



FEDERAL TRADE COMMISSION ADVERTISING ENFORCEMENT

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revised June 1, 2019

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I. LEGAL FRAMEWORK

A. Commission's Statutory Authority in Advertising Cases

1. Section 5 of the FTC Act: 15 U.S.C. § 45 gives the Commission broad authority to prohibit "unfair or deceptive acts or practices."
2. Sections 12-15 of the FTC Act: 15 U.S.C. §§ 52-55 prohibits the dissemination of misleading claims for food, drugs, devices, services or cosmetics.
3. Section 13(b) of the FTC Act: 15 U.S.C. § 53 authorizes the FTC to file suit in United States District Court to enjoin an act or practice that is in violation of any provision of law enforced by the FTC.

B. Deception: Deception Policy Statement, appended to Cliffdale Associates, Inc., 103 F.T.C. 110, 174 (1984), cited with approval in Kraft, Inc. v. FTC, 970 F.2d 314 (7th Cir. 1992), cert. denied, 507 U.S. 909 (1993). An advertisement is deceptive if it contains a misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances to their detriment. Although deceptive claims are actionable only if they are material to consumers' decisions to buy or use the product, the Commission need not prove actual injury to consumers.

C. Unfairness: Unfairness Policy Statement, appended to International Harvester Co., 104 F.T.C. 949, 1070 (1984). A practice is unfair if it causes or is likely to cause substantial consumer injury that is not reasonably avoidable by consumers themselves and which is not outweighed by countervailing benefits to consumers or competition. "In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination." 15 U.S.C. § 45(n). According to the Conference Report, the definition of "unfair" is derived from the Commission's 1980 Unfairness Policy Statement, the Commission's 1982 letter on the subject, and interpretations and applications in specific proceedings before the Commission. Rep. No. 617, 103d Cong., 2d Sess. (1994), 140 Cong. Rec. H6006 (daily ed. July 21, 1994).

II. REMEDIES FOR VIOLATIONS OF THE LAW

- A. Cease and Desist Orders: In advertising cases, the basic administrative remedy is a cease and desist order. The purpose of the order is two-fold: 1) to enjoin the illegal conduct alleged in the complaint; and 2) to prevent future violations of the law. FTC v. Colgate-Palmolive Co., 380 U.S. 374 (1965). The voluntary cessation of an advertising campaign is “neither a defense to liability, nor grounds for omission of an order.” Sears, Roebuck & Co., 95 F.T.C. 406, 520 (1980), citing Fedders Corp. v. FTC, 529 F.2d 1398, 1403 (2d Cir. 1976).
- B. Fencing-In: “If the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.” FTC v. Ruberoid Co., 343 U.S. 470, 473 (1952). Therefore, “those caught violating the Act must expect some fencing in.” FTC v. National Lead Co., 352 U.S. 419 (1957); see FTC v. Universal-Rundle Corp., 387 U.S. 244 (1967). The Supreme Court has afforded the Commission broad discretion in fashioning fencing-in provisions that will not be disturbed except “where the remedy selected has no reasonable relation to the unlawful practices found to exist.” Jacob Siegel Co. v. FTC, 327 U.S. 608, 612-13 (1946). Courts have upheld FTC orders encompassing all products the company markets or all products in a broad category, based on violations involving only a single product or group of products. ITT Continental Baking Co. v. FTC, 532 F.2d 207 (2d Cir. 1976). Among the factors the FTC will consider in determining the appropriate remedy are the seriousness of the violation, the violator’s record with respect to deceptive practices, and the potential transferability of the illegal practice to other products. Sears, Roebuck & Co. v. FTC, 676 F.2d 385, 391 (9th Cir. 1982). The weight given a particular factor or element will vary. The more egregious the facts with respect to a particular element, the less important it is that another negative factor be present. Id. at 391-92. See also Telebrands Corp. v. FTC, 457 F.3d 354 (4th Cir. 2006).
- C. Corrective Advertising: If merely prohibiting future misrepresentations will not dispel misperceptions conveyed through prior misrepresentations, the FTC may order corrective advertising. See Warner-Lambert Co. v. FTC, 562 F.2d 749 (D.C. Cir. 1977) (upholding order enjoining company from representing that Listerine helps prevent colds and sore throats and requiring it for a specific period to state in future advertising “Listerine will not help prevent colds or sore throats or lessen their severity”). Representative corrective advertising cases:
- Novartis Corp. v. FTC, 223 F.3d 783 (D.C. Cir. 2000) (upholding Commission order requiring marketer of Doan’s pills to run corrective advertising to remedy deceptive claim that product is superior to other analgesics for treating back pain)
 - Unocal Corp., 117 F.T.C. 500 (1994) (consent order) (requiring gasoline company to mail corrective notices to credit card holders who had received ads making unsubstantiated performance claims for higher octane fuels)

- Eggland's Best, Inc., 118 F.T.C. 340 (1994) (consent order) (requiring egg marketer to label packaging for one year with corrective notice regarding product's effect on serum cholesterol)
- D. Other Remedies: The FTC may require advertisers to make accurate information available through disclosures, direct notification, or other forms of education or may seek additional remedies to correct deceptive or unfair practices.
1. Representative disclosure cases:
- FTC v. Western Botanicals, Inc., No. CIV-S-01-1332 DFL GGH (E.D. Cal. July 11, 2001); and FTC v. Christopher Enterprises, Inc., No. 2:01-CV-0505-ST (D. Utah Nov. 29, 2001) (stipulated orders) (prohibiting sale of comfrey without proof of safety and requiring warnings that internal use can cause serious liver damage or death)
 - Panda Herbal Int'l, Inc., 132 F.T.C. 125 (2001), and ForMor, Inc., 132 F.T.C. 72 (2001) (consent orders) (requiring warnings in labeling and ads that St. John's Wort can have dangerous interactions for patients taking certain prescription drugs and for pregnant women)
 - Aaron Co., 132 F.T.C. 172 (2001) (consent order) (requiring warnings in labeling and ads that products with ephedra can have dangerous effects, including heart attack, stroke, seizure, and death)
 - FTC v. Met-Rx USA, Inc., No. SAC V-99-1407 (D. Colo. Nov. 15, 1999), and FTC v. AST Nutritional Concepts & Research, No. 99-WI-2197 (C.D. Cal. Nov. 15, 1999) (stipulated orders) (requiring labeling and advertising for supplements containing androgen and other steroid hormones to disclose "**WARNING:** This product contains steroid hormones that may cause breast enlargement, testicle shrinkage, and infertility in males, and increased facial and body hair, voice deepening, and clitoral enlargement in females. Higher doses may increase these risks. If you are at risk for prostate or breast cancer, you should not use this product.")
 - R.J. Reynolds Tobacco Co., 128 F.T.C. 262 (1999) (consent order) (requiring marketer of Winston "no additives" cigarettes to disclose that "No additives in our tobacco does NOT mean a safer cigarette")
 - Global World Media Corp., 124 F.T.C. 426 (1997) (consent order) (requiring marketer to disclose "**WARNING:** This product contains ephedrine which can have dangerous effects on the central nervous system and heart and could result in serious injury. Risk of injury increases with dose.")
 - Safe Brands Corp., 121 F.T.C. 379 (1996) (consent order) (requiring marketer of Sierra antifreeze to include a statement on containers warning that product may be harmful if swallowed) practices.

2. Representative direct notification cases:

- FTC v. Lumos Labs, Inc., No. 3:16-CV-00001 (N.D. Cal. Jan. 5, 2016) (stipulated final judgment) (requiring marketers of Lumosity “brain training” program to notify customers online and via email of one-step mechanism for cancelling product’s auto-renewal feature)
- Oracle Corporation, C-4571 (Dec. 29, 2015) (consent order) (requiring notice to consumers during Java SE update process if they have outdated versions of the software and announcement via social media to inform consumers about deceptive claims regarding security of Java SE)
- BMW of North America, LLC, C-4555 (Mar. 19, 2015) (consent order) (requiring company to contact affected MINI owners to correct false statement about warranty terms made in violation of the Magnuson-Moss Warranty Act and Section 5)
- Brake Guard Products, Inc., 125 F.T.C. 138 (1998) (requiring seller of purported after-market braking system to notify distributors and purchasers that FTC has determined ad claims to be deceptive)
- PhaseOut of America, Inc., 123 F.T.C. 395 (1997) (consent order) (requiring marketer of device advertised to reduce health risks of smoking to notify purchasers that the product has not been proven to reduce the risk of smoking-related diseases)
- Consumer Direct, Inc., 113 F.T.C. 923 (1990) (consent order) (requiring marketer of Gut Buster exercise device to mail warnings to purchasers regarding serious safety hazard) practices.

3. Representative consumer education cases:

- FTC v. WebTV Networks, Inc., C-3988 (Dec. 12, 2000) (consent order) (to settle charges that company made deceptive claims about product’s capabilities, requiring educational campaign to inform consumers about evaluating internet access devices)
- United States v. Macys.com, Inc., (D. Del. July 26, 2000) (consent decree) (\$350,000 civil penalty to settle Mail Order Rule violations and requirement that company post ads on search engines to alert consumers about online shopping rights)
- United States v. Bayer Corp., No. CV-00-132 (NHP) (D.N.J. Jan. 11, 2000) (consent decree) (to settle charges that company made deceptive claims about use of aspirin to prevent heart attacks and strokes in the general population, requiring campaign about proper use of aspirin therapy and disclosure in ads, “Aspirin is not

appropriate for everyone, so be sure to talk with your doctor before beginning an aspirin regimen”)

- United States v. Mazda Motor of America, No. SACV- 99-1213 AHS (C.D. Cal. Sept. 30, 1999) (consent decree) (requiring distribution of consumer education materials to settle charges that Mazda failed to make clear and conspicuous disclosures of leasing terms)
- Exxon Corp., 124 F.T.C. 249 (1997) (consent order) (to settle charges that advertiser made misleading claims about gasoline’s ability to clean engines and reduce maintenance costs, requiring consumer education campaign, including TV ads and brochure)
- Schering-Plough Healthcare Products, Inc., 123 F.T.C. 1301 (1997) (consent order) (requiring marketer of Coppertone Kids Waterproof Sunblock to distribute educational brochures about sunscreen protection)
- California SunCare, Inc., 123 F.T.C. 332 (1997) (consent order) (requiring prominent cautionary statement about hazards of sun exposure in future advertising for sun tanning products)
- Blenheim Expositions, 120 F.T.C. 1078 (1995) (consent order) (requiring producer of franchise trade shows to distribute copies of FTC’s *Consumer’s Guide to Buying a Franchise* to attendees)

4. Other conduct-based remedies

- FTC v. v. Herbalife International of America, Inc., No. 2:16-CV-05217 (C.D. Cal. July 15, 2016) (stipulated order) (\$200 million redress and requiring multilevel marketing company to restructure U.S. operations to, among other things, eliminate incentives that reward distributors primarily for recruiting, rather than retail sales)
- HTC America, Inc., 155 F.T.C. 1617 (2013) (consent order) (requiring mobile device manufacturer to implement program to install patches to correct security flaws)
- Phusion Projects, LLC, 155 F.T.C. 212 (2013) (consent order) (requiring relabeling and repackaging to settle charges that company made false claims for malt beverage)
- United States v. Telebrands Corp., No. 96-0827-R (W.D. Va. Sept. 2, 1999) (consent decree) (ordering recidivist to pay \$800,000 civil penalty and to hire FTC-approved monitor to audit compliance with the Mail Order Rule)

E. Bans and bonds: Courts have banned individuals from certain industries, required them to post bonds before engaging in business, or ordered other remedies to ensure compliance. See, e.g., FTC v. Douglas Gravink and Gary Hewitt, No. 09-CV-4719 (C.D. Cal. Aug. 23, 2012) (final judgment) (lifetime ban from infomercials, telemarketing, or assisting others in those fields). See also Synchronal Corp., 116 F.T.C. 1189 (1993) (consent order). Representative cases:

- FTC v. E.M.A. Nationwide, Inc., 767 F.3d 611 (6th Cir. 2014) (upholding district court order banning telemarketer from pitching mortgage and debt relief programs)
- FTC v. NHS Systems, Inc., No. 08-CV-2215 (E.D. Pa. Apr. 24, 2013) (permanent injunction) (lifetime ban from telemarketing and charging consumers' bank accounts)
- FTC v. Fereidoun "Fred" Khalilian, No. 10-21788-CIV (S.D. Fla. Jan. 10, 2011) (stipulated injunction) (lifetime ban from telemarketing to settle charges of using illegal robocalls to sell auto service contracts)
- FTC v. United Credit Adjusters, Inc., No. 09-798 (JAP) (D.N.J. Apr. 22, 2010) (default order) (\$7.5 million judgment and lifetime ban from selling credit repair and mortgage relief services)
- United States v. Global Mortgage Funding, Inc., No. SA CV 07-1275 (C.D. Cal. July 23, 2009) (five-year ban for calling numbers on Do Not Call Registry and failing to transmit accurate caller ID information)
- FTC v. Wintergreen Systems, No. 3:09-CV-00124-EMC (N.D. Cal. Jan. 13, 2009) (stipulated judgment) (lifetime ban from rebate programs)
- FTC v. 7 Day Marketing, Inc., No. CV-08-01094-ER-FFM (C.D. Cal. Feb. 27, 2008) (permanent injunction) (banning individuals who sold "7 Day Miracle Cleanse Program" from marketing via infomercial or marketing any health-related product in any medium)
- FTC v. AmeriDebt, Inc. and Andris Pukke, No. PJM-03-3317 (D. Md. Sept. 13, 2006) (stipulated judgment) (\$13 million redress and lifetime ban from credit counseling, debt management, and credit education activities)
- FTC v. Sloniker, No. CIV 02 1256 PHX RCB (D. Ariz. Feb. 6, 2003) (stipulated judgment) (banning principals for life from any future telemarketing activities)
- FTC v. American Urological Corp., No. 98-CVC-2199-JOD (N.D. Ga. Apr. 29, 1999) (permanent injunction) (\$6 million bond for marketer of Väegra, a purported impotence treatment)

- F. Trade Name Excision: The FTC has authority to forbid the future use of a brand name or trade name when less restrictive remedies, such as disclosures, would be insufficient to eliminate the deception conveyed by the name or would lead to a confusing contradiction in terms. ABS Tech Sciences, Inc., 126 F.T.C. 229 (1998) (enjoining company from using “ABS” as part its trademark or trade name because consumers would likely confuse it with factory-installed anti-lock braking systems). See also Continental Wax Corp. v. FTC, 330 F.2d 475 (2d Cir. 1964); Thompson Medical Co., 104 F.T.C. at 837-39.
- G. Consumer Redress, Disgorgement, and Other Financial Remedies: Pursuant to its inherent equitable powers, a district court may order redress or disgorgement under Section 13(b). See FTC v. Ross, 743 F.3d 886 (4th Cir. 2014); FTC v. Bronson Partners, LLC, 654 F.3d 359 (2d Cir. 2011); FTC v. H.N. Singer, Inc., 668 F.2d 1107 (9th Cir. 1982). In addition, Commission consent orders often include provisions for marketers to pay redress or disgorge profits. The FTC also may seek redress pursuant to Section 19 of the FTC Act, 15 U.S.C. § 57b.
1. Representative Section 13(b) cases:
- FTC v. Help the Vets, Inc., No. 6:18-CV-01153-CEM (M.D. Fla. July 12, 2018) (stipulated order) (as part of Operation Donate with Honor, \$20.4 million partially suspended judgment and lifetime ban from paid charitable fundraising and charity management to settle charges that “charities” falsely claimed to fund medical care, suicide prevention program, and treatment for veterans with breast cancer)
 - FTC v. Western Union Company, No. 1:17-CV-00110-CCC (M.D. Pa. Jan. 19, 2017) (stipulated order) (\$586 million to settle FTC and DOJ charges of consumer fraud and violations of anti-money laundering laws)
 - FTC and 51 State AGs v. Cancer Fund of America, CV-15-884 PHX NVW (D. Az. Mar. 30, 2016) (stipulated judgments) (settlement that dissolves network of bogus cancer charities that used only small percentage of \$187 million in donations on cancer-related services)
 - FTC v. T-Mobile USA, Inc., 2:14-CV-0097-JLR (W.D. Wash. Dec. 19, 2014) (stipulated order) (at least \$90 million redress for mobile cramming, billing consumers for unauthorized third-party charges)
 - FTC v. Skechers U.S.A. Inc., No 1:12-CV-01214-JG (N.D. Ohio May 16, 2012) (stipulated judgment) (\$40 million redress for deceptive claims that Skechers Shape-ups would help people lose weight, and strengthen buttock, leg, and abdominal muscles)
 - FTC v. Reebok International Ltd., No. 1:11-CV-02046-DCN (N.D. Ohio Sept. 28, 2011) (stipulated judgment) (\$25 million redress for deceptive claims that Reebok EasyTone and RunTone shoes would provide extra toning and strengthening of leg and buttock muscles)

