobe for using “dark patterns.” ***See Negative Option Marketing / “ROSCA” for more information.***
- iii. *FTC v. Doxo et al.*, (W.D. Wash. Apr. 25, 2024). In April 2024, the FTC announced that it was taking action against bill payment company Doxo for allegedly tricking consumers into using Doxo’s portal and paying the company fees. ***See Junk Fees & Deceptive Pricing for more information.***
- iv. *FTC v. FloatMe Corp.*, (W.D. Tex. Jan. 22, 2024). As a result of a proposed settlement order, FloatMe and its co-founders will be required to provide \$3 million to refund customers affected by their allegedly deceptive marketing. The online cash advance company will also be required to stop their deceptive marketing practices, make it easier for customers to cancel their subscriptions and institute a fair lending program. The FTC complaint alleged the company had “lured consumers in with false promises of free money advances, and then used dark patterns to make it difficult for consumers to cancel.” The company is charged with admitting, in internal correspondence, that their cancellation process “make[s] it difficult for someone to quit.”
- v. *FTC v. Publishers Clearing House, LLC*, (E.D.N.Y. June 26, 2023). As a result of the FTC lawsuit against sweepstakes and contests company Publishers Clearing House, the company agreed to a proposed court order requiring it to pay \$18.5 million to consumers and to enact changes to how it conducts business online. The complaint asserted that defendant employed “dark patterns throughout the consumer’s experience.” ***See Sweepstakes for more information.***
- vi. *U.S. v. Epic Games, Inc.*, (E.D.N.C. Dec. 19, 2022). The FTC filed a complaint against Epic Games, a video game developer, in which it alleged that Epic employed dark patterns such as privacy-invasive default settings and deceptive interfaces that tricked Fortnite users (including children) into

making purchases. In March 2023, the FTC finalized its order against Epic which requires Epic to pay a total of \$520 million in relief, which includes civil penalties (\$275 million). **See *Children’s Advertising/COPPA* for more information.**

- vii. *In the Matter of Credit Karma, LLC*, (F.T.C. Sept. 1, 2022). The FTC filed a complaint against credit services company, Credit Karma. The complaint alleged that Credit Karma used dark patterns, manipulatively designed user interfaces, to misrepresent whether consumers were “pre-approved” for credit card offers. Moreover, the complaint alleges that numerous consumers unnecessarily damaged their credit scores, wasted their time and harmed their ability to secure other financial products in the future due to defendant’s practices. In January 2023, the FTC finalized the order for this matter, requiring Credit Karma to (i) pay \$3 million to be sent to harmed consumers and (ii) to stop making the types of deceptive claims noted in the complaint.
- viii. *FTC v. Amazon.com, Inc.*, (W.D. Wash. June 21, 2023). The FTC filed suit against Amazon in which it alleged that Amazon employed manipulative, coercive or deceptive user-interface designs known as “dark patterns” to trick consumers into enrolling in automatically renewing Prime subscriptions. **See *Negative Option Marketing/ROSCA* for more information.**
- ix. *FTC v. CRI Genetics LLC*, (C. D. Cal. November 21, 2023). In November 2023, the FTC entered into a settlement agreement with CRI Genetics for charges concerning deception about the accuracy of its DNA reports. The company will pay a \$700,000 civil penalty and is barred from a wide range of deceptive practices, such as misrepresentations about the accuracy of their DNA tests, fake consumer reviews and other misrepresentations made in connection with advertising, offering for sale and/or sale of DNA testing products or reports. The complaint also asserted that the defendant used “dark patterns” in its online billing process to trick consumers into paying for products they did not want or did not agree to buy. To do this, the company forced consumers to click through a maze of pop-up pages on its websites, “falsely promising ‘special rewards’ and then trapped customers by saying their order ‘was not complete.’” **See *Consumers Reviews* for more information.**
- x. *FTC v. Bridge It, Inc.*, (S.D.N.Y Nov. 02, 2023). In November 2023, the FTC filed a complaint against Bridge It, a personal finance app company. The complaint alleged that the defendant’s “promises of ‘instant’ cash advances of up to \$250 for people living paycheck-to-paycheck were deceptive and that and that the company locked consumers into a \$9.99 monthly membership” without offering a simple mechanism to cancel, as required by ROSCA. The proposed settlement order would require the company to pay \$18 million to the FTC to provide refunds to consumers. The order would also prohibit the company from “misleading consumers about how much money is available through their advances, how fast the money would be available, any fees associated with delivery and consumers’ ability to cancel

their service.” Finally, the order would require Bridge It to make clear disclosures about its subscription products and create a simple way to cancel. *See Negative Option Marketing/ROSCA for more information.*

XIV. UNFAIR METHODS OF COMPETITION / NON- COMPETE AGREEMENTS

The FTC has taken substantial action regarding unfair methods of competition by finalizing a rule banning non-compete clauses. The proposed rule, published in January 2023 and promulgated as a final rule on April 23, 2024, shows the FTC’s resolve to tackle this nationwide issue. However, the FTC was enjoined from enforcing their rule by a district court and is now considering an appeal.

a. Rules, Guidance, Workshops and Staff Reports

i. Rule to Ban Non-compete Clause [Currently Enjoined]: On January 5, 2023, the FTC proposed a new rule that would ban employers from imposing non-competes on their workers. On April 23, 2024, after receiving over 26,000 comments, with around 25,000 in support of the ban, the proposed rule was promulgated as a final rule. The rule is based on the finding that non-competes constitute an unfair method of competition and are therefore in violation of Section 5 of the Federal Trade Commission Act. This final rule was scheduled to go into effect on September 4, 2024, however, a district court issued an order stopping the FTC from enforcing the rule on September 4, 2024. The FTC is considering an appeal to the injunction. The rule would make it illegal for an employer to:

1. Enter into or attempt to enter into a noncompete with a worker;
2. Maintain a noncompete with a worker; or
3. Represent to a worker, under certain circumstances, that the worker is subject to a noncompete.

ii. This new rule would apply to independent contractors and anyone who works for a given employer, regardless of them being paid or not. The final rule does not require the rescission of all pre-existing non-competes, but instead would require employers to provide notice that any non-competes are no longer in effect. The final rule includes an exception for individuals selling entire business entities. The final rule would also exempt “senior executives” from having existing non-competes enforced. Senior executives are defined as “workers earning more than \$151,164 annually and who are in policy-making positions.” The non-competes exempt from the new rule would nonetheless remain subject to federal antitrust laws and any other laws applicable.

b. Unfair Methods of Competition / Non- Compete Agreement Cases under the FTC Act

i. *In the Matter of Anchor Glass Container Corp.*, (F.T.C. Mar. 15, 2023). The FTC finalized a consent order that settles charges against Anchor Glass, a

glass container company, for making more than 300 of its workers sign non-compete agreements. These non-competes typically required that, for one year following the conclusion of the worker’s employment with Anchor Glass, the employee to not “be employed by or work for” an individual or entity in the United States providing “rigid packaging sales and services which are the same or substantially similar to those in which Anchor [Glass] deals.” The finalized consent order bans Anchor Glass from entering into, maintaining, enforcing or attempting to enforce or threatening to enforce non-compete restrictions on relevant workers; it also bans Anchor Glass from telling a relevant employee or other employers that the employee is subject to a non-compete.