- FTC v. CompuCredit Corp., No. 1:08-CV-1976-BBM-RGV (N.D. Ga. Dec. 19, 2008) (stipulated order) (\$114 million redress in the form of reversed charges for subprime credit card marketer's illegal practices, including undisclosed fees)
- FTC v. The Bear Stearns Companies, No. 4:08-CV-338 (E.D. Tex. Sept. 9, 2008) (stipulated judgment) (\$28 million redress for violations of FTC Act, Fair Debt Collection Practices Act, Fair Credit Reporting Act, and the Truth-in-Lending Act for unlawful practices related to servicing consumers' mortgages)
- FTC v. International Product Design, No. 1:97-CV-01114-GBL-TCB (E.D. Va. Sept. 6, 2007) (stipulated order) (\$60 million redress for customers of purported invention promotion company)
- FTC v. AmeriDebt, Inc., No. PJM-03-3317 (D. Md. Sept. 13, 2006) (stipulated judgment) (\$13 million for false claims that company was nonprofit credit counseling organization when, in fact, company funneled money to affiliated for-profit entities and individuals and didn't provide advertised services to consumers)
- FTC v. Rexall Sundown, Inc., No. 00-706-CIV (S.D. Fla. Mar. 11, 2003) (stipulated order) (up to \$12 million redress for deceptive claims for purported anti-cellulite product Cellasene)
- FTC v. Smolev and Triad Discount Buying Service, Inc., No. 01-8922- CIV-Zloch (S.D. Fla. Oct. 24, 2001) (stipulated order) (action by FTC and 40 states ordering \$9 million redress from buying clubs that misled consumers into accepting trial memberships and obtained consumers' billing information from telemarketers without authorization)
- FTC v. Enforma Natural Products, Inc., No. 04376JSL (CWx) (C.D. Cal. Apr. 26, 2000) (stipulated order) (\$10 million redress from marketer of purported weight loss products)
- FTC v. American Urological Corp., No. 98-CVC-2199-JOD (N.D. Ga. Apr. 29, 1999) (permanent injunction) (\$18.5 million for deceptive claims for purported impotence treatment Väegra)
- FTC v. SlimAmerica, Inc., No. 97-6072-Civ (S.D. Fla. 1999) (permanent injunction) (\$8.3 million redress for false weight loss claims)
- FTC v. Amy Travel Service, Inc., 875 F.2d 564 (7th Cir. 1988) (upholding district court's award of redress under Section 13(b) to victims of fraudulent travel promotion)

- FTC v. International Diamond Corp., No. C-82-078 WAI (JSB) (N.D. Cal. Nov. 8, 1983) (upholding court's authority to order redress under Section 13(b) of the FTC Act)

2. Representative Section 19 cases:

- FTC v. Telebrands Corp., No. 2:07-CV-3525 (D.N.J. Jan. 14, 2009) (stipulated order) (\$7 million redress for false weight loss and muscle claims for Ab Force abdominal belt). See also Telebrands Corp. v. FTC, 457 F.3d 354 (4th Cir. 2006), aff'g, 140 F.T.C. 278 (2005).
- FTC v. Figgie, Inc., 994 F.2d 595 (9th Cir. 1993) (upholding award of redress following FTC's finding of Section 5 violation for deceptive safety representations for heat detectors)

3. Representative administrative orders with financial or other remedies:

- Sony Computer Entertainment America LLC, 159 F.T.C. 1128 (2014) (consent order) (requiring company to give consumers choice of \$50 merchandise voucher or \$25 refund for deceptive claims about capabilities of PS Vita gaming device)
- Beiersdorf, Inc., 152 F.T.C. 414 (2011) (consent order) (\$900,000 redress for deceptive claims that Nivea My Silhouette! skin cream can significantly reduce users' body size)
- ValueVision International, Inc., 132 F.T.C. 338 (2001) (consent order) (requiring home shopping company to offer refunds to purchasers of weight loss, cellulite, and baldness products)
- Weider Nutrition International, Inc., C-3983 (Nov. 17, 2000) (consent order) (\$400,000 redress for false weight loss claims for PhenCal, marketed as safe alternative to prescription drug combination Phen-Fen)
- Dura Lube, Inc., D-9292 (May 5, 2000) (consent order) (\$2 million redress for deceptive claims for engine treatment)
- Apple Computer, Inc., 128 F.T.C. 190 (1999) (consent order) (challenging company's practice of charging owners for technical support despite advertising that services were free and requiring company to honor representation that customers would receive free support for as long as they own the product)
- Apple Computer, Inc., 124 F.T.C. 184 (1997) (consent order) (requiring company to provide computer upgrade kits at reduced cost and to offer rebates to purchasers)

- Azrak-Hamway International, 121 F.T.C. 507 (1996) (consent order) (requiring toymaker to offer refunds to consumers and to notify TV stations that ran ad of Children's Advertising Review Unit's policies)
- L & S Research Corp., 118 F.T.C. 896 (1994) (consent order) (\$1.45 million in disgorgement for deceptive claims for Cybergenics bodybuilding products)

H. Civil Penalties for Violations of FTC Orders and Trade Regulation Rules:
Section 5(l) of the FTC Act authorizes the Commission to seek civil penalties in federal court for violations of cease and desist orders. Section 5(m) authorizes the Commission to seek civil penalties for violations of trade regulation rules.

1. Representative order violation cases:

- United States v. iSpring Water Systems, LLC, No. 1:19-CV-01620-AT (stipulated order) (\$110,000 civil penalty for deceptive Made in USA claims for water filtration systems imported from China, in violation of 2017 FTC order)
- United States v. New World Auto Imports, No. 3:16-CV-2401-K (N.D. Tex. Aug. 18, 2016) (stipulated order) (\$85,000 civil penalty for deceptive auto ads, in violation of 2014 FTC order)
- United States v. Billion Auto, No. C-14-4118-MWB (N.D. Ia. Dec. 12, 2014) (stipulated order) (\$360,000 civil penalty for deceptive auto ads, in violation of 2012 FTC order)
- United States v. ICON Health and Fitness, Inc., No. 1:14-CV-1578 (D.D.C. Sept. 14, 2014) (stipulated order) (\$3 million civil penalty for deceptive weight loss and fitness claims for ab GLIDER, in violation of 1997 FTC order)
- FTC v. AJM Packaging Corp., No. 1:13-CV-1510 (D.D.C. Oct. 29, 2013) (stipulated order) (\$450,000 civil penalty for violating 1994 FTC order barring deceptive environmental claims)
- United States v. Google Inc., No. 5:12-CV-04177-HRL (N.D. Cal. Aug. 9, 2012) (stipulated order) (\$22.5 million civil penalty for misrepresenting privacy assurances to users of Apple's Safari browser, in violation of 2011 FTC order)
- United States v. Bayer Corp., No. 07-01 (HAA) (D.N.J. Jan. 4, 2007) (consent decree) (\$3.2 million civil penalty for deceptive weight loss claims for One-A-Day WeightSmart, in violation of 1991 FTC order)

- United States v. NBTY, Inc., No. CV-05-4793 (E.D.N.Y. Oct. 12, 2005) (consent decree) (\$2 million civil penalty for violating terms of FTC order by making deceptive health claims for Royal Tongan Limu and Body Success PM Diet Program)
- United States v. ValueVision International, Inc., No. 03-2890 (D. Minn. Apr. 17, 2003) (consent decree) (\$215,000 civil penalty for violations of FTC order related to unsubstantiated health claims)
- United States v. Mazda Motor of America, Inc., (C.D. Cal. Sept. 30, 1999) (consent decree) (\$5.25 million civil penalty for violations of FTC and state orders related to car leasing ads)
- United States v. Nu Skin International, Inc., No. 97-CV-0626G (D. Utah Aug. 6, 1997) (stipulated permanent injunction) (\$1.5 million civil penalty against seller of weight loss products for violating FTC order barring deceptive claims)
- United States v. STP Corp., No. 78 Civ. 559 (CBM) (S.D.N.Y. Dec. 1, 1995) (stipulated permanent injunction) (\$888,000 civil penalty against motor oil additive manufacturer for violating FTC order barring deceptive claims)
- In re Dahlberg, No. 4-94-CV-165 (D. Minn. Nov. 21, 1995) (stipulated injunction) (\$2.75 million civil penalty against hearing aid manufacturer for violating FTC order)
- United States v. General Nutrition Corp., No. 94-686 (W.D. Pa. Apr. 28, 1994) (stipulated permanent injunction) (\$2.4 million civil penalty for violating FTC order requiring substantiation for disease, weight loss, and muscle building claims)

2. Representative rule violation cases:

- United States v. Dish Network, 309-CV-03073-JES-CHE (June 6, 2017) (amended order for permanent injunction) (\$280 million civil penalty in federal-state action finding Dish Network violated Telemarketing Sales Rule by initiating, or causing others to initiate, calls to numbers on Do Not Call Registry)
- United States v. Sprint Corp., No. 2:15-CV-9340 (D. Kan. Oct. 21, 2015) (stipulated order) (\$2.95 million civil penalty for violation of Fair Credit Reporting Act's Risk-Based Pricing Rule)
- United States v. Sumpolec, No. 6:09-CV-00378-CEH-KRS (M.D. Fla. Jan 31, 2013) (judgment and order) (\$350,000 civil penalty for R-value Rule violations and deceptive claims about insulation)

- United States v. Prochnow, No. 1 02-CV-917 (N.D. Ga. Sept. 11, 2006) (permanent injunction) (\$5.4 million civil penalty and disgorgement of \$1.6 million for magazine seller's violations of Telemarketing Sales Rule and 1996 FTC consent order)
- United States v. Scholastic Inc. and Grolier Inc., No. 1:05CV01216 (D.D.C. June 21, 2005) (consent decree) (\$710,000 civil penalty for book clubs' violations of Negative Option Rule, Unordered Merchandise Statute, Telemarketing Sales Rule, and FTC Act)
- United States v. Igia, No. 04-CV-3038 (S.D.N.Y. Apr. 21, 2004) (consent decree) (\$300,000 civil penalty for violations of Mail Order Rule by marketer of Epil-Stop depilatory product)
- United States v. Deer Creek Products, No. 03-61592-CIV (S.D. Fla. Aug. 19, 2003) (consent decree) (suspended \$150,000 civil penalty against marketer of Big Mouth Billy Bass for violations of Mail Order Rule)
- United States v. Staples, Inc., No. 03-10958 GAO (D. Mass. May 22, 2003) (consent decree) (\$850,000 civil penalty for office supply company's violation of the Mail Order Rule through misleading "real time" inventory availability and delivery claims)
- United States v. Oxmoor House, Inc., No. CV-02-B-2735-S (N.D. Ala. Nov. 7, 2002) (consent decree) (\$500,000 civil penalty for publisher's violation of Unordered Merchandise Statute, Negative Option Rule, and Telemarketing Sales Rule for misrepresenting terms of free trial membership in book club)
- United States v. Toysrus.com, (D.N.J.); United States v. Kay-Bee Toy, (D. Minn.); United States v. Macys.com, (D. Del.); United States v. CDnow, (E.D. Pa.); United States v. MiniDiscNow, Inc., (N.D. Cal.); United States v. The Original Honey Baked Ham Company of Georgia, (N.D. Ga.); and United States v. Patriot Computer Corp., (N.D. Tex.) (July 26, 2000) (consent decrees) (total of \$1.5 million civil penalties for holiday shipping delays)
- United States v. Iomega Corp., No. 98-CV-00141C (D. Utah Dec. 9, 1998) (consent decree) (\$900,000 civil penalty for Mail Order Rule violation)
- United States v. Dell Computer Corp., No. 98-CA-0210 (W.D. Tex. Apr. 2, 1998) (consent decree) (\$800,000 civil penalty for Mail Order Rule violation)

I. Contempt Actions for Violations of District Court Orders: Federal district court orders may be enforced through civil or criminal contempt actions. Representative cases:

- FTC v. BlueHippo Funding, LLC, BlueHippo Capital, LLC, and Joseph Rensin, No. 08-CIV-1819 (PAC) (S.D.N.Y. May 2, 2016) (opinion) (\$13.4 million compensatory contempt sanction for violations of order regarding marketing computers to consumers with poor credit). See also In re Joseph K. Rensin, Ch. 7 Case No. 17-11834-EPK, Adv. Pro. 17-01185-EPK (S.D. Fla. Feb. 1, 2019) (memorandum opinion) (ruling that operator of computer financing company can't use bankruptcy filing as a shield from contempt order requiring him to pay \$13.4 million for violating a 2008 FTC order)
- FTC v. LifeLock, Inc., No. 2:10-CV-00530-MHM (D. Ariz. Jan. 5, 2016) (amended order) (\$100 million to settle contempt charges that LifeLock violated terms of 2010 court order requiring company to secure consumers' personal information and prohibiting deceptive advertising)
- FTC v. Crystal Ewing, No. 2:07-CV-000479-PMP (GWF) (D. Nev. Feb. 11, 2015) (contempt order) (\$9.5 million contempt judgment for violating order banning defendant from prize promotions)
- FTC v. Neovi, Inc., d/b/a Qchex.com, No. 06-CV-1952-JLS (JMA) (S.D. Cal. July 27, 2012) (contempt order) (\$100,000 restitution and \$10,000 per day fine for Internet-based check creation and delivery service's violations of 2009 court order). See also FTC v. Neovi, Inc., 604 F.3d 1150 (9th Cir. 2010).
- FTC v. EdebitPay, LLC, No. 2:07-CV-04880-ODW-AJW (C.D. Cal. May 25, 2011) (contempt order) (requiring marketer to pay \$3.7 million for violating 2008 court order)
- United States v. Ferrara, 334 F.3d 774 (8th Cir. 2003) (upholding 125-month sentence for criminal contempt arising from violation of court order barring violations of the FTC's Franchise Rule)

III. ADVERTISING SUBSTANTIATION

- A. ***Advertising Substantiation Policy Statement:*** Appended to Thompson Medical Co., 104 F.T.C. 648, 839 (1984), aff'd, 791 F.2d 189 (D.C. Cir. 1986), cert. denied, 479 U.S. 1086 (1987), the statement sets forth the requirement, articulated in prior Section 5 cases, that advertisers must have a reasonable basis for making objective claims before claims are disseminated. This doctrine was first announced in Pfizer, Inc., 81 F.T.C. 23 (1972). "In reviewing whether there is appropriate scientific substantiation for the claims made," reviewing courts are "mindful of the Commission's special expertise in determining what sort of substantiation is necessary to assure that advertising is not deceptive." POM Wonderful LLC v. FTC, 777 F.3d 478 (D.C. Cir. 2015).
- B. An advertiser must possess at least the level of substantiation expressly or impliedly claimed in the ad. See, e.g., Honeywell, Inc., 126 F.T.C. 202 (1998) (consent order) (requiring claims that imply a level of performance under

specific conditions, such as household use, to be substantiated by evidence relating to those conditions).