- ii. *In the Matter of O-I Glass, Inc. & In the Matter of Ardagh Group, et. al.*, (F.T.C. Feb. 23, 2023). The FTC filed a complaint against these companies because the companies required its employees to enter non-compete agreements that prohibited employment with any business that sells products or services similar to respondent’s following one year of leaving the company. The finalized consent order requires respondent to include a provision that prohibits them from enforcing, threatening to enforce or imposing non-competes against any relevant employees.
- iii. *In the Matter of Prudential Security, et. al.*, (F.T.C. Jan. 4, 2023). The FTC announced the settlement of its complaint against Prudential Security, Inc., and Prudential Command, Inc., two affiliated Michigan corporations, and their co-owners, Greg Wier and Matthew Keywell, for unfair methods of competition under the FTC Act. The complaint alleged that Prudential was using non-compete agreements to take advantage of unequal bargaining power with its employees, particularly low-wage security guard employees. Prudential’s non-competes required that employees, for two years after the end of employment, not accept employment with a competitor within a 100-mile radius. The non-compete agreement also contained a liquidated damages clause requiring the employee to pay a \$100,000 penalty for any conduct in breach of the agreement. The orders prohibit defendants from enforcing or imposing non-competes against any employee.

XV. COVID-19 REGULATION

The FTC has taken extra efforts in the wake of the COVID-19 pandemic to stop companies from making false claims related to curing or preventing COVID-19. The FTC issued warning letters in partnership with the FDA to stop marketers from making these unsubstantiated health claims. Additionally, for the duration of the COVID-19 public health emergency, the COVID-19 Consumer Protection Act made it unlawful under Section 5 of the FTC Act to engage in a deceptive act or practice in or affecting commerce associated with treatment, cure, prevention, mitigation or diagnosis of COVID-19 or a government benefit related to COVID-19.

- a. Warning Letters, Rules, Guidance Workshops and Staff Reports
 - i. FTC/FDA Warning Letters

1. Throughout Fall 2020 and 2021, the FTC sent many warning letters to marketers nationwide regarding unsubstantiated claims surrounding the treatment of COVID-19.
 - a. Claims ranged from curing COVID-19 to raising immunity specifically to fight COVID-19.
 - b. The FTC explained that it is a violation of the FTC Act to advertise that a product can prevent, treat or cure human disease unless you possess competent and reliable scientific evidence—including, when appropriate, well-controlled human clinical studies—substantiating that the claims are true at the time they are made.
 - ii. Other Warning Letters
 1. The FTC has used its tool of sending warning letters to companies making coronavirus claims, both alone and jointly with the other agencies.
 - a. The FTC sent letters to several VoIP service providers warning that it is illegal to aid or facilitate transmitting robocalls pitching coronavirus scams.
 - b. The FTC and the Missouri AG sent warning letters to multiple companies warning against making claims that customers who purchase hearing aids could receive government stimulus money.
 - c. The FTC and the Small Business Administration sent multiple warning letters to companies that engaged in misleading marketing aimed at small businesses seeking coronavirus relief loans.
 2. The FTC warned multiple Multi-Level Marketing companies about making unsupported COVID claims for their products and for unsubstantiated earnings claims aimed at potential sellers.
 - iii. Staff Report: Protecting Consumers During the COVID-19 Pandemic: A Year in Review. In April 2021, the FTC released a report in which it pledged to “continue its vigilance to protect the public from harms that stem directly and indirectly from the COVID-19 pandemic, the economic fallout and the technological shift in how we live, learn and work.”
- b. COVID-19 Regulation Cases
 - i. *FTC v. Womply*, (N.D. Cal. Mar. 18, 2024). The FTC filed suit against Womply and its CEO in March 2024, alleging that the defendants advertised

that small businesses could get PPP funding when applying through Womply. However, the complaint alleges that over 60% of Womply applicants did not receive funding. A proposed settlement of \$26 million was agreed to by defendants in April 2024.

- ii. *FTC v. Biz2Credit, Inc.*, (S.D.N.Y. Mar. 18, 2024). The FTC filed suit against Biz2Credit in March 2024, alleging that defendants “deceptively advertised that consumers’ emergency PPP loan applications would be processed in an average of 10-14 business days when, in reality, the average processing took well over a month.” Defendants agreed to pay \$33 million in damages to settle the charges.
- iii. *FTC v. Razer, Inc., et al.*, (C.D. Cal. Apr. 24, 2024). The FTC settled a suit against Razer, Inc., and its affiliates for deceptively advertising their Zephyr masks as N95-equivalent grade masks that would protect consumers from contracting COVID-19. The proposed order (i) bans Razer from making any claims that any product prevents or reduces the likelihood of transmission of, reduces the severity of or otherwise cures, mitigates or treats COVID-19 without prior FDA approval; (ii) prohibits the defendants from representing the health benefits or efficacy of protective goods and services unless they have reliable scientific evidence to support the claims; (iii) prohibits the defendants from making certain advertising misrepresentations, including that any goods or services are endorsed, certified or otherwise connected to any government entity; (iv) prohibits the defendants from any deceptive use of government logos or trademarks to imply such an affiliation, from falsely claiming that any product meets government-established standards and from misrepresenting any other primary characteristics and material facts to consumers; and (v) imposes a \$100,000 civil penalty and requires the defendants to pay their total revenue from the masks to the FTC, who will disburse the roughly \$1 million as refunds to consumers who purchased the deceptively marketed masks.
- iv. *FTC v. SuperGoodDeals.com, Inc., et al.*, (E.D.N.Y. Jul. 8, 2024). The FTC filed a proposed settlement order in a suit against Kevin Lipsitz and his company for fraudulently promising “next day” shipping of facemasks and respirators at the peak of the COVID-19 pandemic. The order (i) permanently bans the defendants from selling any personal protective equipment (PPE) designed to prevent the spread of infection or disease; (ii) prohibits the defendants from making promises about shipping times without a reasonable basis for those promises; (iii) requires the defendants to abide by the requirements of the Mail, Internet or Telephone Merchandise Rule; (iv) prohibits the defendants from misrepresenting any refund policy, the nature of any good and any other material misrepresentations; and (v) imposes a total fine of \$1,088,984.20; \$145,958.59 is immediately payable.
- v. *FTC v. KW Tech. Inc., et al.*, (E.D.N.Y. Oct. 24, 2023). The FTC filed suit to stop four related defendants from deceptively marketing their “Invisible Mask”. The defendants claimed the product used “quantum theory” to create

a three-foot protective barrier against 99.9% of all viruses and bacteria, including COVID-19. In reality, the defendants had no scientific proof that the product actually worked. Three of the defendants agreed to a court order that: (i) bans the defendants from “advertising, promoting, or selling any product claiming to prevent or treat COVID-19, unless the claims are true and supported by scientific evidence”; (ii) bans the defendants from making other health-related product misrepresentations; (iii) prohibits the defendants from misrepresenting that they have government approval for their products or claims; and (iv) requires a fine of \$150,000.

- vi. *FTC v. Frank Romero, d/b/a Trend Deploy*, (M.D. Fla May 31, 2023). The FTC announced a summary judgment victory in a case charging Frank Romero with unfair or deceptive acts or practices in violation of the FTC Act and the FTC “Mail, Internet, or Telephone Order Merchandise” Rule (“MITOR”). This follows the FTC’s June 2021 complaint that alleged that defendant preyed on consumers’ fear of COVID-19 by advertising the availability and quick delivery of PPE, even though defendant had no basis to make these promises within the time periods advertised. The complaint further alleged that defendant failed to allow consumers’ consent to delay or cancel their orders and failed to cancel orders even after receiving cancellation and refund requests pursuant to the FTC’s MITOR. The Court permanently enjoined defendant from selling any protection goods or services.
- vii. *U.S. v. doTERRA International, LLC*, (Mar. 3, 2023). The FTC filed three different suits against three multi-level marketing company defendants that marketed essential oils and dietary supplements as being able to treat, prevent or cure COVID-19. These representations were made by defendants, who are all current or former healthcare practitioners, at webinars in early 2022. The defendants agreed to a federal court order requiring them to: (i) stop making unfounded COVID claims; (ii) substantiate any health claims made; and (iii) pay a \$15,000 financial civil penalty.
- viii. *FTC v. Precision Patient Outcomes, Inc.*, (N.D. Cal. Nov. 22, 2022). The FTC filed suit against Precision Patient Outcomes alleging that Precision falsely advertised over-the-counter vitamins that could significantly reduce mortality and illness from COVID-19, when in reality the supplement contained nothing more than vitamins, zinc and a flavonoid. On February 14, 2024, the FTC settled the case. The order: (i) bans the defendants from making any claims that any product cures, mitigates or treats COVID-19, unless the FDA has approved the claim; (ii) requires the defendants possess and preserve all scientific evidence used to support the health claims made about their products; and (iii) requires the defendants to notify customers and resellers about the FTC’s lawsuit.
- ix. *U.S. v. Quickwork LLC, et. al.*, (E.D. Mo. Apr. 15, 2021). The FTC charged chiropractor Eric Anthony Nepute and his company with violating the COVID-19 Consumer Protection Act by marketing products containing

vitamin D and zinc as being scientifically proven to treat or prevent COVID-19 despite no competent or reliable scientific evidence. This was the first COVID-19 case in which the agency sought civil penalties.

- x. *FTC v. QYK Brands LLC d/b/a Glowyy et. al.*, (C.D. Cal. Aug. 4, 2020) & *FTC v. SuperGoodDeals.com, Inc.*, (E.D.N.Y. July 8, 2020). The FTC filed actions against QYK Brands and SuperGoodDeals.com alleging violations of the Mail Order Rule by promising prompt delivery of face masks, sanitizer and PPE when they did not have these items in stock. The FTC won both actions on summary judgment and more than \$16.6 million went back to consumers.
- xi. *FTC v. Golden Sunrise Nutraceutical, Inc.*, (E.D. Cal. July 30, 2020). The FTC filed suit against Golden Sunrise Nutraceutical for marketing a \$23,000 COVID-19 treatment plan after the company received an earlier warning letter. In June 2021, the FTC settled with a promotor of the company, who agreed to pay \$100,000 to defrauded consumers and to refrain from making unsupported health claims. Litigation continues against Golden Sunrise Nutraceutical, Inc. The order also prohibits the medical director from (i) making health-related product misrepresentations, including those relating to the results of any tests, studies or other research; and (ii) falsely stating a product is FDA approved when it is not. The order also requires the promotor to have competent and reliable scientific evidence to support his claims.
- xii. *FTC v. Marc Ching, individually and also doing business as Whole Leaf Organic*, (F.T.C. Apr. 27, 2020). In July 2020, the marketer for Thrive (a dietary supplement) was barred from making baseless claims that it can treat, prevent or reduce the risk of COVID-19. The order also bars Thrive from making unsupported cancer treatment or prevention claims for CBD products.

XVI. HEALTH CLAIMS

The FTC has a long history of taking enforcement action against companies making false or unsubstantiated health claims. In recent years, the FTC has focused on claims related to CBD, weight-loss claims and other supplements marketed as being a cure for an illness or disease.

- a. Rules, Guidance, Workshops and Staff Reports
 - i. FDA/FTC Warning Letters:
 - 1. FTC Artificial Sweetener Influencer Warning Letters: Promotion of Consumption of Aspartame or Sugar: In November 2023, the FTC sent warning letters to two trade associations, 12 registered dietitians and other health influencers based on Instagram and TikTok posts promoting the safety of the artificial sweetener aspartame or the consumption of sugar-containing products. The letters to the trade groups expressed concerns that there was a lack of adequate

disclosures that the influencers were hired to promote the safety of aspartame or the consumption of sugar-containing products. *See **Influencer Marketing and Endorsements for more information.***

2. In March 2022, the FDA and FTC together sent warning letters to seven companies, all of which addressed claims that CBD could prevent or treat COVID-19. The FDA and FTC continue to be active in sending warning letters to companies making aggressive drug claims about CBD products—the FDA has also sent letters to companies making claims about treatment of diseases like Alzheimer’s and cancer.
 3. Operation CBDeceit: The FTC initiated a crackdown on deceptively marketed CBD products, nicknamed “Operation CBDeceit”.
 - a. In the first wave of enforcement, in December 2020, the FTC reached settlements against six sellers of CBD-containing products for allegedly making deceitful claims about the products’ benefits that were not supported by scientific evidence. Without adequate substantiation, the companies advertised their products could treat serious diseases, such as cancer and Alzheimer’s. As part of the settlements, the companies and individuals behind them were prohibited from making such unfounded health claims. The final administrative consent orders were approved by the FTC in March 2021.
 4. 2019 FTC/FDA Warning Letters: In March 2019, the FDA and the FTC sent joint warning letters to three companies selling CBD products. All three of these companies made aggressive claims related to CBD, such as “CBD has shown the ability to kill cancer cells without the help of our immune system.” The FDA noted, among other issues, that these unfounded claims fundamentally categorize these products as drugs and ones which are not generally recognized as safe and effective for the advertised uses.
 - a. The FDA and FTC have also sent warning letters independently of each other. In July 2019, the FDA sent a warning letter to Curaleaf citing the same issues as it did in earlier letters. And in September 2019, the FTC sent three letters on a similar basis to unidentified companies.
- ii. Health Products Compliance Guidance: On December 20, 2022, the FTC’s Bureau of Consumer Protection issued the Health Products Compliance Guidance, which is the first revision of its business guidance in the area in almost 25 years. The revised guide draws on the more than 200 cases that the FTC has brought regarding false or misleading advertising claims for dietary supplements, foods and other health related products, since the last revision

of the guide was issued, with many examples. One of the major revisions extended the guidance covering dietary supplements to all health-related products. The revised guide also includes updates from other FTC guidance documents, including the guidance on endorsements and testimonials and the enforcement policy statement on homeopathic drugs. In addition, the new guide includes a more detailed discussion of the amount and type of evidence needed to substantiate health-related claims and places a greater emphasis on what the FTC expects with regard to controlled human clinical trials.