- C. If no specific level of substantiation is claimed, what constitutes a reasonable basis is determined on a case-by-case basis by analyzing six “Pfizer factors”:
1. the type of claim;
 2. the benefits if the claim is true;
 3. the consequences if the claim is false;
 4. the ease and cost of developing substantiation for the claim;
 5. the type of product; and
 6. the level of substantiation experts in the field would agree is reasonable.
- D. For health, safety, or efficacy claims, the FTC has generally required that advertisers possess “competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.” FTC orders have typically defined “competent and reliable scientific evidence” to mean “tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and that are generally accepted in the profession to yield accurate and reliable results.” *See, e.g., HealthyLife Sciences LLC*, C-4492, and *John Matthew Dwyer III*, C-4493 (Sept. 11, 2011) (consent orders); *Brake Guard Products, Inc.*, 125 F.T.C. 138 (1998). Depending on the nature of the claim, the Commission has imposed more specific requirements, including randomized clinical trials (RCTs). Representative cases:
- *POM Wonderful LLC v. FTC*, 777 F.3d 478 (D.C. Cir. 2015) (“Here, insofar as the Commission’s order imposes a general RCT-substantiation requirement for disease claims – i.e., without regard to any particular number of RCTs – the order satisfies the tailoring components of *Central Hudson* review.”)
 - *The Dannon Corp.*, 151 F.T.C. 62 (2010) (consent order) (requiring two well-designed human clinical studies for certain future health claims made by company under order for deceptive representations for Activia yogurt and DanActive beverage)
 - *Nestlé Healthcare Nutrition, Inc.*, 151 F.T.C. 1 (2010) (consent order) (requiring two well-designed human clinical studies for certain future health claims made by company under order for deceptive representations for Boost Kid Essentials)
 - *Schering Corp.*, 118 F.T.C. 1030 (1994) (consent order) (requiring that tests and studies relied upon as reasonable basis must employ appropriate methodology and address specific claims made in ad)

- FTC v. Pantron I Corp., 33 F.3d 1088 (9th Cir. 1994) (holding that consumer satisfaction surveys are insufficient to meet “competent and reliable scientific evidence” standard)
- Removatron Int’l Corp., 111 F.T.C. 206 (1988), aff’d, 884 F.2d 1489 (1st Cir. 1989) (requiring “adequate and well-controlled clinical testing” to substantiate claims for hair removal product)
- Thompson Medical Co., 104 F.T.C. 648 (1984), aff’d, 791 F.2d 189 (D.C. Cir. 1986), cert. denied, 479 U.S. 1086 (1987) (requiring two well-controlled clinical studies to substantiate certain drug claims)

IV. LIABILITY FOR FALSE OR UNSUBSTANTIATED CLAIMS

- A. Principals: An advertiser is responsible for all claims, express and implied, that are reasonably conveyed by the ad. See Sears, Roebuck & Co., 95 F.T.C. 406, 511 (1980), aff’d, 676 F.2d 385 (9th Cir. 1982). Advertisers are strictly liable for violations of the FTC Act. Neither proof of intent to convey a deceptive claim nor evidence that consumers have actually been misled is required for a finding of liability. Chrysler Corp. v. FTC, 561 F.2d 357, 363 & n.5 (D.C. Cir. 1977); Regina Corp., 322 F.2d 765, 768 (3d Cir. 1963). See also Orkin Exterminating Co. v. FTC, 849 F.2d 1354 (11th Cir. 1988) (holding that company’s purported good faith reliance on the advice of counsel is not a defense under Section 5).
- B. Individual Liability: Corporate officers may be held individually liable for FTC Act violations if the officer “owned, dominated and managed” the company and if naming the officer individually is necessary for the order to be fully effective in preventing the deceptive practices found to exist. FTC v. Standard Education Society, 302 U.S. 112 (1937). See also FTC v. Ross, 743 F.3d 886 (4th Cir. 2014) (holding corporate Vice President jointly and severally liable for \$163 million judgment); POM Wonderful LLC v. FTC, 777 F.3d 478 (D.C. Cir. 2015) (holding former CEO and company president liable for deceptive practices). The Commission is not required to show that defendants intended to defraud consumers in order to hold them personally liable. FTC v. Affordable Media, 179 F.3d 1228 (9th Cir. 1999). See also FTC v. Commerce Planet, Inc., 815 F.3d 593, 601 (9th Cir. 2016) (upholding joint and several liability).
 1. Individual liability is justified “where an executive officer of the respondent company is found to have personally participated in or controlled the challenged acts or practices” or if the officer held a “control position” over employees who committed illegal acts. See Rentacolor, Inc., 103 F.T.C. 400 (1984); Thiret v. FTC, 512 F.2d 176 (10th Cir. 1975).
 2. Individuals are personally liable for restitution for corporate misconduct if they “had knowledge that the corporation or one of its agents engaged in dishonest or fraudulent conduct, that the misrepresentations were the type upon which a reasonable and prudent person would rely, and that

consumer injury resulted.” FTC v. Ross, 743 F.3d 886 (4th Cir. 2014). The knowledge requirement can be satisfied by showing the individuals had actual knowledge of a material misrepresentation, were recklessly indifferent to the deception, or were aware of the probability of fraud along with an intentional avoidance of the truth. See FTC v. Affordable Media, 179 F.3d 1228 (9th Cir. 1999); FTC v. Publishing Clearing House, Inc., 104 F.3d 1168, 1171 (9th Cir. 1996).

3. Requisite authority may be inferred from activities that exhibit signs of planning, decision making, and supervision, such as preparing or approving ads containing deceptive representations. See Southwest Sunsites, Inc. v. FTC, 785 F.2d 1431 (9th Cir. 1986).

C. Advertising Agency Liability An advertising agency may be liable for a deceptive ad if the agency was an active participant in the preparation of the ad and if it knew or should have known the ad was deceptive. Standard Oil Co., 84 F.T.C. 1401, 1475 (1974), aff’d and modified, 577 F.2d 653 (9th Cir. 1978). An ad agency will be held to know what express or implied claims are conveyed to consumers by its ads. ITT Continental Baking Co., 83 F.T.C. 865, 968 (1973), aff’d as modified, 532 F.2d 207 (2d Cir. 1976). An ad agency does not have to independently substantiate the claims or scientifically re-examine the advertiser’s evidence. However, it can’t ignore obvious shortcomings or facial flaws. Bristol-Myers Co., 102 F.T.C. 21, 364 (1983). Representative cases:

- FTC and Maine v. Marketing Architects, Inc., No. 2:18-CV-00050 (D. Me. Feb. 6, 2018) (stipulated permanent injunction) (\$2 million settlement for ad agency’s role in creating and disseminating deceptive ads for weight loss products on behalf of client Direct Alternatives)
- Deutsch LA, Inc., 159 F.T.C. 1164 (2014) (consent order) (alleging that ad agency staff tweeted favorable comments about client Sony’s gaming console without disclosing material connection to company)
- TBWA Worldwide, Inc., C-4455 (Jan. 23, 2014) (consent order) (challenging agency’s role in deceptive on-camera demonstration of Nissan Frontier truck)
- Campbell Mithun, L.L.C., 133 F.T.C. 702 (2002) (consent order) (challenging agency’s role in ads claiming that calcium in Wonder Bread could improve children’s brain function and memory)
- Bozell Worldwide, Inc., 127 F.T.C. 1 (1999), and Martin Advertising, Inc., 127 F.T.C. 10 (1999) (consent orders) (challenging agencies’ roles in ads containing deceptive representations of car leasing terms)
- Foote, Cone & Belding, Inc., 125 F.T.C. 528 (1998); Grey Advertising, Inc., 125 F.T.C. 548 (1998); and Rubin Postaer and Associates, Inc., 125 F.T.C. 572 (1998) (consent orders) (challenging agencies’ roles in ads containing deceptive representations of car leasing terms)

- Grey Advertising, Inc., 122 F.T.C. 343 (1996) (consent orders) (challenging agency's role in advertisements containing deceptive demonstration for Hasbro paint-sprayer toy and deceptive claims for Dannon frozen yogurt)
 - Jordan McGrath Case & Taylor, 122 F.T.C. 152 (1996) (consent order) (challenging agency's role in ads containing deceptive claims for Doan's pills)
 - Young & Rubicam, Inc., 122 F.T.C. 79 (1996) (consent order) (challenging agency's role in ads containing deceptive claims for Ford's auto air filtration system)
 - NW Ayer & Son, Inc., 121 F.T.C. 656 (1996) (consent order) (challenging agency's role in ads containing deceptive claims regarding the effect of Eggland's Best eggs on cholesterol)
 - BBDO Worldwide, Inc., 121 F.T.C. 33 (1996) (consent order) (challenging agency's role in ads containing deceptive claims for Häagen-Dazs frozen yogurt)
 - Scali, McCabe, Sloves, Inc., 115 F.T.C. 96 (1992) (consent order) (challenging agency's role in ad containing deceptive demonstration of Volvo)
- D. Means and Instrumentalities: Companies may be liable if they provide others with the means and instrumentalities for engaging in deceptive conduct. Castrol North America Inc., 128 F.T.C. 682 (1999), and Shell Chemical Co., 128 F.T.C. 749 (1999) (consent orders) (challenging Castrol's role in disseminating deceptive claims for its Syntec fuel additives and Shell's role in providing trade customers, including Castrol, with promotional materials containing deceptive claims for purported active ingredient of Syntec, which Shell developed). See Nice-Pak Products, Inc., C-4556 (May 18, 2015) (consent order); FTC v. Applied Food Sciences, Inc., No. 1-14-CV-00851 (W.D. Tex. Sept. 8, 2014) (stipulated order); Oreck Corp., 151 F.T.C. 289 (2011) (consent order).
- E. Liability of Other Parties: Depending on the circumstances, the FTC has held other parties – including retailers, catalogs, infomercial producers, home shopping companies, public relations firms, and payment processors – liable for their role in deceptive practices. Representative cases:
- Creaxion Corp. and Inside Publications LLC of Georgia, C-4668 (Nov. 13, 2018) (consent order) (challenging public relations firm and publisher's roles in Olympians' promotion of insect repellent in social media and in a format that deceptively appeared to be independent magazine content)

- FTC v. Temecula Equity Group, LLC, No. 8:18-CV-03118-PX (D. Md. Oct. 10, 2018) (challenging marketing firm's role in car dealerships' mailing of more than 21,000 fake "urgent recall" notices – similar in appearance to official NHTSA safety recall notices – to consumers in an effort to bring them to the dealerships)
- FTC v. PayBasics, Inc., No. 1:15-CV-10963 (N.D. Ill. Dec. 22, 2015) (stipulated order) (suspended \$1 million judgment for payment processor's role in illegally providing scammers with access to payment networks)
- FTC v. E.M. Systems & Services, LLC, No. 8:15-CV-01417-SDM-EAJ (M.D. Fla. July 7, 2015) (FTC-Florida AG action challenging role of payment processor in alleged credit card laundering and illegally assisting and facilitating debt relief telemarketing scheme)
- FTC v. Applied Food Sciences, Inc., No. 1-14-CV-00851 (W.D. Tex. Sept. 8, 2014) (stipulated order) (\$3.5 million to settle charges that company used flawed study to make baseless weight loss claims about green coffee extract to retailers, who repeated claims in marketing products to consumers)
- Neiman Marcus Group, 156 F.T.C. 95 (2013); Dr.Jays.com, Inc., 156 F.T.C. 116 (2013); and Eminent, Inc., 156 F.T.C. 132 (2013) (consent orders) (challenging retailers' false claims that products containing real fur were made with faux fur, in violation of FTC Act and Fur Products Labeling Act)
- FTC and Illinois, Iowa, Nevada, North Carolina, North Dakota, Ohio, and Vermont v. Your Money Access, LLC, No. 2:07-CV-OS147-ER (E.D. Pa. Nov. 5, 2010) (order) (\$3.6 million judgment against payment processor that debited consumers' accounts illegally on behalf of deceptive telemarketers)
- FTC v. Neovi, Inc., d/b/a Qchex.com, 604 F.3d 1150 (9th Cir. 2010) (upholding that Internet-based check creation and delivery service's actions violated FTC Act)
- United States v. QVC, Inc., No. 04-CV-1276 (E.D. Pa. Mar. 19, 2009) (consent decree) (\$6 million redress for deceptive claims for For Women Only weight loss pills, Lite Bites, and Bee-Alive Royal Jelly, and \$1.5 civil penalty for claims for anti-cellulite lotion, in violation of 2000 FTC order)
- CompUSA Inc., 139 F.T.C. 357 (2005) (consent order) (requiring retailer to pay rebates for bankrupt manufacturer when retailer continued to advertise rebates despite knowing that manufacturer was not fulfilling requests)
- FTC v. Universal Processing, Inc., No. SA-CV-05-6054-FMC (VBKx) (C.D. Cal. Sept. 7, 2005) (stipulated order) (holding payment processor liable for unauthorized debits to consumers' checking accounts made on behalf of company selling allegedly bogus pharmacy discount cards)

- FTC v. Modern Interactive Technology, Inc., No. CV 00–09358 GAF (CWx) (C.D. Cal. Mar. 1, 2005) (stipulated order) (holding infomercial producer and two principals liable for deceptive weight loss claims made for the Enforma system)
- FTC v. First American Payment Processing, Inc., No. CV 04-0074 PHX (D. Az. Nov. 3, 2004) (stipulated permanent injunction) (\$1.5 million redress for electronic payment processor’s role in assisting fraudulent telemarketers by electronically debiting consumers’ bank accounts)
- FTC v. No. 1025798 Ontario, Inc., d/b/a The Fulfillment Solutions Advantage, Inc., No.: 03-CV-910A (W.D.N.Y. Oct. 12, 2004) (stipulated order) (holding fulfillment company liable for role in marketing of deceptively advertised weight loss products)
- ValueVision International, Inc., 132 F.T.C. 338 (2001) (consent order) (holding home shopping company liable for deceptive claims for weight loss, cellulite, and baldness products)
- FTC v. Lane Labs-USA, Inc., No. 00CV3174 (D.N.J. June 28, 2000) (stipulated order) (applying common enterprise theory to hold product manufacturer and company that distributed information about use of product liable for deceptive cancer treatment claims for BeneFin shark cartilage product). See FTC v. Lane Labs-USA, Inc., 624 F.3d 575 (3d Cir. 2010).
- QVC, Inc., C-3955 (June 16, 2000) (consent order) (holding home shopping company liable for its role in making and disseminating deceptive cold prevention claims)
- Home Shopping Network, Inc., 122 F.T.C. 227 (1996) (consent order) (holding home shopping company liable for its role in making and disseminating deceptive claims for vitamin and stop-smoking sprays)
- Sharper Image Corp., 116 F.T.C. 606 (1993) (consent order) (holding catalog company liable for deceptive claims for telephone tap detector, exercise device, and dietary supplement)
- General Nutrition, Inc., 111 F.T.C. 387 (1989) (consent order) (holding retailer liable for deceptive claims for dietary supplements)
- Walgreen Co., 109 F.T.C. 156 (1987) (holding retail drugstore chain liable for deceptive advertising of OTC pain reliever)

V. LIABILITY FOR PARTICULAR KINDS OF CLAIMS

A. Claims Made through Endorsements: False or deceptive endorsements or testimonials violate Section 5. See Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255. The Guides are premised on the principle that because consumers rely on endorser's opinions in making product decisions, endorsements must be non-deceptive. Endorsements "may not contain any representations which would be deceptive or could not be substantiated if made directly by the advertiser." 16 C.F.R. § 255.1(a). In other words, endorsements are not themselves substantiation; rather, they give rise to the need for the advertiser to possess competent and reliable evidence to support the underlying efficacy representations conveyed to consumers. In addition, any material connection between the endorser and the advertiser (*i.e.*, a relationship not reasonably expected by a consumer that might materially affect the weight or credibility of the endorsement) must be disclosed. See Numex Corp., 116 F.T.C. 1078 (1993) (consent order) (challenging endorser's status as corporate officer to be a material connection that must be disclosed); TrendMark Int'l, Inc., 126 F.T.C. 375 (1998) (consent order) (challenging consumer endorsers' status as distributors of weight loss product or their spouses to be a material connection that must be disclosed). In 2009, the FTC issued its revised Endorsement Guides, modifying the standard for typicality claims and adding examples to demonstrate the Guides' applicability in new marketing media, including blogs.