b. Health Claims Cases

- i. *FTC v. Peyroux*, (N.D. Ga. Aug. 16, 2021). In August 2012, the FTC jointly filed a complaint with the State of Georgia against the co-founders of the Stem Cell Institute of America for marketing stem cell therapy to seniors nationwide alleging that the defendant was making false claims about the efficacy of its product in treating arthritis, joint pain and a range of other orthopedic ailments. On March 11, 2024, the district court granted the FTC and the State of Georgia summary judgement on the issue of liability. The case is still pending to calculate the exact relief the Court will order.
- ii. *FTC v. Naturecity LLC*, (S.D. Fla. 10, 2019). The FTC filed a complaint, against Florida-based marketers and sellers of two aloe vera based supplements. The complaint alleged that the company marketed TrueAloe and AloeCran as effective treatments for a range of conditions affecting seniors, including chronic pain, ulcerative colitis, diabetes and acid reflux, despite the lack of competent and reliable scientific evidence to substantiate these claims. The court order resolving the complaint bars the defendants from making false and unsubstantiated health claims and requires them to pay \$537,500, which is being used to provide refunds to consumers.
- iii. *FTC v. Marketing Architects, Inc.*, (D. Me. Feb. 5, 2018). The FTC filed a complaint against Marketing Architects in which it alleged that the company's radio ads touting weight-loss products marketed by the company's client were deceptive because they were not based on competent and reliable evidence. Additionally, the FTC alleged that the company developed and disseminated "fictitious weight-loss testimonials" and created radio ads disguised as news stories. In February 2018, the FTC settled its complaint for \$2 million.

XVII. TELEMARKETING

The Telemarketing Sales Rule ("TSR") is the FTC's main source of authority for addressing deceptive and unfair telemarketing schemes. The TSR requires sellers and telemarketers to disclose all material restrictions, limitations or conditions to purchase, receive or use goods or services that are being offered to the consumer. The FTC published an Advanced Notice of Proposed Rulemaking in June 2023 aimed at updating the TSR to match current business practices and finalized aspects of the proposal in March 2024. The FTC also announced an initiative called "Operation Stop Scam Calls" to crack down on illegal robocalls.

- a. Rules, Guidance, Workshops and Staff Reports
- i. **FTC Warning Letters:** On November 27, 2023, the FTC issued cease and desist letters to seven Voice over Internet Protocol (VoIP) providers. The providers had been identified as the point of entry for illegal robocalls to access U.S. consumers from abroad.
 - ii. **Unsolicited Communications Enforcement Network (UCENet):** On September 21, 2023, the FTC joined the Federal Communications Commission (FCC) in signing a renewed memorandum of understanding between international public authorities combatting unsolicited communications, such as email and text spam, scams and illegal telemarketing. The UCENet members agreed to renew and make evergreen their non-binding agreement to share information and assist enforcement among the members. Other members include Canada, Australia, South Korea, New Zealand and the United Kingdom.
 - iii. **Telemarketing Sales Rule (TSR):** On June 3, 2022, the FTC published a Notice of Proposed Rulemaking and an Advance Notice of Proposed Rulemaking (ANPR) proposing several updates to the TSR. Proposed changes fall into three categories:
 1. **Enhanced Record-Keeping Requirements:** The FTC proposed requiring sellers and telemarketers to maintain (a) copies of each unique prerecorded message; (b) call detail records of telemarketing campaigns; (c) records showing the existence of an established business relationship; (d) records showing that the customer is a “previous donor”; (e) records showing what service providers were used to place outbound calls; (f) copies of the entity’s internal “do not call” registry; and (g) records showing use of the federal “do not call” registry.
 2. **Revising the definition of “previous donor”:** The FTC proposed clarifying that a customer must have made a prior donation to the specific nonprofit charitable organization within a two-year period immediately preceding the date of the call to fall within the definition.
 3. **Narrowing the business-to-business (B2B) telemarketing exemption** by including B2B calls within the TSR’s prohibitions on the use of false or misleading statements.
 4. Additionally, the ANPR sought public comment on (a) whether clearer disclosures of subscription and cancellation terms should be required for subscriptions and negative options marketed through telemarketing; (b) whether the exemptions for telemarketers who induce inbound calls from consumers in connection with computer technical support services should be repealed; and (c) the proposed elimination of the B2B exemption.

5. On March 7, 2024, the FTC announced a final rule to update the TSR in two areas: (1) prohibiting deceptive and abusive practices in B2B calls; and (2) modifying the recordkeeping requirements for call detail records, consent records, compliance records and adding a provision to allow sellers and telemarketers to allocate responsibility for recordkeeping.
6. On March 7, 2024, the FTC also announced a Notice of Proposed Rulemaking to amend the TSR by extending coverage to inbound telemarketing calls involving technical support services. The FTC justified the proposal as necessary to respond to the widespread increase in deception and consumer injury caused by tech support scams. The proposed rule would allow the FTC to seek stronger forms of relief, such as civil penalties and consumer redress, against tech support scams.

b. Telemarketing Cases

- i. *FTC v. NRRM, LLC*, (E.D. Mo. Jul. 31, 2024). In July 2024, the FTC filed suit against NRRM, LLC d/b/a CarShield, LLC. The FTC alleged that CarShield’s misrepresentations and omissions about CarShield’s products and services violated the Telemarketing Sales Rule. ***See Influencer Marketing and Endorsements for More Information.***
- ii. *FTC v. Career Step, LLC*, (N.D. Ga. Jul. 29, 2024). In July 2024, the FTC filed a complaint against Career Step, LLC. Among other things, the complaint alleged that Career Step made misrepresentations in their telemarketing that caused Career Step to violate the TSR. ***See Consumer Reviews for More Information.***
- iii. *FTC v. Start Connecting LLC, et al.*, (M.D. Fla. Jul. 9, 2024). In July 2024, the FTC announced that, at the request of the FTC, a federal court halted a fake student loan relief scheme. The FTC alleged that defendants violated the Telemarketing Sales Rule by calling number on the National Do Not Call Registry, charging advance fees for their “debt-relief” services, and misrepresenting information during calls. ***See Consumer Reviews for more information.***
- iv. *FTC v. Restoro Cyprus Ltd., et al.*, (D.D.C. Mar. 15, 2024). The FTC settled suits against two tech support companies that allegedly deceived consumers into purchasing unnecessary computer repair services. Consumers responded to fake Microsoft Windows pop-ups that claimed to show serious virus problems that required the purchase of software and services from the companies’ technicians. After purchase, the consumers were provided a phone number to call—after which defendants’ telemarketers would try to sell additional services by gaining access to the consumer’s computer and misrepresenting malware, viruses or other issues. The order requires the defendant companies to pay \$26 million, prohibits the companies from

misrepresenting security, performance or other material issues related to the sale, distribution or marketing of any product or service and prohibits the companies from engaging in deceptive telemarketing.

- v. *FTC et al., v. Cancer Recovery Found. Int'l et al.*, (S.D. Tex. Mar. 11, 2024). The FTC and 10 states filed suit against an alleged sham charity and its operator for deceiving donors. The charity claimed that the more than \$18 million it collected would help women undergoing cancer treatments to pay for basic needs. About one cent of every dollar raised went towards helping women undergoing cancer treatments. The rest went towards the operator's salary, overhead costs and paying for-profit fundraisers. These fundraisers solicited donations over the phone with deceptive pitches. The complaint alleges that the defendants violated the FTC Act, the Telemarketing Sales Rule and state consumer protection laws.
- vi. *FTC, et al., v. Green Equitable Solutions, et al.*, (C.D. Cal. Feb. 2, 2024). The FTC won a default judgment against a variety of companies and their owners that allegedly defrauded distressed homeowners. The defendants used telemarketing to falsely promise lower mortgage payments and foreclosure prevention. The order banned the defendants from directly or indirectly engaging in telemarketing, debt relief services and making any misrepresentations or unsubstantiated claims about a product or service.
- vii. *FTC v. Simple Health Plans, LLC, et al.*, (S.D. Fla. Feb. 7, 2024). The FTC obtained a \$195 million judgment against a health care company and its affiliates for allegedly duping consumers paying for "sham health care plans that did not deliver the coverage or benefits they promised and effectively left consumers uninsured and exposed to limitless medical expenses." The Order also banned the defendants from telemarketing and from marketing, promoting, selling or offering any healthcare products. The FTC's complaint alleged that the defendants lured consumers to deceptive health insurance websites and then misled consumers who submitted contact information over the phone about the "sham health care plans."
- viii. *FTC v. Day Pacer LLC, et al.*, (N.D. Ill. Jan. 23, 2024). The FTC obtained a \$28.7 million judgment against a telemarketing company and its owner for making millions of unsolicited and illegal calls to people on the National Do Not Call Registry. The order also banned the defendants from telemarketing or facilitating others in engaged in telemarketing to consumers.
- ix. Operation Stop Scam Calls: The FTC and more than 100 federal and state law enforcement partners nationwide, plus attorney generals from all 50 states and D.C., announced a crackdown on illegal telemarketing calls involving more than 180 actions targeting operations responsible for billions of calls to U.S. consumers. "Operation Stop Scam Calls" is part of the FTC's ongoing efforts to combat illegal telemarketing, including robocalls. The effort also targets Voice over Internet Protocol (VoIP) service providers who facilitate illegal robocalls every year, which often originate overseas.

Operation Stop Scam Calls included five new cases from the FTC:

1. *U.S. v. Fluent, LLC, et. al.*, (S.D. Fla July 17, 2023). The FTC proposed an order seeking \$2.5 million in civil penalty and permanent injunction from engaging in, assisting, or facilitating robocalls.
 2. *U.S. v. Viceroy Media Solutions, LLC, et. al.*, (N.D. Cal. July 18, 2023). The FTC proposed an order seeking \$913,636 in civil penalty and a permanent injunction from engaging in, assisting or facilitating robocalls. This suit was filed based on alleged violations under the FTC Act and the Telemarketing Sales Rule.
 3. *U.S. v. Yodel Technologies, LLC, et. al.*, (M.D. Fla. July 14, 2023). The FTC proposed an order seeking \$1 million in civil penalty (which will be partially suspended after a payment of \$400,000) and a permanent injunction prohibiting the company from engaging in, assisting or facilitating robocalls.
 4. *U.S. v. Solar Xchange, LLC*, (D. Ariz. July 14, 2023). The FTC proposed an order seeking \$13.8 million in civil penalty and a permanent injunction prohibiting the company from engaging in, assisting or facilitating robocalls.
 5. *U.S. v. Hello Miami, LLC*, (S.D. Fla July 14, 2023). The FTC proposed an order seeking a monetary civil penalty and a permanent injunction prohibiting them from engaging in, assisting or facilitating robocalls.
- x. *FTC v. Grand Canyon Education, et al.*, (D. Ariz. Dec. 27, 2023). In December 2023, the FTC filed suit against Grand Canyon Education (“GCE”), Grand Canyon University (“GCU”) and the CEO of GCE and GCU. The FTC alleged that the defendants used abusive telemarketing calls to try to boost enrollment at GCU. The complaint alleged that GCE would advertise—urging prospective students to submit contact information, then GCE telemarketers would illegally use the information to contact people who requested to not be called in addition to “people on the National Do Not Call Registry.” The complaint also alleged that GCE made illegal calls to numbers purchased from lead generators. ***See Junk Fees & Deceptive Pricing for more information.***
- xi. *FTC v. Walmart, Inc., et. al.*, (N.D. Ill. June 28, 2023). The FTC filed a complaint against Walmart which alleges that, through Walmart’s money transfer practice, tens of millions of dollars that consumers sent and received annually through money transfers processed by Walmart employees were induced by fraud. The amended complaint adds on to the FTC’s initial March 27, 2023, complaint, adding further detail into Walmart’s alleged violations of the assisting and facilitating provision of Telemarketing Sales Rule. In July 2024, a U.S. judge rejected the claim that Walmart owes

monetary damages for violating the Telemarketing Sales Rule.

- xii. *FTC v. XCast Labs, Inc., et. al.*, (C.D. Cal. May 12, 2023). The FTC filed a complaint against VoIP service provider, XCast. The complaint alleged that XCast assisted in delivering billions of illegal robocalls to American consumers even after receiving multiple warnings from the FTC and government officials. On January 2, 2024, the FTC settled the case with a \$10 million civil penalty. The settlement also required XCast to implement a screening process and terminate relationships with firms that do not comply with telemarketing-related laws.
- xiii. *FTC v. BCO Consulting Services, Inc., et. al.*, (C.D. Cal. Apr. 24, 2023). The FTC successfully brought temporary federal court injunctions against two student loan debt relief companies. The complaint alleged that defendants falsely claimed to be affiliated with the Department of Education and that they would assume control for servicing students' loans. A federal court temporarily halted defendants' schemes and froze their assets.
- xiv. *U.S. v. Nexway, Inc., et. al.*, (D.C. Cir. Apr. 3, 2023). The FTC filed suit against Nexway, a multinational payment processing company, and its affiliates. The complaint alleged that defendant worked with telemarketers who made misrepresentations about the performances and security of their computers to consumers. The complaint further alleges that defendant knowingly committed acts of credit card laundering through its credit card system for payment. Defendants agreed to court orders that: (i) prohibit further payment laundering; (ii) require close screening and monitoring of high-risk clients for potential illegal activity; (iii) prohibit paying or assisting tech support companies; and (iv) require defendants to handle payments netting up to \$650,000. In February 2024, the FTC sent over \$610,000 in refunds to 6,490 customers.
- xv. *U.S. v. Stratics Networks, Inc.*, (S.D. Cal. Feb. 16, 2023). The FTC filed suit against several VoIP service providers. The complaint alleges defendants delivered millions of unwanted robocalls to consumers nationwide. These calls made misrepresentations on debt relief services and delivered illegal prerecorded messages to induce consumers to purchase goods or services. The DOJ filed a proposed consent order against one of the defendants that would prohibit making further misrepresentations on debt relief services if approved by a federal court. The U.S. District Court dismissed the action against Stratics with prejudice, finding that Stratics (the developer of the ringless technology at issue) was not responsible for misuse of its technology by third parties.
- xvi. *United States v. VOIP Terminator, Inc.*, (M.D. Fla. Apr. 26, 2022). The FTC sued VoIP Terminator and its owner for providing VoIP services even after knowing or consciously avoiding knowing customers were using its services to initiate calls to numbers placed on the National Do Not Call Registry, to deliver prerecorded messages and to display spoofed caller ID numbers. Most

of the prerecorded robocalls related to the COVID-19 pandemic.