1. Expert Endorsers: An "expert" is defined as "an individual, group, or institution possessing, as a result of experience, study, or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals." 16 C.F.R. § 255.0(d). Endorsers represented directly or by implication to be experts must have qualifications sufficient to give them the represented expertise. 16 C.F.R. § 255.3(a); see FTC v. Lark Kendall, No. 00-09358-AHM (C.D. Cal. Aug. 31, 2000) (challenging false claim that person touting a diet product was a nutritionist) (stipulated order). An expert endorsement must be supported by an examination or testing of the product at least as extensive as experts in the field generally agree would be needed to support the conclusions presented in the endorsement. 16 C.F.R. § 255.3(b). Both the advertiser and the expert endorser may be held liable for deceptive claims made by the endorser. See Synchronal Corp., 116 F.T.C. 1189 (1993) (consent order) (holding advertiser and expert endorsers liable for deceptive claims for a purported baldness remedy and cellulite treatment). Representative cases:

- FTC v. Nobetes Corp., No 2:18-CV-10068 (C.D. Cal. Dec. 4, 2018) (stipulated order) (challenging deceptive "expert" endorsement for purported diabetes treatment product)
- Moonlight Slumber, LLC, C-4634 (Sept. 28, 2017) (consent order) (challenging company's claim that baby mattresses had earned the "Green Safety Shield" while failing to disclose that shield was the company's own designation and not a third-party certification)

- Benjamin Moore & Co., Inc., C-4646, and ICP Construction, Inc., C-4648 (July 11, 2017) (consent orders) (challenging paint companies' use of environmental seals that falsely conveyed that products had been endorsed or certified by independent third party when companies had actually awarded seals to their own products)
- FTC v. Supple LLC, 1:16-CV-1325 (E.D. Wis. Oct. 5, 2016) (stipulated judgment) (challenging inadequate disclosure of material connection between company selling glucosamine and chondroitin liquid supplement and doctor recommending it)
- FTC v. Your Baby Can, LLC, Hugh Penton, Jr., and Robert Titzer, Ph.D., No. 12-CV-2114 (S.D. Cal. Aug. 22, 2014 and Aug. 28, 2012) (stipulated judgments) (challenging claims for Your Baby Can Read, including deceptive expert endorsement)
- ADT, LLC, C-4460 (Mar. 6, 2014) (consent order) (alleging that on Today Show and in other media, home security company misrepresented that paid endorsements from safety and technology experts were independent reviews)
- FTC v. Sensa Products, LLC, No. 11-CV-72 (N.D. Ill. Jan. 7, 2014) (stipulated judgment) (challenging deceptive expert endorsements for Sensa weight loss product)
- EcoBaby Organics, Inc., C-4416 (July 25, 2013) (consent order) (challenging false claim that National Association of Organic Mattress Industry was independent third-party certifier with expertise)
- FTC v. Terrill Mark Wright, M.D., No. 1:04-CV-3294 (N.D. Ga. Jan. 15, 2009) (\$15,454 redress for doctor's deceptive endorsement of Thermalean weight loss product)
- Robert M. Currier, D.O., 134 F.T.C. 672 (2002) (consent order) (challenging deceptive representations made by eye doctor for Snorenz, a purported anti-snoring treatment)
- Gerber Products Co., 123 F.T.C. 1365 (1997) (consent order) (challenging deceptive claim regarding pediatricians' endorsement of baby food in survey)
- The Eskimo Pie Corp., 120 F.T.C. 312 (1995) (consent order) (challenging deceptive claim that line of frozen desserts was approved or endorsed by American Diabetes Association)

- Third Option Laboratories, Inc., 120 F.T.C. 973 (1995) (consent order) (\$480,000 redress for deceptive claim that Jogging in a Jug cider beverage was approved by the Department of Agriculture)
- James McElhaney, M.D., 116 F.T.C. 1137 (1993) (consent order) (challenging deceptive representations made by a physician for a purported pain relief and arthritis treatment device)
- Steven Victor, M.D., 116 F.T.C. 1189 (1993), and Patricia Wexler, M.D., 115 F.T.C. 849 (1992) (consent orders) (challenging deceptive claims by dermatologists for a purported baldness remedy)
- Black & Decker (U.S.) Inc., 113 F.T.C. 63 (1990) (consent order) (challenging deceptive claim that iron received endorsement of the National Fire Safety Council because the group did not have expertise to evaluate appliance safety)

2. Consumer Endorsers: Anecdotal evidence, such as consumer testimonials, is generally inadequate to substantiate efficacy claims. See, e.g., Removatron, 111 F.T.C. at 302; Original Marketing, Inc., 120 F.T.C. 278 (1995) (consent order) (challenging use of testimonials that didn't represent typical experience of consumers who used weight loss ear clip). Consumer testimonials may not contain claims that could not be substantiated if the advertiser made them directly. An ad using consumer endorsements will generally be interpreted to convey that the endorser's experience is representative of what consumers will typically achieve with the product in actual use. 16 C.F.R. § 255.2(a); see Cliffdale Associates, 103 F.T.C. 110, 173 (1984). If the advertiser doesn't have substantiation that the endorser's experience is representative of what consumers will generally achieve, the ad should clearly and conspicuously disclose the generally expected performance in those circumstances, and the advertiser must have adequate substantiation for that claim. 16 C.F.R. § 255.2(b). Statements like "Your results may vary" or "Not all consumers will get this result" are insufficient. 16 C.F.R. § 255.2(b). Furthermore, a material connection between an endorser and an advertiser, i.e., a relationship not reasonably expected by a consumer that might materially affect the weight or credibility of the endorsement, must be disclosed. 16 C.F.R. § 255.5. Representative cases:

- CSGO Lotto, Trevor Martin, and Thomas Cassell, C-4632 (Sept. 13, 2017) (consent order) (alleging that social media influencers endorsed online gaming site while failing to disclose that they owned the company)
- Son Le and Bao Le, C-4619 (May 31, 2017) (consent order) (alleging respondents directed consumers to trampoline review sites that falsely claimed to be independent and posted endorsements without disclosing financial interest in sale of product)

- FTC v. Aura Labs, Inc., 8:16-CV-02147-DOC-KES (C.D. Cal. Dec. 12, 2016) (stipulated injunction) (alleging CEO of blood pressure app company posted anonymous review of his own product in app store and used testimonial from business partner's family members without disclosing material connection)
- FTC v. Universal City Nissan, Inc., No. 2:16-CV-07329 (C.D. Cal. Mar. 22, 2017) (stipulated order) (challenging practice of auto dealer's employees and affiliates posting favorable reviews without disclosing material connection to the company)
- Warner Bros. Home Entertainment, Inc., C-4595 (July 8, 2016) (consent order) (challenging practice of paying online influencers to post videos endorsing company's videogame without adequately disclosing material connection)
- Lord & Taylor, LLC, C-4573 (Mar. 15, 2016) (consent order) (alleging that company deceived consumers by not disclosing payments for article in online fashion magazine and Instagram posts for fashion influencers)
- FTC v. Lumos Labs, Inc., No. 3:16-CV-00001 (N.D. Cal. Jan. 5, 2016) (stipulated judgment) (challenging company's practice of publishing testimonials without disclosing they were solicited through contests where consumers received significant prizes)
- Machinima, Inc., C-4569 (Sept. 2, 2015) (consent order) (challenging online entertainment network's failure to disclose that it paid influencers to post YouTube videos endorsing client Microsoft's Xbox One system and game titles)
- AmeriFreight, Inc., 159 F.T.C. 1627 (2015) (consent order) (challenging company's practice of touting online customer reviews, while failing to disclose that reviewers were compensated with discounts and incentives)
- Deutsch LA, Inc., 159 F.T.C. 1164 (2014) (consent order) (alleging that ad agency staff tweeted favorable comments about client Sony's gaming console from their personal accounts without disclosing material connection to the company)
- FTC v. Sensa Products, LLC, No. 11CV72 (N.D. Ill. Jan. 7, 2014) (stipulated judgment) (challenging weight loss company's failure to disclose compensation of consumer endorsers)
- United States v. Spokeo, Inc., No. CV-12-05001 (C.D. Cal. June 12, 2012) (consent decree) (alleging that company deceptively posted endorsements of its own services on news and tech sites)

- FTC and State of Colorado v. Marsha Kellogg, No. 1:11-CV-01396-CMA-KLM (D. Colo. May 31, 2011) (stipulated order) (holding consumer endorser liable for overstating the amount she earned with a purported money-making program)
 - Legacy Learning Systems, Inc., 151 F.T.C. 383 (2011) (consent order) (\$250,000 to settle charges that company deceptively advertised its products through online affiliate marketers who falsely posed as ordinary consumers or independent reviewers)
 - Reverb Communications, Inc., 150 F.T.C. 782 (2010) (consent order) (alleging public relations firm hired by game developers engaged in deceptive practices by having employees pose as consumers and post reviews on iTunes store site without disclosing the reviews came from employees working on behalf of the developers)
3. Celebrity Endorsers: Celebrity endorsements must reflect the celebrity's "honest opinions, findings, beliefs, or experience." Advertisers must substantiate the accuracy of claims made by the celebrity and any efficacy claims conveyed. 16 C.F.R. § 255.1(a). A celebrity represented to use the product must be a *bona fide* user. See generally FTC v. Garvey, 383 F.3d 891 (9th Cir. 2004) (holding that celebrity endorser possessed requisite level of substantiation). Advertisers may use an endorsement only as long as they have reason to believe the endorser continues to subscribe to the views presented. The FTC has challenged ads in which defendants falsely claimed a celebrity endorsed the product. See FTC v. Central Coast Nutraceuticals, Inc., No. 10C4931 (N.D. Ill. Jan. 9, 2012) (stipulated order) (\$1.5 million redress for false claim that products were endorsed by Oprah Winfrey and Rachael Ray). In April 2017, FTC staff sent letters to more than 90 celebrities, athletes, and marketers reminding them that influencers should clearly disclose their relationship to brands when promoting or endorsing products through social media.
- B. Consumer Reviews: Applying 16 C.F.R. § 255.5, the FTC Endorsement Guides' provision related to the disclosure of material connections between endorsers and advertiser, the Commission has challenged various forms of deception related to the publication of consumer reviews that falsely claimed to be independent. The FTC also has alleged that it is an unfair trade practice to use threats, intimidation, or non-disparagement clauses in an effort to prohibit consumers from speaking or publishing truthful or non-defamatory comments or reviews about companies, their employees, or their products. See FTC v. Roca Labs, Inc., No. 8:15-CV-02231-MSS-TBM (M.D. Fla. Sept. 25, 2018) (Order Granting Amended Motion for Summary Judgment as to Liability) (ruling that defendants' use of gag clauses to stop consumers from posting negative online reviews was a violation of the FTC Act); FTC v. World Patent Marketing Inc., No. 1:17-CV-20848 (S.D. Fla. May 16, 2018) (stipulated order for permanent injunction) (settlement reached after court ruled that defendants' attempts to

squelch consumer complaints was a violation of the FTC Act) In 2016, Congress passed the Consumer Review Fairness Act, which – among other things – makes it illegal for companies to include standardized contract provisions that threaten or penalize people for posting honest reviews. Representative cases:

- A Waldron HVAC, LLC, FTC File No. 182-3077; National Floors Direct, Inc., FTC File No. 182-3085; and LVTR, LLC, FTC File No. 182-3098 (proposed consent orders issued for public comment May 8, 2019) (first stand-alone law enforcement actions alleging violations of the Consumer Review Fairness Act for including consumer gag clauses in form contracts for HVAC services, flooring, and trail rides)
- UrthBox, Inc., C-4676 (April 3, 2019) (consent order) (alleging snack box sellers misrepresented that customer reviews were independent when they had provided customers with free products and other incentives to post positive reviews online)
- FTC v. Cure Encapsulations, Inc., No. 1:19-CV-00982 (E.D.N.Y. Feb. 26, 2019) (stipulated order) (partially suspended \$12.8 million judgment to settle charges that defendants made deceptive claims for garcinia cambogia diet pill and paid a third-party website to post fake reviews on Amazon)
- FTC and State of Minnesota v. Sellers Playbook, Inc., No. 0:18-CV-02207-DWF-TNL (D. Minn. Dec. 3, 2018) (stipulated order) (in addition to alleging deceptive money-making claims, first FTC case charging a violation of the Consumer Review Fairness Act)
- Creaxion Corp., C-4668 (Nov. 13, 2018) (consent order) (alleging public relations firm reimbursed employees and others for buying client’s product and posting online reviews without disclosing affiliation with the brand)
- Mikey & Momo, Inc., C-4655 (May 3, 2018) (consent order) (alleging corporate officers’ relatives posted favorable reviews of Aromaflage anti-mosquito perfume and candles without disclosing material connection)

C. Claims Made Through Demonstrations: Product demonstrations must accurately depict how the product will perform under normal consumer use. See FTC v. Colgate-Palmolive Co., 380 U.S. 374 (1965). Representative cases:

- Nissan North America, Inc., C-4454, and TBWA Worldwide, Inc., C-4455 (Jan. 23, 2014) (consent orders) (challenging car company’s and ad agency’s role in deceptive representation of Nissan Frontier truck pushing a dune buggy up a sand dune)
- United States v. Goodtimes Entertainment, Ltd., No. 03 CV 6037 (S.D.N.Y. Aug. 11, 2003) (consent decree) (challenging deceptive before-and-after photos for Copa hair straightening product)

- Arak-Hamway International, Inc., 121 F.T.C. 507 (1996) (consent order) (challenging company's use of deceptive off-camera techniques to depict performance of toy cars)
- National Media Corp., 116 F.T.C. 549 (1993) (consent order) (challenging deceptive demonstration of kitchen mixer "whipping" skim milk and "pureeing" fresh pineapple)
- Hasbro, Inc., 116 F.T.C. 657 (1993) (consent order) (challenging deceptive use of wire to show G.I. Joe helicopter flying)
- Volvo North America Corp., 115 F.T.C. 87 (1992), and Scali, McCabe, Sloves, Inc., 115 F.T.C. 96 (1992) (consent orders) (challenging deceptive demonstration depicting monster truck driving over row of cars because Volvo had been reinforced and roof supports of other cars had been severed)

D. Comparative Advertising: Commission policy encourages truthful references to competitors or competing products, but requires clarity and, if necessary, appropriate disclosures to avoid deception. Statement of Policy Regarding Comparative Advertising, 16 C.F.R. § 14.15. Representative cases:

- KFC Corp., 138 F.T.C. 442 (2004) (consent order) (challenging deceptive claims about relative nutritional value and healthiness of company's fried chicken compared to a Burger King Whopper)
- Novartis Corp. v. FTC, 223 F.3d 783 (D.C. Cir. 2000) (upholding FTC ruling that marketer of Doan's pills misrepresented that product is superior to other analgesics for treating back pain)
- London International Group, 125 F.T.C. 726 (1998) (consent order) (challenging claims that Ramses condoms are "30% stronger" than competing products)
- Kraft, Inc., 114 F.T.C. 40 (1991), aff'd, 970 F.2d 311 (7th Cir. 1992), cert. denied, 507 U.S. 909 (1993) (holding ads for Kraft Singles cheese slices deceptive because ads falsely implied that product contained more calcium than imitation cheese slices)

E. Safety, Risk-Reduction, and Related Claims: Advertisers must have reliable substantiation to support safety-related or risk reduction claims and must carefully qualify claims to indicate the level of safety or significant risks. Representative cases:

- FTC v. Passport Import, Inc., No. 8:18-CV-03118-PX (D. Md. Oct. 10, 2018) (alleging that car dealerships mailed more than 21,000 fake "urgent recall" notices – similar in appearance to official NHTSA safety recall notices – to consumers in an effort to bring them to the dealerships)
- FTC v. Breathometer, Inc., No. 3:17-CV-00314-LB (N.D. Cal. Jan 23,

2017) (challenging deceptive claims for app-supported smartphone accessory pitched in ads and on TV show “Shark Tank” to accurately measure consumers’ blood alcohol content (BAC))

- CarMax, Inc., C-4605, Asbury Automotive Group, Inc., C-4606, and West-Herr Automotive Group, Inc., C-4607 (Dec. 16, 2016) (consent orders) (challenging companies’ practice of touting inspection procedures for used cars while failing to disclose some were subject to unrepairs safety recalls)
- General Motors LLC, C-4596, Lithia Motors, C-4597, and Jim Koons Management Company, C-4598 (Dec. 16, 2016) (consent orders) (challenging practice of touting inspection procedures for used cars while failing to disclose some were subject to unrepairs safety recalls)
- Brain-Pad, Inc., C-4375 (Aug. 16, 2012) (consent order) (challenging unsubstantiated claims that company’s mouth guards reduced the risk of sports-related concussions)
- Prince Lionheart, Inc., 138 F.T.C. 403 (2004) (consent order) (challenging claims for the Love Bug, a device designed to clip onto a baby stroller and advertised to repel mosquitos and protect children from the West Nile Virus)
- FTC v. Vital Living Products, Inc., No. 3:02-CV-74-MU (W.D.N.C. Feb. 27, 2002) (stipulated order) (challenging deceptive efficacy claims for a do-it-yourself test kit represented to detect anthrax bacteria and spores)
- Kris A. Pletschke d/b/a Raw Health, 133 F.T.C. 574 (2002) (consent order) (challenging deceptive claims that colloidal silver product could treat diseases and kill anthrax, Ebola virus, and flesh-eating bacteria)
- FTC v. Tecnozone Int’l, No. 03 CV 9000 (S.D.N.Y. Nov. 14, 2003); FTC v. Safety Cell, Inc., No. CV 03-3851, and FTC v. Rhino Int’l, Inc., No. CV 03-3850 (E.D.N.Y. Aug. 6, 2003); FTC v. Comstar Communications, No. 02-CV-003483 (E.D. Cal. May 7, 2003); and FTC v. Interact Communications, No. 02-CV-80131 (S.D. Fla. Dec. 1, 2003) (stipulated orders) (challenging deceptive safety and efficacy claims for cell phone shields)
- FTC v. Western Botanicals, Inc., No. CIV-S-01-1332 DFL GGH (E.D. Cal. July 11, 2001); FTC v. Christopher Enterprises, Inc., No. 2:01-CV-0505 ST (D. Utah Dec. 6, 2001) (stipulated orders); Panda Herbal Int’l, Inc., 132 F.T.C. 125 (2001); ForMor, Inc., 132 F.T.C. 72 (2001), and Aaron Co., 132 F.T.C. 174 (2001) (consent orders) (requiring warnings in labeling and ads about health risks of improper use of comfrey, St. John’s Wort, and ephedra)
- FTC v. Medimax, Inc., No. 99-1485-CIV (M.D. Fla. Mar. 22, 2000), and FTC v. Cyberlinx Marketing, No. CV-S-99-1564-PMP (D. Nev. Nov. 8, 1999) (stipulated orders) (challenging false claim that home test kits could accurately detect HIV)