- xvii. *FTC v. American Vehicle Protection Corp., et. al.*, (S.D. Fla. Feb. 8, 2022). The FTC filed suit against operators of a telemarketing scam that called hundreds of thousands of consumers nationwide pitching “extended automobile warranties” and made bogus claims about bumper-to-bumper warranties. The complaint asserted that in addition to misrepresenting that they either are, or are associated with, the consumers’ vehicle manufacturer or dealer, the defendants’ telemarketers have made false promises that they can provide “bumper to bumper” or “full vehicle” coverage for prices ranging between \$2,800 and \$3,400. Under the terms of the proposed orders, the companies involved would be banned from the extended automobile warranty market.
- xviii. *FTC v. Associated Community Servs. Inc., et. al.*, (E.D. Mich. Jan. 26, 2021): The FTC, along with 38 states and Washington, D.C., stopped a telefunding operation that “bombed” 67 million consumers with 1.3 billion deceptive charitable fundraising calls.
- xix. *FTC v. Absolute Fin. Servs., et. al.*, (D.S.C. Sept. 13, 2020). The FTC alleged that Absolute Financial Services and its operators collected money from consumers through illegal debt collection practices by placing deceptive robocalls alleging that consumers owed debt and faced legal action if they did not comply. Under the terms of the settlement, the company is permanently banned from playing any role in debt collection.
- xx. *FTC v. Nat’l Landmark Logistics, LLC, et. al.*, (D.S.C. July 13, 2020). The FTC alleged that National Landmark Logistics and its operators collected money from consumers through illegal debt collection practices by using robocalls to leave deceptive messages claiming consumers faced imminent legal action. The settlement bars the company from playing any future role in debt collection.
- xxi. *FTC v. American Future Systems, Inc., et. al.*, (E.D. Pa. May 13, 2020). The FTC filed a complaint against operators of a Pennsylvania telemarketing scheme alleging that they charged organizations such as businesses, schools and police departments for books and newsletter subscriptions that they never ordered. In April 2023, the company agreed to a permanent ban from the debt collection industry. In March 2024, the district court ruled against the FTC on its claims, and in June 2024, the district court denied the FTC’s post-trial motion to alter or amend judgment.

XVIII. NATIVE ADVERTISING

Native advertising is defined by the FTC as digital advertisements that are presented to look like articles or news stories. The FTC continues to emphasize that it is deceptive to mislead consumers about the commercial nature of content.

a. Native Advertising Cases

- i. *FTC v. Willow Labs, LLC, et. al.*, (E.D. Mich. June 25, 2020). In August 2021, the FTC returned more than \$350,000 to 23,000 consumers based on a settlement with companies and individuals marketing Willow Curve, a device that applied low-level light and mild heat for pain relief. The FTC asserted the claims that the device could reduce pain were not substantiated and the risk-free trial offers were not honored. In addition, the company ran an online magazine article called “Understanding the Gender Gap in Sports Injuries and Treatment” that was not editorial content but an ad for Willow Curve.
- ii. *FTC v. Mile High Madison Group, Inc., et. al.*, (S.D. Fla. Apr. 17, 2020). In October 2021, the FTC sent refunds totaling more than \$1.1 million to customers of Regenify and Neurocet, which were advertised for pain and inflammation targeting seniors, including through glossy magazine-style mailers and online doctor endorsements containing unsubstantiated claims.
- iii. *In the Matter of Creaxion Corporation, et. al.*, (F.T.C. Nov. 13, 2018). In February 2019, the FTC approved two final orders settling allegations that the defendants misrepresented that paid endorsements were independent opinions and that commercial advertising was independent journalistic content. Under the two final orders, the defendants, Creaxion Corporation and Inside Publications, and their principals, are prohibited from making misrepresentations regarding their products in misleading journalistic content going forward, and they must disclose material connections with, and otherwise monitor, any endorsers they engage. The order also requires that needed disclosures must be presented on a product label on the principal display panel. This is a heightened requirement for clear and conspicuous disclosures on packaging.
- iv. *FTC v. Next-Gen, Inc.*, (W.D. Mo. Feb. 20, 2018). The FTC and the State of Missouri reached a settlement with the company Next-Gen and related defendants. The defendants sent mailers that informed consumers they had “won” but would need to pay a fee to collect a prize. Some mailers were allegedly disguised as newsletter subscription solicitations and others were games of skill that involved a fee and ultimately an unsolvable puzzle between the purchaser and the prize. ***See Sweepstakes, Contests and Games for more information.***
- v. *FTC v. Marketing Architects, Inc.*, (D. Me. Feb. 5, 2018). The FTC filed a complaint against Marketing Architects in which it alleged that the company’s radio ads touting weight-loss products marketed by the company’s client were deceptive and were disguised as news stories. ***See Health Claims for more information.***

XIX. FINANCIAL PRACTICES: EARNINGS CLAIMS, BLOCKCHAIN AND CRYPTOCURRENCY

The FTC has seen a proliferation of bogus money-making claims (earnings claims) as well as claims related to blockchain and cryptocurrency. The FTC has tried to tackle these issues by publishing an Advanced Notice of Proposed Rulemaking on Earnings Claims. Additionally, the FTC formed a Blockchain working group.

a. Rules, Guidance, Workshops and Staff Reports

- i. **Safeguards Rule:** On October 27, 2023, the FTC approved an amendment to the Safeguards Rule. The Rule requires non-banking institutions, such as mortgage brokers and payday lenders, to maintain a comprehensive security program to keep consumer information safe. The amendment requires financial institutions to report certain data breaches and other security events involving at least 500 consumers to the FTC as soon as possible and no later than 30 days after discovery. The amendment took effect on May 13, 2024.
- ii. **Earnings Claims:** On March 11, 2022, the FTC published an advanced notice of proposed rulemaking to consider a rule to address deceptive or unfair marketing using earnings claims. If finalized, a rule in this area would allow the Commission to recover redress for defrauded consumers and seek steep penalties.
- iii. **FTC Blockchain Working group:** In March 2018, the FTC announced the creation of the FTC Blockchain Working Group to promote the FTC’s mission of protecting consumers and promoting competition in light of cryptocurrency and blockchain developments.