- FTC v. Met-Rx USA, No. SAC V-99-1407 (D. Colo. Nov. 15, 1999), and FTC v. AST Nutritional Concepts & Research, No. 99-WI-2197 (C.D. Cal. Nov. 15, 1999) (stipulated orders) (challenging deceptive safety claims for body building supplements containing androgen and other steroid hormones)
- Conopco, Inc. (Unilever Home and Personal Care), C-3914 (Jan. 7, 2000) (consent order) (challenging antimicrobial and disease prevention claims for Vaseline Intensive Care Anti-Bacterial Hand Lotion)
- Safe Brands Corp., 121 F.T.C. 379 (1996) (consent order) (challenging comparative safety claims for Sierra antifreeze)

F. Made in USA Claims: On December 1, 1997, the FTC issued an Enforcement Policy Statement retaining the “all or virtually all standard” for merchandise advertised and labeled as “Made in USA.” The FTC issued ***Complying with the Made in USA Standard***, a guide for businesses making country-of-origin claims. Representative cases:

- United States v. iSpring Water Systems, LLC, No. 1:19-CV-01620-AT (stipulated order) (\$110,000 civil penalty to settle charges that distributor of water filtration systems violated 2017 FTC administrative order by making false claims that imported Chinese water filtration systems were made in the United States). See also iSpring Water Systems, LLC, C-4611 (Feb. 1, 2017) (consent order) (challenging deceptive “Built in USA” claims for water filtration devices).
- Underground Sports Inc. d/b/a Patriot Puck, C-4674 (Sept. 12, 2018) (consent order) (alleging that company falsely represented that its products were “The only American Made Hockey Puck!” when they were actually made in China)
- Sandpiper of California, Inc., C-4675 (Sept. 12, 2018) (consent order) (alleging that company falsely claimed that foreign-made backpacks, wallets, etc. were “U.S. Made”)
- Nectar Brand LLC, C-4656 (Mar. 20, 2018) (consent order) (alleging company made false “Assembled in the USA” claims for Chinese-made mattresses)
- Bollman Hat Company, C-4643 (Jan. 23, 2018) (consent order) (alleging company made deceptive Made in USA claims for its own products and deceptive claims about its “American Made Matters” certification program)
- Block Division, Inc., C-4613 (Mar. 6, 2017) (consent order) (challenging deceptive “Made in USA” claims for block pulleys and other products)

- FTC v. Chemence, Inc., No. 1:16-CV-00228 (N.D. Ohio Oct. 19, 2016) (stipulated order) (\$220,000 judgment to settle charges that company made deceptive Made in USA claims for cyanoacrylate glues)
- Made in the USA Brand, LLC, C-4497 (July 22, 2014) (consent order) (challenging company's misleading issuance of Made in USA certification seals)
- E.K. Ekcessories, Inc., 156 F.T.C. 442 (2013) (consent order) (challenging deceptive Made in USA claims on packages and website for outdoor accessories)
- United States v. The Stanley Works, No. 3:06-CV-883(JBA) (D. Conn. June 9, 2006) (stipulated order) (\$205,000 civil penalty to settle charges that company falsely claimed ratchets were Made in USA)
- Leiner Health Products, Inc., 133 F.T.C. 485 (2002); A&S Pharmaceutical Corp., 133 F.T.C. 501 (2002); LNK Int'l, Inc., 133 F.T.C. 518 (2002); Pharmaceutical Formulations, Inc., 133 F.T.C. 537 (2002); Perrigo Company, 133 F.T.C. 559 (2002) (consent orders) (challenging deceptive Made in USA label claims for private brand OTC analgesics)
- Jore Corp., 131 F.T.C. 585 (2001) (consent order) (challenging deceptive Made in USA claims for power tool accessories)
- Black & Decker Corp., 131 F.T.C. 439 (2001) (consent order) (challenging deceptive Made in USA claims for Kwikset locks)
- Physicians Formula Cosmetics, Inc., 128 F.T.C. 676 (1999) (consent order) (challenging deceptive Made in USA claims for Physicians Formula skincare products and cosmetics)
- The Stanley Works, 127 F.T.C. 897 (1999) (consent order) (challenging deceptive Made in USA claims for mechanics tools)
- American Honda Motor Co., Inc., 127 F.T.C. 461 (1999) (consent order) (challenging deceptive Made in USA claims for lawn mowers)

G. Rebates, "Free" Offers, Continuity Plans, Gift Cards, Etc.: Deceptive or unfair practices related to rebates, free offers, continuity plans, gift cards, etc., are actionable under the FTC Act. Marketers also may be subject to the Restore Online Shoppers' Confidence Act (ROSCA), Mail Order Rule, the Telemarketing Sales Rule, the Negative Option Rule, and the Unordered Merchandise Statute.

1. **Rebates.** On April 27, 2007, the FTC sponsored *The Rebate Debate*, a national workshop on complying with Section 5 and other laws and rules when advertising the availability of rebates. Representative cases:

- American Telecom Services, Inc., C-4256 (Mar. 11, 2009) (consent order) (challenging telephone seller's failure to pay timely rebates)
- FTC v. Wintergreen Systems, No. 3:09-CV-00124-EMC (N.D. Cal. Jan. 13, 2009) (stipulated judgment) (challenging company's failure to pay advertised rebates and banning defendants for life from involvement in rebate programs)
- Soyo, Inc., 143 F.T.C. 717 (2007) (consent order) (challenging company's practice of delaying rebates for purchasers of computer motherboards and other products despite representation that company would mail rebate checks within "10 to 12 weeks")
- InPhonic, 143 F.T.C. 687 (2007) (consent order) (challenging mobile phone retailer's failure to disclose adequately before purchase that consumers would have to wait at least three months to submit rebate requests and at least six months after purchase to get their rebate)
- CompUSA Inc., 139 F.T.C. 357 (2005), and Priti Sharma and Rajeev Sharma, 139 F.T.C. 343 (2005) (consent orders) (alleging retailer and manufacturer failed to pay timely rebates and requiring retailer to pay rebates for bankrupt manufacturer when retailer advertised rebates despite knowing that manufacturer was not fulfilling requests)
- FTC v. Cyberrebate.com, Inc., No. 04-3616 (E.D.N.Y. Aug. 24, 2004) (stipulated order) (challenging company's practice of failing to honor rebate promises)
- Philips Electronics North America Corp., 134 F.T.C. 532 (2002), and OKie Corp., 134 F.T.C. 511 (2002) (consent orders) (challenging misrepresentations about rebate delivery time and modification of terms of rebate programs after they had begun)
- America Online, Inc. and Compuserve Interactive Services, Inc., 137 F.T.C. 117 (2004) (consent order) (challenging companies' failure to deliver timely \$400 rebates to eligible consumers)
- FTC and New York v. UrbanQ, No. CV-0333147 (E.D.N.Y. June 26, 2003) (stipulated injunction) (\$600,000 in refunds for failure to provide advertised rebates and related deceptive representations)
- Memtek Products, Inc., C-3927 (Feb. 17, 2000) (consent order) (challenging delays in issuing advertised rebates and gift checks to purchasers of Memorex diskettes and tapes)
- UMAX Technologies, Inc., C-3928 (Feb. 17, 2000) (consent order) (challenging delays in issuing rebates)

- United States v. Iomega Corp., No. 1:98-CV-00141C (D. Utah Dec. 9, 1998) (imposing \$900,000 civil penalty for failure to fulfill rebate and premium requests in violation of the Mail Order Rule)

7. **“Free” offers and continuity plans.** On February 9, 2009, the FTC issued *Negative Options*, a staff report outlining principles for avoiding deception in negative option offers, including disclosing material terms in an understandable manner, making disclosures clear and conspicuous, disclosing material terms before consumers incur a financial obligation, getting affirmative consent, and honoring cancellation requests. On April 2, 2010, a rule took effective requiring clear and conspicuous disclosures on websites and other advertisements that market credit reports as “free.” See 16 C.F.R. § 610. Congress passed the Restore Online Shoppers’ Confidence Act (ROSCA) in 2010, requiring online marketers offering negative options to: 1) clearly and conspicuously disclose material terms before obtaining a consumer’s billing information; 2) get consumer’s express informed consent before making the charge; and 3) provide a simple mechanism for stopping recurring charges. Representative cases:

- UrthBox, Inc., C-4676 (April 3, 2019) (consent order) (\$100,000 redress for snack box seller’s violations of ROSCA by failing to adequately disclose material terms of “free trial” offer and by failing to get consumers’ informed consent before charging them for negative option subscription)
- FTC v. Nobetes Corp., No 2:18-CV-10068 (C.D. Cal. Dec. 4, 2018) (stipulated order) (challenging company’s use of deceptive “free trial” offer to market purported diabetes treatment)
- FTC v. RevMountain LLC, No. 2:17-CV-02000-APG-GWF (D. Nev. Apr. 16, 2018) (stipulated orders) (partially suspended \$92 million judgment against parties involved in online negative option programs for tooth whiteners and other products, in violation of the FTC Act and ROSCA)
- FTC v. Triangle Media, No. 18-CV-1338-MMA (NLS) (S.D. Cal. July 3, 2018) (complaint filed) (alleging violations of FTC Act and ROSCA for deceptively advertising free trial offers, enrolling consumers in inadequately disclosed continuity plans, and billing their credit cards without their consent)
- FTC v. AdoreMe, Inc., No. 1:17-CV-09083 (S.D.N.Y. Nov. 21, 2017) (stipulated order) (\$1.3 million in refunds to settle charges that online lingerie marketer deceived consumers about the terms of a negative option membership program and made it difficult for them to cancel their memberships)

- FTC v. BunZai Media Group, Inc., No. CV15-04527-GW(PLAx) (C.D. Cal. Oct. 13, 2016) (stipulated orders) (partially suspended \$72 million judgment to settle charges that defendants made bogus “risk free trial” claims for skincare products)
- FTC v. NutriClick Media LLC, No. 2:16-CV-06819-DMG (C.D. Cal. Sept. 22, 2016) (\$350,000 redress to settle charges that marketer violated FTC Act and ROSCA by advertising “free” samples of products and then charging unauthorized monthly fee)
- FTC v. iWorks, Inc., No. 2:10-CV-02203 (D. Nev. Aug. 29, 2016) (stipulated order) (partially suspended \$281 million judgment to settle charges that enterprise illegally lured consumers into “trial” memberships for bogus government-grant and money-making schemes, and charged monthly fees without authorization)
- FTC v. Commerce Planet, Inc., 815 F.3d 593 (9th Cir. 2016) (upholding redress and individual liability and ruling that defendants’ failure to adequately disclose negative options related to purported online auction businesses violated the FTC Act)
- FTC v. Health Formulas, LLC, No. 2: 14-CV-01649-JAD-GWF (D. Nev. May 3, 2016) (stipulated order) (first FTC case alleging violations of ROSCA for deceptive practices related to negative option marketing of dietary supplements)
- FTC v. Allstar Marketing Group, LLC, No. 1:15-cv-01945 (N.D. Ill. Mar. 5, 2015) (total of \$8 million to settle FTC and New York AG charges that marketer of “as seen on TV” products such as the Snuggie made deceptive buy-one-get-one-free promotions)
- FTC v. One Technologies, LP, No. 3:14-cv-05066 (N.D. Cal. Nov. 19, 2014) (stipulated order) (with Ohio and Illinois AGs, \$22 million redress for deceptive “free” credit score claims, in violation of FTC Act and ROSCA)
- FTC v. Willms, No. 2:11-CV-00828 (W.D. Wash. Feb. 23, 2012) (final judgment) (challenging deceptive practice of charging consumers without authorization for “free” or “risk-free” offers and banning defendants from negative option promotions)
- FTC v. Moneymaker, No. 2:11-CV-00461-JCM-RJJ (D. Nev. Feb. 1, 2012) (stipulated order) (\$9.9 million redress to settle charges that as part of a payday lending promotion, defendants enrolled consumers without their permission in continuity programs, illegally billed them, and failed to provide promised refunds)

- FTC v. Central Coast Nutraceuticals, Inc., No. 10C4931 (N.D. Ill. Jan. 9, 2012) (stipulated order) (\$1.5 million redress for deceptive claims that acai berry supplements and “colon cleansers” could cause weight loss and prevent cancer, falsely claiming products were endorsed by Oprah Winfrey and Rachael Ray, and making unauthorized charges to consumers’ credit cards for “free” or “risk free” trial offers)
- FTC v. Commerce Planet, Inc., No. 09-CV-01324 (C.D. Cal. Nov. 19, 2009) (stipulated judgment as to certain defendants) (\$19.7 million suspended judgment and up to \$1 million redress for deceptive “free” claims for internet auction kits and unauthorized monthly charges)
- FTC v. NextClick Media, LLC, No. C08-1718 VRW (D. Del. Nov. 9, 2009) (stipulated order) (\$3.4 million suspended judgment and \$315,000 redress for deceptive “free trial” of bogus smoking cessation patches and debiting consumers’ bank accounts without consent)
- FTC and Kentucky v. Direct Connection Consulting, Inc., No. 1-08-CV-1739 (N.D. Ga. Apr. 1, 2009) (final judgment) (\$5 million bond for deceptive “free” offers in which defendants misled consumers into thinking they were calling from a major retailer or from consumer’s credit card company and didn’t deliver “free” goods as promised)
- FTC v. JAB Ventures, No. 2:08-CV-04648-SVW-RZ (C.D. Cal. Feb. 9, 2009) (stipulated order) (partially suspended \$7.8 million judgment for deceptive weight loss claims for hoodia products and bogus “free” sample offers in which consumers were charged for products without their consent)
- FTC v. Complete Weightloss Center, Inc., No. 1:08-CV-00053-DLH-CSM (D.N.D. Feb. 9, 2009) (partially suspended \$2.5 million judgment for deceptive diet claims and bogus “free” offers for which consumers were charged without their consent)
- FTC v. PureHealth Laboratories, No.: 2:08-CV-07655-DSF-PJW (C.D. Cal. Dec. 3, 2008) (stipulated order) (partially suspended \$9.9 million judgment for offering “free” sample of purported weight loss product and then enrolling consumers in a continuity plan and billing their credit cards without consent)
- FTC v. Think All Publishing, No.: 4:07-CV-11 (E.D. Tex. June 11, 2008) (stipulated judgment) (\$2 million redress for company’s deceptive practice of advertising “free” software CDs but billing consumers’ credit cards without authorization based on a statement buried in computer software licensing agreement)