b. Financial Deception Cases

- i. *FTC v. Automators LLC, et al.*, (S.D. Cal. Feb. 26, 2024). The FTC settled a complaint against the owners of a supposed e-commerce, artificial intelligence and coaching business. The defendants claimed to offer significant earnings from its “proven system” of e-commerce, coaching and artificial intelligence if consumers invested enough money. However, as the FTC alleged, the “vast majority” of consumers failed to obtain the promised profits or recoup the initial investment. The order prohibits the defendants from making deceptive or unsubstantiated earnings claims and from preventing negative reviews about their companies in future contracts. The order also permanently bans most defendants from offering business opportunities or coaching for e-commerce platforms and contains a total monetary judgment of over \$21 million.
- ii. *FTC v. Traffic & Funnels, LLC, et al.*, (M.D. Tenn. Dec. 5, 2023). The FTC settled a complaint against a Tennessee-based group of companies, their owners, officers and a former sales director for deceiving consumers. The defendants charged consumers hundreds of thousands of dollars “for

supposed telemarketing trainings that rarely, if ever, delivered on what was promised.” The defendants continued to make such deceptive earnings claims after receiving warnings from the FTC about the illegality of such conduct. The order bans the defendants from making misleading or unsubstantiated earnings claims and from making any misrepresentation in selling any goods or services. The order also contains a total monetary judgment of over \$16 million.

- iii. *FTC v. Voyager Digital, LLC, et al.*, (S.D.N.Y. Oct. 12, 2023). The FTC settled a case against Voyager, a bankrupt cryptocurrency company. The company allegedly falsely claimed that customers’ accounts were insured by the Federal Deposit Insurance Corporation (FDIC) and were “safe” even though the company was approaching bankruptcy. The order permanently bans the company from handling consumers’ assets, misrepresenting the benefits of any product or service, making false representation to any customer of a financial institution to obtain financial information and from disclosing nonpublic personal information about consumers without express consent. The order also stipulated a judgment of \$1.65 billion, which will be suspended as Voyager disburses its remaining assets to consumers through its bankruptcy proceedings.
- iv. *FTC v. Lurn, Inc., et al.*, (D. Md. Sept. 27, 2023). The FTC settled a complaint against an online coaching business that allegedly made “unfounded claims that consumers can make a significant income by starting an array of online businesses.” The company made “outlandish” and unsubstantiated earnings claims, such as becoming a “Stay-At-Home Millionaire” if they purchased one program. The order bans the defendants from making misleading or unsubstantiated earnings claims and from making any misrepresentation in selling any goods or services. The order also requires the defendants to inform consumers of the FTC’s case against it and to pay \$2.5 million to the FTC to refund consumers.
- v. *FTC v. Celsius Network Inc., et. al.*, (S.D.N.Y. July 13, 2023). The FTC filed a complaint against Celsius Network, a cryptocurrency platform, in which it alleged that defendants falsely promised consumers (a) the opportunity to withdraw their deposits at any time; (b) that the company maintained a \$750 million insurance policy for deposits; (c) that defendants had sufficient reserves to meet customer obligations; (d) that those in its Earn program could earn rewards on deposits of cryptocurrency assets as high as an 18% annual percentage yield (APY); and (e) that Celsius did not make unsecured loans. Celsius agreed to a proposed settlement in which it will be permanently banned from handling consumers’ assets. Additionally, the company will pay \$4.7 billion, though this will be suspended to permit Celsius to return its remaining assets to consumers in bankruptcy proceedings. The charges against the former executives have not been settled and will proceed in federal court.
- vi. *FTC v. Vision Online, Inc., et. al.*, (M.D. Fla. June 13, 2023). A federal court

entered a preliminary injunction against Vision Online and its affiliates. The FTC's complaint alleged that Vision Online targeted Spanish-speaking consumers and used false and unsubstantiated earnings claims to entice consumers into paying thousands of dollars for a false online business and real estate money-making opportunities. The court order also prohibits defendants from making unsupported marketing claims, violating the above Business Opportunity and Cooling-Off Rules, and from interfering with consumers' ability to review defendants' products. On January 17, 2024, the FTC obtained permanent injunctions and a judgment of over \$29 million in a settlement.

- vii. *FTC and the State of Florida v. Global E-Trading, LLC, also d/b/a Chargebacks911*, (M.D. Fla. Apr. 12, 2023). The FTC and Florida's Attorney General filed suit against Chargebacks911, a credit card chargeback mitigation business and two of its officers for allegedly violating the FTC Act and the Florida Deceptive and Unfair Trade Practices Act. The complaint alleged that defendants unfairly denied and prevented consumers from obtaining their chargebacks that otherwise would have been approved.
- viii. *In the Matter of Mastercard Inc.*, (F.T.C. Dec. 23, 2022). The FTC finalized a consent order that settles charges against financial services company Mastercard for violating the "Durbin Amendment" of the Electronic Funds Transfer Act and the FTC Act. The Complaint alleges that Mastercard implemented policies that require merchants to route online e-wallet transactions using only Mastercard-branded debit cards to Mastercard for processing while bearing the fees Mastercard charges. The FTC's finalized order requires Mastercard to end these practices while also banning Mastercard from taking other actions that may restrict merchants' ability to choose between competing debit card networks.
- ix. *U.S and State of Wisconsin v. Square One Development Group Inc., et al.*, (E.D. Mo. Nov. 21, 2022). The FTC filed suit against four companies for unfair or deceptive acts or practices in violation of the FTC Act and for violating the FTC's Cooling-Off Rule for sales made at home. The complaint alleges Square One operated a timeshare exit scheme. Defendants allegedly stoked consumers with high-pressure fear and urgency to leave their timeshares within a specified time frame and then charged consumers with a large upfront fee.
- x. *FTC v. DK Automation, LLC, et. al.*, (S.D. Fla. Nov. 16, 2022). The FTC filed suit against DK Automation, its affiliates, and its owners, Kevin David Hulse and David Shawn Arnett, for using unfair or deceptive acts or practices under Section 5 of the FTC Act and the Consumer Review Fairness Act of 2016 ("CRFA"). The complaint alleges that DK Automation misled consumers by making unsubstantiated moneymaking opportunity claims involving Amazon packages, business coaching and cryptocurrency. A proposed court order would require defendants to pay at least \$2.6 million to refund consumers who were harmed by the deceptive conduct. On March

28, 2024, the FTC sent \$2.8 million in refunds to consumers.