- United States v. ValueClick, Inc., No. CV08-01711 MMM (Rzx) (C.D. Cal. Mar. 17, 2008) (\$2.9 million civil penalty for violations of CAN-SPAM Act related to deceptive emails, banner ads, and pop-ups deceptively claiming consumers were eligible for “free” gifts)
- United States v. Member Source Media, Inc., No.: CV-08 0642 (N.D. Cal. Jan. 30, 2008) (\$200,000 civil penalty for CAN-SPAM violations and deceptive claim that recipient of spam had won “free” prizes)
- United States v. Adteractive, Inc., No. CV-07-5940 SI (N.D. Cal. Nov. 28, 2007) (stipulated judgment) (\$650,000 civil penalty for violation of CAN-SPAM Act and failure to disclose that consumers have to spend money to receive “free” gifts)
- FTC v. Consumerinfo.com., Inc. d/b/a Experian Consumer Direct, No. CV-SACV05-801 AHS (MLGx) (C.D. Cal. Feb. 21, 2007) (supplemental stipulated judgment) (\$300,000 for violating FTC order regarding disclosures about “free” credit reports); and (C.D. Cal. Aug. 16, 2005) (stipulated judgment) (\$950,000 payment and refunds for deceptive marketing of “free” credit reports without disclosing that consumers would be charged annually for monitoring service)
- FTC v. Berkeley Premium Nutraceuticals, Inc., No. 1:06-CV-51 (S.D. Ohio July 22, 2009) (stipulated judgment) (charging that marketers offered “free” supplements only to enroll consumers in automatic shipment program and bill them without authorization)
- United States v. Scholastic Inc. and Grolier Incorporated, No. 1:05CV01216 (D.D.C. June 21, 2005) (consent decree) (\$710,000 civil penalty for book clubs’ violations of Negative Option Rule, Unordered Merchandise Statute, Telemarketing Sales Rule, and Section 5)
- FTC v. Conversion Marketing, Inc., No. SACV 04-1264 (C.D. Cal. Jan. 17, 2006) (stipulated order) (\$474,000 in redress and civil penalties for offering “free samples” of diet and tooth-whitening products and then debited consumer’s accounts and enrolled them in automatic shipment programs without consent)
- United States v. Mantra Films, Inc., No. CV-03-9184 RSWL (C.D. Cal. July 30, 2004) (stipulated order) (\$1.1 million civil penalty and redress in settlement of charges that marketers of “Girls Gone Wild” videos violated Section 5, the Electronic Fund Transfer Act, and the Unordered Merchandise Statute by billing consumers for products without their express consent)

- United States v. Micro Star Software, Inc., (S.D. Cal. May 22, 2002) (consent decree) (\$90,000 civil penalty for failure to disclose adequately that 30-day “no risk” trial offer obligated consumers to continuous unordered shipments of software and a \$49.95 non-refundable membership fee)
 - FTC v. Smolev and Triad Discount Buying Service, Inc., No. 01-8922- CIV-Zloch (S. D. Fla. Oct. 24, 2001) (stipulated order) (\$9 million redress from buying clubs that misled consumers into accepting trial memberships and obtained consumers’ billing information from telemarketers without authorization)
 - FTC v. Creative Publishing International, Inc., (D. Minn. May 30, 2001) (consent decree) (ordering \$200,000 civil penalty for publisher’s failure to disclose adequately that acceptance of “free trial” offer unknowingly enrolled consumers in book club)
 - Value America, Inc., C-3976, Office Depot, Inc., C-3977, and BUY.COM, Inc., C-3978 (Sept. 8, 2000) (consent orders) (challenging claims for “free” and “low-cost” computers that failed to disclose true costs and important restrictions, including that consumers had to agree to a three-year ISP contract)
4. **Gift cards and stored value cards.** On August 22, 2010, new Federal Reserve Board rules went into effect that restrict the fees and expiration dates that may apply to gift cards and require that gift card terms and conditions be clearly stated. Representative FTC cases:
- FTC v. EdebitPay, LLC, No. CV-07-4880 ODW (AJWx) (C.D. Cal. May 25, 2011) (order holding defendants in contempt) (challenging marketers of stored value cards from making unauthorized debits from consumers’ bank accounts)
 - Darden Restaurants, 143 F.T.C. 610 (2007) (consent order) (challenging company’s failure to clearly and conspicuously disclose dormancy fees for non-use of Olive Garden, Red Lobster, Bahama Breeze, and Smokey Bones gift cards)
 - Kmart Corp., 144 F.T.C. 539 (2007) (consent order) (challenging company’s failure to clearly disclose dormancy fees for non-use of gift card and falsely claims that cards would never expire)
5. **Pricing claims, financing claims, and other forms of promotion.** Representative cases:
- FTC v. Tate’s Auto Center, No. 3:18-CV-08176-DJH (D. Ariz. Aug. 1, 2018) (complaint filed) (alleging auto dealerships falsified consumers’ income and down payment on vehicle financing applications and misrepresented advertised financial terms)

- Cowboy AG LLC, C-4639 (Dec. 1, 2017) (consent order) (alleging that car dealership deceptively advertised loan and leasing terms in Spanish-language ads)
- FTC v. Universal City Nissan, Inc., No. 2:16-CV-07329 (C.D. Cal. Mar. 22, 2017) (stipulated order) (\$3.625 million to settle charges that dealerships engaged in yo-yo financing, deceptive advertising, and other deceptive and unfair practices)
- Progressive Chevrolet Company and Progressive Motors, Inc., C-4578 (Nov. 24, 2015) (consent order) (challenging auto dealers' deceptive advertising of low monthly lease payments without clearly disclosing key terms)
- FTC v. Ramey Motors, No. 1:14-CV-29603 (S.D.W.V. Sept. 18, 2015) (stipulated order) (\$80,000 civil penalty for violations of 2012 FTC consent order related to auto financing)
- TC Dealership, L.P., (Planet Hyundai), C-4536 (June 29, 2015), JS Autoworld, Inc. (Planet Nissan), C-4535 (June 29, 2015) (consent orders) (alleging that auto dealers made deceptive pricing and financing claims)
- ***Operation Ruse Control***. On March 26, 2015, the FTC and 32 law enforcement partners announced a nationwide and cross-border crackdown on deception in auto advertising and financing. The sweep included 252 actions, including seven FTC cases.
- United States v. Billion Auto, No. No. C14-4118-MWB (N.D. Ia. Dec. 12, 2014) (stipulated order) (\$360,000 civil penalty for violations of 2012 FTC consent order related to auto financing)
- TXVT Limited Partnership (Trophy Nissan), 159 F.T.C. 726 (2014) (consent order) (challenging deceptive advertising claims for auto financing)
- Courtesy Auto Group, Inc., D-9359 (consent order) (Mar. 21, 2014) (challenging deceptive lease advertising by Massachusetts auto dealer)
- Norm Reeves Honda Superstore, Rainbow Auto Sales, Casino Auto Sales, New World Auto Imports (Southwest Kia), Infiniti of Clarendon Hills, Nissan of South Atlanta, Fowlerville Ford, Inc., Paramount Kia of Hickory, and Honda of Hollywood, (Jan. 9, 2014) (consent orders) (as part of Operation Steer Clear, challenging deceptive claims by auto dealers about sale, financing, and leasing of motor vehicles). See also United v. New World Auto Imports, No.

3:16-CV-2401-K (N.D. Tex. Aug. 18, 2016) (stipulated order) (\$85,000 civil penalty for deceptive auto ads, in violation of 2014 FTC order).

- Ganley Ford West, Inc., C-4428, and Timonium Chrysler, Inc., C-4429 (Sept. 2, 2013) (consent orders) (challenging deceptive representations about automobile pricing)
- CVS Caremark Corp., C-4357 (Jan. 12, 2012) (consent order) (\$5 million to settle charges that company misrepresented prices of certain Medicare Part D drugs at CVS and Walgreens pharmacies)
- Bumble Bee Seafoods, Inc., C-3954 (June 16, 2000) (consent order) (challenging “75¢ off next purchase” promotion that did not adequately disclose coupon required purchase of five cans of tuna)
- Benckiser Consumer Products, Inc., 121 F.T.C. 644 (1996) (consent order) (challenging deceptive cause-related marketing campaign in which advertiser falsely claimed a portion of proceeds from EarthRite products would be donated to non-profit environmental groups)

H. Unauthorized Billing: Companies need consumers’ express authorization to bill them or place charges on their credit cards. The FTC has used Section 5 and other statutes to challenge unauthorized billing as unfair or deceptive. Representative cases:

- FTC v. Amazon.com, Inc., No. 2:14-CV-01038 (W.D. Wash. Apr. 27, 2016) (order granting motion for summary judgment) (finding Amazon liable for billing consumers for unauthorized in-app charges incurred by children, resulting in consumers’ eligibility for more than \$70 million in refunds)
- FTC v. T-Mobile USA, Inc., (W.D. Wash. Dec. 19, 2014) (stipulated order) (at least \$90 million redress for mobile cramming, unlawfully billing consumers for unauthorized third-party charges)
- FTC v. AT&T Mobility, LLC, No. 1:14-CV-3227-HLM (N.D. Ga. Oct. 8, 2014) (stipulated order) (\$80 million redress for mobile cramming, unlawfully billing consumers for unauthorized third-party charges)
- Google, Inc., C-4499 (Sept. 4, 2014) (consent order) (at least \$19 million to settle allegations that company charged for children’s in-app purchases without account holders’ authorization)
- Apple, Inc., C-4444 (Jan. 15, 2014) (consent order) (at least \$32.5 million to settle allegations that company charged for children’s in-app purchases without account holders’ authorization)

- FTC v. Tatto, Inc., No. 2:13-CV-08912-DSF-FFM (C.D. Cal. August 5, 2014 and June 3, 2014) (stipulated orders) (\$11 million redress for cramming unauthorized charges on consumers' mobile phone bills)

I. Earnings Claims: The FTC has used Section 5 to challenge false and deceptive business opportunity and earnings representations. In addition, the FTC enforces the Franchise Rule and the Business Opportunity Rule, 16 C.F.R. §§ 436-437, which require that consumers receive certain disclosures before investing. Representative cases:

- FTC v. Uber Technologies, No. 3:17-CV-00261 (N.D. Cal. Jan. 19, 2017) (\$20 million redress for deceptive earnings and auto financing claims)
- FTC v. Vemma Nutrition Co., No. CV-15-01578-PHX-JJT (D. Az. Dec. 15, 2017) (stipulated order) (partially suspended \$238 million judgment to settle charges that multilevel marketing company acted as an illegal pyramid scheme)
- FTC v. Herbalife International of America, Inc., No. 2:16-CV-05217 (C.D. Cal. July 15, 2016) (stipulated order) (\$200 million redress and business restructuring to settle claims that company deceived consumers into believing they could earn substantial money selling products as part of multilevel marketing program)
- FTC v. BurnLounge, Inc., 753 F.3d 878 (9th Cir. 2014) (upholding \$16.2 million judgment for operating a pyramid scheme)
- FTC v. John Beck Amazing Profits, LLC, No. 09-CV-4719 (C.D. Cal. Aug. 23, 2013) (order) (\$478 million judgment for false and deceptive money-making claims)
- FTC and State of Colorado v. Dalbey, No. 1:11-CV-01396-RBJ-KLM (D. Colo. July 31, 2013) (stipulated order) (partially suspended \$330 million judgment for deceptive "wealth-building" claims)

J. Educational Claims: The FTC has used Section 5 to challenge false and deceptive claims about educational opportunities. Representative cases:

- FTC v. Capitol Network Distance Learning Programs, No. 2:16-CV-00350-DJH (D. Ariz. Feb. 13, 2017) (stipulated order) (challenging claims for purported "online high school")
- FTC v. Stepping Stonez Development, No. 2:16-CV-00351-SPL (D. Ariz. Feb. 10, 2017) (stipulated order) (challenging claims for purported "online high school")
- FTC v. Stratford Career Institute, No. 1:16-CV-00371 (N.D. Ohio Feb. 3, 2017) (stipulated order) (partially suspended \$6.5 million judgment for deceptive claims about company's high school equivalency program)

- FTC v. DeVry Educational Group, No. X160022 (C.D. Cal. Jan. 27, 2016) (stipulated order) (\$100 million redress for deceptive claims about likelihood students would find jobs in their fields and would earn more than students graduating from other colleges)
- FTC v. Professional Career Development Institute, LLC d/b/a Ashworth College, No. 1:15-MI-99999-UNA (N.D. Ga. May 26, 2015) (challenging misrepresentations that students would get training and credentials needed to get jobs and that course credits would transfer)

K. Advertising and Marketing Directed to Spanish-Speaking Consumers: On May 12, 2004, the FTC hosted a workshop to explore strategies for effective education and law enforcement to protect Hispanic consumers from fraud and deception and followed up with a series of regional events. Representative cases:

- Cowboy AG LLC, C-4639 (Dec. 1, 2017) (consent order) (alleging that car dealership deceptively advertised loan and leasing terms in Spanish-language ads)
- FTC v. Hispanic Global Way Corp., No. 14-22018 CIV-Altonaga (S.D. Fla. Mar. 2, 2015) (stipulated order) (partially suspended \$50 million judgment and ban from telemarketing and sale of weight loss products for company's practice of sending unordered or defective products in response to Spanish-language ads)
- FTC v. Oro Marketing, No. 2:13-CV-08843 (C.D. Cal. Jan. 15, 2015) (final order) (partially suspended \$5.1 million judgment and lifetime ban from telemarketing for bogus money-making claims targeting Spanish-speaking women)
- FTC v. Del Sol LLC, No. CV-05-3013 GAF(RCx) (C.D. Cal. Dec. 14, 2006) (\$235,000 redress and \$1.6 million suspended judgment for Do Not Call violations and deceptive Spanish-language telemarketing of bogus "prizes")
- FTC v. Unicyber Technology, No. CV-04-1569 LGB (MANx) (C.D. Cal. Mar. 25, 2005) (stipulated judgment) (partially suspended \$4.6 million judgment for deceptive claims about computers advertised on Spanish-language television)
- FTC v. Crediamerica Group d/b/a Latin Shopping Network, No. 05-20504-CIV-Martinez (S.D. Fla. Feb. 24, 2005) (stipulated judgment) (partially suspended \$2.9 million judgment for deceptive claims about availability and quality of computers)
- FTC v. Alternative Medical Technologies, Inc., (S.D. Fla. Apr. 27, 2004) (stipulated order) (challenging deceptive diet and smoking cessation claims in Spanish-language media)

- FTC v. Latin Hut, Inc., No. 04-CV-0830- BTM (RBB) (S.D. Fla. Apr. 22, 2004) (stipulated order) (\$149,425 redress for deceptive claims for purported weight loss products and breast augmentation supplement)

L. Advertising and Marketing Related to Mortgages, Loans, Credit, and Other Financial Representations: Although banks, thrifts, credit unions, and others in the financial sector are exempt from FTC jurisdiction, see 15 U.S.C. 45(a)(2), illegal practices by certain other entities are within Section 5's purview. The FTC has frequently challenged unfair or deceptive financial practices. For example, the FTC has taken action against deceptive claims by companies promising to "rescue" homeowners from foreclosure or modify mortgage or debt terms. The FTC also enforces the Mortgage Assistance Relief Services (MARS) Rule and the debt relief services amendments to the Telemarketing Sales Rule, which ban upfront fees. On November 19, 2012, the FTC and CFPB announced warning letters to more than 30 companies for possible violations of the Mortgage Acts and Practices (MAP) Advertising Rule, now Regulation N. In addition, the FTC has hosted three FinTech Forums to explore developing financial technology, including blockchain, crowdfunding, marketplace lending, and peer-to-peer payment systems. Representative cases:

- FTC v. iBackPack of Texas, LLC, No. 3:19-CV-00160 (S.D. Tex. May 6, 2019) (complaint filed) (alleging that defendant made deceptive claims on crowdfunding platforms about raising money for the development of a high-tech backpack, while using the funds for personal expenses)
- FTC v. Avant, LLC, No. 1:19-CV-02517 (N.D. Ill. Apr. 15, 2019) (stipulated order) (\$3.85 million to settle charges that online lender engaged in deceptive and unfair loan servicing practices, such as imposing unauthorized charges and unlawfully requiring consumers to consent to automatic payments from their bank accounts)
- Social Finance, Inc. and Sofi Lending Corp., C-4673 (Oct. 29, 2018) (consent order) (alleging online student loan refinance company made deceptive claims about loan refinancing savings)
- PayPal, Inc., C-4561 (consent order) (Feb. 27, 2018) (alleging Venmo failed to disclose material information about fund transfers and privacy settings and violated Gramm-Leach-Bliley Safeguards and Privacy Rules)
- **Operation Game of Loans**. On October 13, 2017, the FTC and 12 state Attorney General announced Operation Game of Loans, a total of 36 law enforcement actions targeting allegedly deceptive claims of student loan debt relief.
- FTC v. NetSpend Corporation, No. 1:16-CV-04203-AT (N.D. Ga. Apr. 10, 2017) (stipulated order) (at least \$53 million to settle charges that many consumers' access to funds on reloadable debit cards were denied or delayed, despite company's advertising claims of "immediate access")