- xi. *FTC v. Ygrene Energy Fund Inc.*, (C.D. Cal. Oct. 28, 2022). The FTC filed a complaint which alleged that Ygrene and its contractors falsely told consumers that financing its Property Assessed Clean Energy (“PACE”) loan program would not interfere with the sale or refinancing of their homes. The FTC further alleges that Ygrene failed to obtain consumers’ express informed consent to using the consumers’ home as collateral to secure Ygrene’s loan. Additionally, Ygrene was alleged to conduct high-pressure sales tactics by forcing consumers to sign on to the program with their contractors standing by the consumers’ side or by rushing them through the process.
- xii. *FTC and State of Arkansas, ex. Rel. v. BINT Operations, LLC*, (E.D. Ark. June 16, 2021). The FTC and the State of Arkansas Attorney General jointly filed suit against “Blessings in No Time” (“BINT”) for violating the FTC Act, the Consumer Review Fairness Act of 2016 and the Arkansas Deceptive Trade Practices Act. The complaint alleged the operators of BINT lured people into joining their illegal pyramid scheme by falsely promising investment returns as high as 800%. BINT also allegedly prohibited participants from truthful, non-defamatory reviews and other information about the scheme on social media or online. The settlement, among other things, permanently bans defendants from multi-level marketing and requires defendants to pay at least \$450,000 to a fund administered by the State of Texas that will be used to provide refunds.
- xiii. *FTC v. Position Gurus, LLC*, (W.D. Wash. May 12, 2020). In May 2020, the FTC settled a case against Position Gurus and Top Shelf Ecommerce and their owners for \$1.2 million. The complaint alleged that the defendants targeted consumers looking for opportunities to make money starting retail businesses online. Additionally, the complaint alleged that the company included provisions in its contracts prohibiting customers from sharing negative reviews or otherwise complaining about the company online.
- xiv. *FTC v. Prog Leasing, LLC*, (N.D. Ga. Apr. 20, 2020). Progressive Leasing, a company that markets rent-to-own payment plans in tens of thousands of retail stores nationwide, agreed to pay \$175 million to settle FTC charges that it misled consumers about the true price of items purchased through its plans.
- xv. *In the Matter of HomeAdvisor, Inc.*, (F.T.C. Mar. 22, 2022). In April 2023, the FTC announced approval of a final consent order requiring the company to pay up to \$7.2 million in connection with the sale of home improvement project leads to service providers, including small businesses operating in the “gig economy.”
- xvi. *FTC v. SLAC, Inc.*, (C.D. Cal. Mar. 9, 2020). In May 2020, SLAC Inc., Navloan, Student Loan Assistance Center, and Adam Owens—three California-based student loan debt relief companies and their owner—agreed

to a permanent ban from the debt relief business to settle FTC's charges. The complaint alleged that the companies falsely promised to lower or eliminate consumers' student loans for an illegal upfront fee. The FTC also alleged that the companies and Owens failed to disclose that they paid consumers for positive Better Business Bureau (BBB) reviews.

- xvii. *FTC v. OTA Franchise Corporation*, (C.D. Cal. Feb. 12, 2020). The FTC reached a settlement with Online Training Academy ("OTA"), an investment training company, which requires OTA to pay monetary refunds totaling more than \$5.4 million dollars and also requires the company to forgive over \$13.3 million in debt owed by consumers to OTA. The FTC's complaint against OTA and its officers alleged that the defendants have used false or unfounded earnings and related claims to sell investment "training programs" costing as much as \$50,000.
- xviii. *FTC v. James D. Noland, Jr., et. al.*, (D. Ariz. Jan. 17, 2020). The U.S. District Court for the District of Arizona found in support of the FTC that defendants Noland, Harris and Sacca violated the FTC Act through their operation of travel businesses as pyramid schemes while promising consumers "financial freedom." The complaint alleged that defendants operated the pyramid scheme on false promises of wealth and income to entice consumers to join. Additionally, Noland was found to have violated a previous court order barring him from engaging in similar action. The Court's ruling imposes a \$7.3 million judgment on defendants.
- xix. *FTC v. Dluca d/b/a Bitcoin Funding Team and My7Network, et. al.*, (S.D. Fla. Feb. 20, 2018). In August 2019, the FTC reached a settlement with the defendants. The defendants were "promoters of recruitment-based cryptocurrency schemes." The chain referral schemes (a type of pyramid scheme) involved the defendants using websites, YouTube videos, social media and conference calls to claim that they "could turn a payment of the equivalent of just over \$100 into \$80,000 in monthly income." Under the settlement agreement, the defendants forfeited more than \$500,000 and will be permanently barred from operating any other multilevel marketing or pyramid scheme.

XX. GENERAL RULEMAKING UPDATES NOT DISCUSSED EARLIER

- a. Rules of Practice: On June 2, 2023 the FTC voted to modify several sections of the agency's Rules of Practice, including: (1) revisions to reflect the creation of the FTC's Office of Technology in parts 0 and 2; (2) revisions to the FTC's administrative hearing process, which will allow the administrative law judge to issue a "recommended" decision after each administrative hearing rather than an "initial decision" so that each recommended decision will automatically be subjected to FTC review in part 3; (3) revisions to the procedures for Touhy and Privacy Act requests in part 4; and (4) revisions in parts 1 and 3 that correct minor errors, like outdated references or misspellings.

- b. Amplifier Rule: On July 25, 2023, the FTC issued supplemental proposed amendments to its Amplifier Rule. In July 2022, the FTC issued a notice of proposed rulemaking seeking comments on, among other things, standardizing certain test conditions for measuring amplifier power output.
- c. Impersonation of Government and Businesses: On March 30, 2023, the FTC published an Initial notice of an informal hearing for the “Rule on Impersonation of Government and Businesses” would prohibit the impersonation of government, businesses or their officials. On April 1, 2024, the FTC promulgated a final rule that enables the agency to directly seek monetary relief in federal courts from scammers that impersonate government or business seals or logos, spoof government or business email addresses or websites or falsely imply a governmental or business affiliation. The FTC also highlighted new data on the most common ways that scammers target consumers. Reported losses from these impersonation scams are over \$1.1 billion for this year, which is more than triple the amount reported in 2020.
 - i. The FTC announced on April 1, 2024, the effective date of the new rule, that it would be accepting public comments on a supplemental notice of proposed rulemaking which would prohibit impersonation of individuals and prohibit “providing scammers with the means and instruments to execute [impersonation scams].”
- d. Inflation Adjusted Civil Penalty Amounts: On January 11, 2024, the FTC adjusted the maximum civil penalty dollar amounts for violations of 16 provisions of the law enforced by the FTC, as is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. These new maximum civil penalty amounts become effective on January 10, 2024, and the amounts increased from:
 - i. \$50,120 to \$51,744 for violations of Sections 5(l), 5(m)(1)(A) and 5(m)(1)(B) of the FTC Act, Section 7A(g)(l) of the Clayton Act and Section 525(b) of the Energy Policy and Conservation Act.
 - ii. \$659 to \$680 for violations of Section 10 of the FTC Act.
 - iii. \$1,426,319 to \$1,472,546 for violations of Section 814(a) of the Energy Independence and Security Act of 2007.
- e. Ophthalmic Practice Rules (Eyeglass Rule) (NPRM) 16 CFR 456: On June 27, 2024, the FTC announced final updates to amend the Eyeglass Rule. The updates require that prescribers obtain a signed confirmation after they release an eyeglass prescription to a patient. They must maintain each confirmation for no less than three years. The Rule also allows prescribers to comply with automatic prescription release via electronic delivery in specific circumstances. Additionally, the Rule clarifies that presentation of proof of insurance coverage shall be deemed to be a payment for purposes of determining when a prescription must be provided.
- f. Funeral Rule: On November 2, 2022, the FTC issued an Advance Notice of Proposed Rulemaking regarding potential changes to the rule. The potential amendments

included whether and how funeral providers should be required to display or distribute their pricing information online and through other electronic means.