- ***Operation Collection Protection.*** On November 25, 2015, the FTC announced the first coordinated federal-state enforcement initiative targeting deceptive and abusive debt collection practices.
- FTC and CFPB v. Green Tree Servicing, LLC, No. 15-2064 (D. Minn. Apr. 21, 2015) (\$63 million to settle charges that mortgage servicer engaged in illegal servicing and debt collection practices)
- FTC v. AMG Services, Inc., No. 212-CV-00536 (D. Nev. Oct. 4, 2016) (order) (record \$1.3 billion judgment against defendants involved in online payday lending scheme). See also FTC v. AMG Services, Inc., No. 212-CV-00536 (D. Nev. June 4, 2014) (order) (adopting Magistrate Judge’s recommendation that FTC has authority to regulate arms of Indian tribes and their employees and contractors, and that defendants engaged in deceptive payday lending practices)
- FTC v. FMC Counseling Services, Inc., No. 0:14-cv-61545-WJZ (S.D. Fla. Dec. 15, 2014) (stipulated order) (\$815,865 redress and lifetime ban from debt relief for misleading mortgage relief claims and deceptive use of FDIC logo and name “Federal Debt Commission”)
- FTC v. E.M.A. Nationwide, Inc., 767 F.3d 611 (6th Cir. 2014) (upholding district court order awarding \$5.7 million consumer redress and permanently barring telemarketer from pitching mortgage and debt relief programs)
- United States v. Intermundo Media, LLC, No. 1:14-CV-2529-WYD (D. Colo. Sept. 12, 2014) (stipulated order) (\$500,000 to settle charges that mortgage lead generator deceptively advertised mortgage refinancing)
- United States v. Heritage Homes Group, Inc., No. 2:14-CV-03173-EL (E.D. Pa. June 10, 2014) (stipulated order) (suspended \$650,000 civil penalty for home seller’s deceptive advertising of low-cost mortgages, in violation of MAP Rule and Section 5)
- United States v. GoLoansOnline.com, No. 4:14-CV-1262 (S.D. Tex. May 8, 2014) (stipulated order) (\$225,000 civil penalty for lead generator’s role in violating MAP Rule and FTC Act)
- FTC v. Payday Financial, LLC; Great Sky Finance, LLC; Western Sky Financial, LLC; Martin Webb et al., No. 3:11-CV-03017-RAL (D.S.D. Apr. 11, 2014) (stipulated order) (\$967,740 redress from payday lenders that used tribal affiliation to illegally garnish wages)
- FTC v. Direct Benefits Group, LLC, No. 6:11-CV-01186-JA-GJK (M.D. Fla. Aug. 12, 2013) (final judgment) (\$9.5 million redress for unauthorized debits from consumers’ bank accounts when consumers visited websites seeking payday loans)

- FTC v. American Tax Relief LLC, No. 1:10-CV-06123 (N.D. Ill. Feb. 5, 2013) (final order) (\$15 million to settle charges that company made deceptive claims that it could reduce consumers' tax obligations)
- FTC v. Broadway Global Master, Inc., No. 2:12-CV-00855-JAM- GGH (E.D. Cal. Apr. 11, 2012) (temporary restraining order) (challenging allegedly deceptive acts of "phantom debt collector" that collected debts consumers didn't owe or didn't owe them)
- Key Hyundai of Manchester, LLC, C-4358, Frank Myers AutoMaxx, LLC, C-4353, Ramey Motors, Inc., C-4354, and Billion Auto, Inc., C-4356 (Mar. 14, 2012) (consent orders) (challenging dealerships' practice of deceptively advertising they would pay off consumers' trade-in)
- FTC v. U.S. Mortgage Funding, Inc., No. 11-CIV-80155 (S.D. Fla. Feb. 14, 2012) (stipulated judgment) (alleging that defendants' charged illegal upfront fees, falsely promising consumers they would get loan modifications or fully refund their money if they failed)
- FTC v. Flora, No. SACV11-00299-AG-(JEMx) (C.D. Cal. Sept. 29, 2011) (stipulated permanent injunction) (challenging marketer's practice of sending out 5.5 million text messages pitching deceptive mortgage modification site)
- FTC v. Truman Foreclosure Assistance, LLC, No. 09-CV-23543 (S.D. Fla. Aug. 25, 2011) (stipulated order) (\$1.8 million redress and lifetime ban from mortgage relief business for deceptive claims that company would negotiate to stop foreclosures)
- FTC v. Cantkier, No. 09-CV-00894 (D.D.C.. Aug. 25, 2011) (stipulated order) (\$710,000 suspended judgment for marketing bogus mortgage relief services and impersonating government website that helps eligible homeowners modify mortgages)
- FTC v. Dominant Leads, LLC, No. 1:10-CV-00997 (D.D.C. Aug. 25, 2011) (stipulated order) (\$1 million suspended judgment for marketing bogus mortgage relief services with false claim of government affiliation)
- FTC v. First Universal Lending, LLC, No. 09-CV-82322 (S.D. Fla. June 21, 2011) (stipulated order) (\$18 million redress and lifetime ban from mortgage modification for deceptive claims that company would negotiate with lenders to modify mortgages)
- FTC v. Kirkland Young LLC, No. 09-CV-23507 (S.D. Fla. April 11, 2011) (\$2.2 million redress and lifetime ban from mortgage relief services for falsely promising modifications to consumers' mortgages)

- ***Operation Empty Promises:*** On March 2, 2011, the FTC announced an initiative involving more than 90 law enforcement actions – including developments in 10 FTC cases, 48 Department of Justice criminal actions, 7 actions by the Postal Inspection Service, and 28 actions by state law enforcers – related to practices targeting consumers in financial distress.
- FTC v. Media Innovations, LLC, Hermosa Group, LLC, Financial Future Network, LLC, and Jonathan Greenberg, No. 8:11-CV-00164-RWT (D. Md. Jan. 20, 2011) (\$500,000 redress and \$8.5 million suspended judgment for deceptive debt relief services)
- FTC v. Federal Housing Modification Department, No. 09-CV-01753 (D.D.C. Nov. 19, 2010) (stipulated order against certain defendants) (\$900,000 suspended judgments for false promise of loan modifications and bogus claims of government affiliation)
- FTC v. Golden Empire Mortgage, No. CV09-03227 (Shx) (C.D. Cal. Sept. 20, 2010) (stipulated judgment) (\$1.5 million to settle charges that mortgage company charged Hispanic consumers higher prices for mortgages than other consumers)
- FTC v. New Hope Property LLC, No. 1:09-CV-01203-JBS-JS, and FTC v. Hope Now Modifications, LLC, No. 1:09-CV-01204-JBS-JS (D.N.J. June 17, 2010) (stipulated orders) (challenging false claims that companies were part of a government-endorsed mortgage assistance network and could modify most mortgages)
- FTC v. Countrywide Home Loans, Inc., No. CV-10-4193 (C.D. Cal. June 7, 2010) (consent judgment) (\$108 million to settle charges that mortgage servicers collected excessive fees from borrowers). See also FTC v. Countrywide Home Loans, Inc. and BAC Home Loans Servicing, LP (C.D. Cal. Feb. 9, 2012) (supplemental consent order) (\$36 million to settle charges that company illegally assessed fees against struggling homeowners, in violation of earlier FTC settlement)
- FTC v. Home Assure LLC, No. 8:09-CV-547-T-23TBM (M.D. Fla. July 29, 2010) (stipulated judgment) (\$2.4 million redress for deceptive claims about mortgage foreclosure “rescue” services)
- FTC v. National Foreclosure Relief, Inc., No. SA-CV-09-117-DOC (C.D. Cal. Apr. 29, 2010) (stipulated order) (challenging foreclosure “rescue” company’s false claims it would stop foreclosure and banning individuals from the mortgage modification business)
- ***Operation Stolen Hope.*** On November 24, 2009, the FTC announced Operation Stolen Hope involving 118 cases by 26 agencies as part of ongoing crackdown on mortgage foreclosure rescue and loan modification scams.

- FTC v. Lucas Law Center, No. 09-CV-770 (C.D. Cal. Sept. 17, 2009) (preliminary injunction) (challenging practices of using an attorney to circumvent state prohibitions against receiving a fee before providing any purported services and advising clients to stop paying their mortgages in order to pay fees of up to \$3,995)
- FTC v. United Home Savers, LLP, No. 8:08-CV-01735-VMC-TBM (M.D. Fla. Aug. 24, 2009) (stipulated permanent injunction) (challenging company's deceptive claims it could prevent homes from being foreclosed)
- FTC v. Freedom Foreclosure Prevention Services LLC, No. CV-09-1167-PHX-FJM (D. Az. Nov. 24, 2009) (stipulated permanent injunction) (\$5 million suspended judgment for deceptive claims alleging that company could prevent foreclosure in 97% of cases)
- FTC v. Mortgage Foreclosure Solutions, Inc., No. 8:08-CV-00388-SDM-EAJ (M.D. Fla. Jan. 8, 2009) (stipulated judgment) (challenging deceptive claims that company would stop foreclosure for a \$1,200 fee)
- Good Life Funding, C-4248; American Nationwide Mortgage Company, Inc., C-4249; and Shiva Venture Group, C-4250 (Jan. 8, 2009) (consent orders) (challenging companies' deceptive advertising of low monthly payments and low rates without fully disclosing loan terms, in violation of Section 5, Truth in Lending Act, and Regulation Z)
- FTC v. The Bear Stearns Companies, No. 4:08-CV-338 (E.D. Tex. Sept. 9, 2008) (\$28 million redress for violations of FTC Act, Fair Debt Collection Practices Act, Fair Credit Reporting Act, and Reg Z for practices related to servicing mortgage loans, including misrepresenting amounts owed, charging unauthorized fees, and engaging in abusive collection practices)
- FTC v. Capital City Mortgage Corp., No. 1:98-CV-00237 (D.D.C. Feb. 24, 2005) (consent decree) (\$750,000 redress for companies' practice of including phony charges in monthly statements, foreclosing on borrowers who were in compliance, and failing to release liens on homes after loans were paid off)
- United States v. Fairbanks Capital Corp., No. 03-12219-DPW (D. Mass. Nov. 12, 2003 and Aug. 2, 2007) (stipulated judgments) (\$40 million redress for deceptive mortgage practices, including charging consumers illegal late fees and other unauthorized fees and failing to post mortgage payments on time)
- FTC v. The Associates and Citigroup, Inc., No. 1:01-CV-00606-JTC (N.D. Ga. Sept. 29, 2002) (stipulated settlement) (\$215 million redress for deceptive practices that induced consumers to refinance existing debts into home loans with high interest rates and fees, and to purchase high-cost credit insurance)

- FTC v. First Alliance Mortgage Co., No. SA-CV-00-964 DOC (C.D. Cal. Mar. 22, 2002) (stipulated settlement) (\$74 million redress for deceptive mortgage practices in case brought in cooperation with states and consumer groups)
- M. Deceptive Format. The FTC has alleged that the deceptive format of advertising – for example, ads that mimic the appearance of news, entertainment, or other independent content – violates Section 5. In 2013, the agency sponsored *Blurred Lines*, a workshop on native advertising, the practice of blending ads with other content, especially in digital media. On December 22, 2015, the FTC issued an Enforcement Policy Statement on Deceptively Formatted Advertisements, including online native advertising. Representative cases:
- Creaxion Corp. and Inside Publications LLC of Georgia, C-4668 (Nov. 13, 2018) (consent order) (challenging the roles a public relations firm and specialty sports publisher played in Olympic gymnasts’ promotion of insect repellent in a format that deceptively appeared to be independent editorial magazine content)
 - FTC v. Passport Import, Inc., No. 8:18-CV-03118-PX (D. Md. Oct. 10, 2018) (alleging that car dealerships mailed more than 21,000 fake “urgent recall” notices – similar in appearance to official NHTSA safety recall notices – to consumers in an effort to bring them to the dealerships)
 - Lord & Taylor, LLC, C-4573 (Mar. 15, 2016) (consent order) (alleging that company deceived consumers by not disclosing payment for native advertising in online fashion magazine)
 - ADT, LLC, C-4460 (Mar. 6, 2014) (consent order) (alleging that on Today Show and in other media, home security company misrepresented that paid endorsements from safety and technology experts were independent reviews)
 - Clickbooth.com, LLC, No. 1:12-CV-09087 (N.D. Ill. Nov. 14, 2012) (\$2 million redress to settle charges that company’s affiliate marketers deceived consumers through bogus weight loss claims on fake news sites about acai berry supplements and “colon cleansers”)
 - FTC v. IMM Interactive, Inc. d/b/a COPEAC and Intermark Media, No. 1:11-CV-02484 (N.D. Ill. Mar. 21, 2012); FTC v. Coulomb Media, No. 2:11-CV-11618-RHC-LJM (E.D. Mich. Mar. 21, 2012); FTC v. DLXM LLC, No. CV 11-1889 (E.D.N.Y. Jan. 25, 2012); FTC v. Vaughn, No. 2:11-CV-00630-RAJ (W.D. Wash. Jan. 25, 2011); FTC v. Dunlevy, No. 1:11-CV-01226-TWT (N.D. Ga. Jan. 25, 2012); FTC v. Labra, No. 1:11-CV- 02485 (N.D. Ill. Jan. 25, 2012); FTC v. Ambervine Marketing, No. 1:11-CV-02487 (N.D. Ill. Jan. 25, 2012); and FTC v. Circa Direct, No. 1:11-CV-02172-RMB- AMD (D.N.J. Oct. 19, 2012) (stipulated judgments) (challenging affiliate marketers’ practice of using fake news websites to market acai berry diet products)

- FTC v. Great American Products, Inc., No. 3:05-CV-00170-RV-MD (N.D. Fla. May 20, 2005), aff'd, 200 Fed. Appx. 897 (4th Cir. 2006) (challenging deceptive format for radio and TV infomercials for dietary supplements)
- Vital Basics, Inc., 137 F.T.C. 254 (2004) (consent order) (challenging deceptive format for radio infomercials for dietary supplements)
- Georgetown Publishing, 122 F.T.C. 391 (1996) (consent order) (challenging the format of a direct mail promotion for a book that appeared to be an independent review from a magazine sent with a handwritten note, “[Recipient’s name], Try this. It works! J.”)
- JS&A Group, Inc., 111 F.T.C. 522 (1989) (consent order) (challenging as deceptive the format of a program-length advertisement for BlueBlocker sunglasses that appeared to be an investigative news program)

VI. DETERMINING AD MEANING

- A. Express Claims: Because express claims unequivocally state the representation, the representation itself establishes the meaning of the claim. No further proof about the meaning of the claim is necessary. Deception Policy Statement, 103 F.T.C. at 176; Thompson Medical Co., 104 F.T.C. at 788.
- B. Implied Claims: Implied claims are any claims that are not express and range on a continuum from language virtually synonymous with an express claim to language that literally says one thing but strongly suggests something else to language that relatively few consumers would interpret as making the claim. See Kraft, Inc., 114 F.T.C. 40, 120 (1991), aff'd, 970 F.2d 311 (7th Cir. 1992), cert. denied, 507 U.S. 909 (1993); Thompson Medical Co., 104 F.T.C. at 789. When the language or depictions in an ad are clear enough to permit the FTC to conclude with confidence that an implied claim is conveyed to consumers acting reasonably under the circumstances, no extrinsic evidence is necessary to determine that an ad makes an implied claim. Kraft, 114 F.T.C. at 121. In determining if reasonable consumers are likely to take an implied claim, the FTC examines the net impression created by the ad, looking at “the entire mosaic, rather than each tile separately.” Deception Policy Statement, 103 F.T.C. at 179 & n. 32; Stouffer Foods Corp., 118 F.T.C. 746, 799 (1994); FTC v. Sterling Drug, 317 F.2d 669, 674 (2d Cir. 1963).
- C. Extrinsic Evidence: Courts give FTC determinations of ad meaning substantial deference. “The Kraft court further noted that deferential review is particularly appropriate when the FTC is the factfinder, given the Commission’s expertise in the field of deceptive advertising and the often exceedingly complex and technical factual issues that the Commission resolves on a nationwide basis.” POM Wonderful LLC v. FTC, 777 F.3d 478 (D.C. Cir. 2015) (citations omitted). When an implied claim is not clear enough to permit the Commission to determine its existence by examining the ad alone, extrinsic evidence may be

required. Stouffer Foods Corp., 118 F.T.C. at 798-99. In all cases, if extrinsic evidence is available, the Commission will consider it, taking into account its relative quality and reliability. Kraft, 114 F.T.C. at 121.

1. Copy tests are one form of extrinsic evidence used to establish that an implied claim is conveyed. To be reliable, the copy test must be methodologically sound. Kraft, 114 F.T.C. at 121; Thompson Medical Co., 104 F.T.C. at 790; Stouffer Foods Corp., 118 F.T.C. at 807 (“Perfection is not the prevailing standard for determining whether a copy test may be given any weight. The appropriate standard is whether the evidence is reliable and probative.”). The FTC has issued the results of copy tests that examine consumer perception of certain kinds of claims. For example, on in 2012, the FTC published results of a study evaluating how consumers interpret “up to” claims in ads for replacement windows.
2. Other forms of extrinsic evidence include testimony by marketing experts regarding principles derived from marketing research showing how consumers generally respond to ads presented in a particular way, and evidence of the advertiser’s intent. Kraft, Inc., 114 F.T.C. at 121-22; Thompson Medical Co., 104 F.T.C. at 790.

D. Disclosures in Ads: Advertisements often contain fine-print footnotes or video superscripts that attempt to disclaim, limit, or modify claims made elsewhere in the ad. Advertisers cannot use fine print to contradict other statements in an ad or to clear up misimpressions the ad would otherwise leave. Deception Policy Statement, 103 F.T.C. at 180-81. Similarly, accurate information in a footnote or text will likely not remedy a false headline because reasonable consumers may glance only at the headline. Id. See .com Disclosures, How to Make Effective Disclosures in Digital Advertising (Mar. 12, 2013).

1. To be effective, disclosures must be clear and conspicuous. E.g., Thompson Medical Co., 104 F.T.C. 648, 842-43 (1984), aff’d, 791 F.2d 189 (D.C. Cir. 1986) (requiring simultaneous audio and visual disclosure of certain information). See also FTC v. Cyberspace.com, 453 F.3d 1196 (9th Cir. 2006) (holding that fine-print statement on purported rebate check was insufficient to disclose that cashing the check would prompt monthly charges for internet services); United States v. Bayer Corp., No. CV 00-132 (NHP) (D.N.J. Jan. 11, 2000) (consent decree) (requiring audio and visual disclosure of information when ads make certain representations about the benefits of aspirin in the prevention of heart attacks).
2. In evaluating the effectiveness of disclosures, the FTC considers factors like:
 - **Prominence:** whether the qualifying information is prominent enough for consumers to notice and read (or hear)
 - **Presentation:** whether the qualifying information is presented in

easy-to-understand language that does not contradict other things said in the ad and is presented at a time when consumers' attention is not distracted elsewhere

- **Placement:** whether the qualifying information is located in a place and conveyed in a format that consumers will read (or hear)
 - **Proximity:** whether the qualifying information is located in close proximity to the claim being qualified.
3. The FTC has convened workshops, issued policy statements, and sent warning letters to reiterate disclosure requirements and the “clear and conspicuous” standard. See, e.g., *Disclosure Exposure: An FTC-NAD Workshop on Effective Disclosures in Advertising* (May 22, 2001); *Dot Com Disclosures: Information about Online Advertising* (May 3, 2000); *Joint FTC-FCC Policy Statement on the Advertising of Dial-Around and Other Long-Distance Services to Consumers* (Mar. 1, 2000); *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms: A Bureau of Economics Staff Report* (June 13, 2007). On May 26, 2011, FTC staff announced that it was seeking input on revisions to *Dot Com Disclosures* and followed up with a national workshop in 2012. The revised staff guidance document, *.com Disclosures, How to Make Effective Disclosures in Digital Advertising*, was issued on March 12, 2013. On September 23, 2014, the FTC staff announced that as part of Operation Full Disclosure, more than 60 national advertisers received letters warning about the possible failure to make adequate disclosures in television and print ads.
 4. In addition to Section 5, other federal laws mandate that information about certain products and services be clearly and conspicuously disclosed. See, e.g., Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 C.F.R. § 308; Dell Computer Corp., 128 F.T.C. 151 (1999), and Micron Electronics, Inc., 128 F.T.C. 137 (1999) (consent orders) (challenging under Section 5 and Consumer Leasing Act ads for consumer leases that placed material cost information in fine print). On September 11, 2007, the FTC sent over 200 warning to mortgage brokers and lenders – and media outlets carrying those ads – that ads may violate FTC Act and Truth in Lending Act by touting low monthly payments or rates without adequate disclosure of other key loan terms. On January 9, 2014, the FTC announced *Operation Steer Clear*, settlements with nine auto dealers focusing on deceptive claims about auto financing, and leasing.
 5. Print disclosures: In print ads and point-of-sale materials, the FTC has found fine-print footnotes or blocks of text to be inadequate to disclaim or modify a claim made elsewhere in the ad. Representative cases:

- Budget Rent-A-Car Systems, Inc., 145 F.T.C. 1 (2008) (consent order) (challenging car rental company's failure adequately to disclose fuel fees automatically charged to customers who drove fewer than 75 miles)
- Palm, Inc., 133 F.T.C. 715 (2002) (consent order) (challenging ads for personal digital assistants that represented that products came with built-in wireless access and email while revealing in fine print down the side of the ad "Application software and hardware add-ons may be optional and sold separately. Applications may not be available on all Palm handhelds")
- Gateway Corp., 131 F.T.C. 1208 (2001) (consent order) (challenging ads for "free" or flat-fee internet services that disclosed in a fine-print footnote that many consumers would incur significant additional telephone charges)
- Hewlett-Packard Co., 131 F.T.C. 1086 (2001), and Microsoft Corp., 131 F.T.C. 1113 (2001) (consent orders) (challenging ads for personal digital assistants that represented that products came with built-in wireless access and email while revealing in fine print "Modem required. Sold separately.")
- Value America, Inc., C-3976, Office Depot, Inc., C-3977, and BUY.COM, Inc., C-3978 (Sept. 8, 2000) (consent orders) (challenging promotions for low-cost computer systems that disclosed true costs of the offer and important restrictions in fine-print footnotes)
- Häagen-Dazs Co., 119 F.T.C. 762 (1995) (consent order) (challenging effectiveness of fine-print footnote modifying claim that frozen yogurt was "98% fat free")
- Stouffer Food Corp., 118 F.T.C. 746 (1994) (holding that sodium content claims for Lean Cuisine products were false and unsubstantiated and not cured by fine-print footnote)

5. Television disclosures: Visual superscripts that are difficult to understand, superimposed over distracting backgrounds, compete with audio elements, or are placed in parts of the ad less likely to be remembered have been found to be ineffective in modifying a claim made in the body of the ad. Thompson Medical Co., 104 F.T.C. at 797-98. Representative cases:

- TXVT Limited Partnership (Trophy Nissan), C-4508 (Dec. 23, 2014) (consent order) (charging that car dealership used deceptive fine print disclosures to bury key financing terms and conditions)

- United States v. Mazda Motor of America, Inc., (C.D. Cal. Sept. 30, 1999) (consent decree) (\$5.25 million penalty for violating FTC and state orders related to disclosures in car leasing ads)
 - General Motors Corp., 123 F.T.C. 241 (1997); American Honda Motor Co., 123 F.T.C. 262 (1997); American Isuzu Motor Co., 123 F.T.C. 275 (1997); Mitsubishi Motor Sales of America, Inc., 123 F.T.C. 288 (1997); Mazda Motor of America, Inc., 123 F.T.C. 312 (1997); Toyota Motor Sales, U.S.A., Inc., 125 F.T.C. 39 (1998); and Volkswagen of America, Inc., 125 F.T.C. 74 (1998) (consent orders) (requiring clear and conspicuous disclosure of terms in ads for car leases, defined as “readable [or audible] and understandable to a reasonable consumer”)
 - Frank Bommarito Oldsmobile, 125 F.T.C. 1 (1998); Beuckman Ford, 125 F.T.C. 59 (1998); Suntrup Buick-Pontiac-GMC Truck, 125 F.T.C. 91 (1998); and Lou Fusz Automotive Network, 125 F.T.C. 111 (1998) (consent orders) (requiring clear and conspicuous disclosure of car lease terms in TV ads, defined as “readable [or audible] and understandable to a reasonable consumer”)
 - Foote, Cone & Belding, Inc., 125 F.T.C. 528 (1998); Grey Advertising, Inc., 125 F.T.C. 548 (1998); Rubin Postaer and Associates, Inc., 125 F.T.C. 572 (1998); Bozell Worldwide, Inc., 127 F.T.C. 1 (1999); and Martin Advertising, Inc., 127 F.T.C. 10 (1999) (consent orders) (challenging advertising agencies’ roles in ads containing deceptive representations of car leasing terms)
 - Kraft, Inc., 114 F.T.C. at 124 (Initial Decision) (holding that complicated superscript – “one $\frac{3}{4}$ ounce slice has 70% of the calcium of five ounces of milk” – didn’t cure deceptive calcium content claim for cheese slices)
6. Internet disclosures: On May 3, 2000, staff issued *Dot Com Disclosures: Information about Online Advertising*, examining how disclosures required by FTC rules and guides apply to online advertising and sales. The FTC issued revised staff guidance on March 13, 2013, *.com Disclosures, How to Make Effective Disclosures in Digital Advertising*. FTC staff sent letters to search engines on June 27, 2002, regarding the clear and conspicuous disclosure of paid placements. See Letter to Gary Ruskin, Executive Director of Commercial Alert. On June 25, 2013, staff sent letters updating that guidance on distinguishing paid search results and other forms of advertising from natural search results. The staff sent letters to 22 hotel operators on November 28, 2012, warning that online price quotes that excluded “resort fees” and other mandatory charges may be deceptive. The FTC also has brought numerous cases challenging online promotions that failed to meet the “clear and conspicuous” standard. Representative cases:

- Network Solutions, LLC, 159 F.T.C. 1859 (2015) (consent order) (alleging that company failed to clearly disclose materials limitations on advertised “30 Day Money Back Guarantee”)
- FTC v. One Technologies, No. 3:14-CV-05066 (N.D. Cal. Nov. 19, 2014) (stipulated order) (\$22 million redress for deceptive online “free” credit score claims and inadequately disclosed negative option, in violation of FTC Act and Restore Online Shoppers’ Confidence Act).

VII. FOOD ADVERTISING

- A. FTC-FDA Liaison Agreement: Under a longstanding agreement between the Commission and the Food and Drug Administration, the FTC has primary responsibility for food advertising, while the FDA has primary responsibility for food labeling. See Working Agreement Between the FTC and FDA, 3 Trade Reg. Rep. ¶ 9851 (CCH) (1971).
- B. Nutrition Labeling and Education Act (NLEA), 21 U.S.C. § 343(I), (q), and (r). The NLEA and FDA’s implementing regulations effected broad changes in the regulation of nutrition information on food labels. Under the NLEA, only FDA-approved nutrient content and health claims may appear on labels.
- C. Enforcement Policy Statement on Food Advertising, 59 Fed. Reg. 28388 (June 1, 1994). The FTC issued its Enforcement Policy Statement to provide guidance regarding the use of nutrient content and health claims in food advertising, in light of the NLEA and FDA’s regulations. The Statement clarifies how the FTC’s deception and substantiation standards apply. Issues addressed by the Enforcement Policy Statement include:
 1. **Absolute nutrient content claims**: The Commission will apply FDA’s definitions for terms such as low fat and high fiber.
 2. **Serving size**: The Commission will use FDA’s serving sizes in analyzing nutrient content claims.
 3. **Relative or comparative nutrient content claims**: Unqualified comparative claims must meet FDA’s minimum percentage difference requirements, although other comparative claims that are accurately qualified to identify the nature of the increase or reduction in a nutrient and to eliminate misleading implications may also comply with Section 5, even if increase or reduction does not meet FDA’s prescribed levels.
 4. **Synonyms**: Claims that characterize the level of a nutrient, including those using synonyms not provided for in FDA regulations, must be consistent with FDA definitions.

5. **Health Claims:** The FTC will use FDA’s “significant scientific agreement” standard as its principal guide in determining whether unqualified health claims are substantiated. Health claims that are not yet FDA-approved must be adequately qualified so that consumers understand both the extent of the support for the claim and any significant contrary evidence in the scientific community. In many cases, the presence and significance of risk-increasing nutrients must be disclosed to prevent a health claim from being deceptive

D. Representative health benefits cases:

- FTC v. Gerber Products Co. d/b/a Nestlé Nutrition, No. 2:33-AV-00001 (D.N.J. July 15, 2019) (stipulated final judgment) (settling FTC action alleging that Gerber deceptively advertised that Good Start Gentle formula would prevent or reduce risk of allergies in babies with a family history of allergies and that product had FDA approval)
- POM Wonderful LLC v. FTC, 777 F.3d 478 (D.C. Cir. 2015) (upholding FTC ruling that advertisers made false and unsubstantiated claims for POM Wonderful 100% Pomegranate Juice and POMx supplements)
- The Dannon Company, Inc., 151 F.T.C. 62 (2010) (consent order) (challenging deceptive health claims for Activia yogurt and DanActive dairy drink)
- Nestlé HealthCare Nutrition, Inc., 151 F.T.C. 1 (2010) (consent order) (challenging deceptive claims that Boost Kid Essentials prevents upper respiratory infections in children, protects against colds and flu, and reduces absences from daycare or school)
- Kellogg Co., C-4262 (2009) (consent order) (challenging false claims touting Frosted Mini-Wheats as “clinically shown to improve kids’ attentiveness by nearly 20%”). See also Kellogg Co., C-4262 (June 3, 2010) (order modification) (modifying order to resolve FTC investigation into questionable immunity-related claims for Rice Krispies)
- Tropicana Products, Inc., 140 F.T.C. 176 (2005) (consent order) (challenging unsubstantiated claims that drinking 2-3 glasses a day of “Healthy Heart” orange juice would produce dramatic effects on blood pressure, cholesterol, and homocysteine levels, thereby reducing risk of heart disease and stroke)
- KFC Corp., 138 F.T.C. 422 (2004) (consent order) (challenging deceptive claims about relative nutritional value and healthiness of fried chicken)
- Unither Pharma, Inc., and United Therapeutics Corp., 136 F.T.C. 145 (2003) (consent order) (challenging claims that bar containing amino acid reduces the risk of heart disease and reverses damage to the heart)

- Interstate Bakeries Corp., 133 F.T.C. 687 (2002) (consent order) (challenging claims that calcium in Wonder Bread could improve children's brain function and memory)
- Conopco, Inc., 123 F.T.C. 131 (1997) (consent order) (challenging heart-health claims for Promise margarine)
- United States v. Eggland's Best, Inc., No. 96 CV-1983 (E.D. Pa. Mar. 12, 1996) (stipulated permanent injunction) (\$100,000 civil penalty for violation of previous order challenging claims about product's effect on cholesterol)
- The Isaly Klondike Co., 116 F.T.C. 74 (1993) (consent order) (challenging claims about effect of Klondike Lite frozen dessert bars on consumers' serum cholesterol levels)
- Bertolli USA, Inc., 115 F.T.C. 774 (1992) (consent order) (challenging claims that olive oil had been medically proven to reduce cholesterol, blood pressure, and blood sugar)
- Campbell Soup Co., 115 F.T.C. 788 (1991) (consent order) (challenging heart-health claims for soups that are high in sodium)
- CPC International, Inc., 114 F.T.C. 1 (1991) (consent order) (challenging claims about the effect of Mazola Corn Oil and Mazola Margarine on cholesterol levels)

E. Representative nutrient content claim cases:

- Pizzeria Uno Corp., 123 F.T.C. 1038 (1997) (consent order) (challenging misleading low-fat representations for Thinzetta pizzas)
- Mrs. Fields Cookies, Inc., 121 F.T.C. 599 (1996) (consent order) (challenging low-fat claims for cookies)
- The Dannon Co., 121 F.T.C. 136 (1996) (consent order) (challenging low-fat, low-calorie, and lower in fat than ice cream claims for Pure Indulgence frozen yogurt)
- Häagen-Dazs Co., 119 F.T.C. 762 (1995) (consent order) (challenging low-fat representations for Häagen-Dazs frozen yogurt)
- The Eskimo Pie Corp., 120 F.T.C. 312 (1995) (consent order) (challenging low-calorie claims for Sugar Freedom products)
- Stouffer Food Corp., 118 F.T.C. 746 (1994) (holding that sodium content claims for Lean Cuisine products were deceptive)

- Kraft, Inc., 114 F.T.C. 40 (1991), aff'd, 970 F.2d 311 (7th Cir. 1992), cert. denied, 507 U.S. 909 (1993) (holding that calcium content claims for Kraft Singles cheese slices were deceptive)
- F. Food and Beverage Marketing to Children: On July 14, 2005, the FTC and HHS sponsored *Perspectives on Marketing, Self-Regulation, and Childhood Obesity*, to discuss self-regulation in the marketing of food and beverages to children. The agencies issue a report on May 2, 2006. On June 1, 2007, the FTC's Bureau of Economics issued a report, *Children's Exposure to Television Advertising in 1977 and 2004: Information for the Obesity Debate*. On July 18, 2007, the agencies sponsored *Weighing In: A Check-Up on Marketing, Self-Regulation, and Childhood Obesity*. On July 29, 2008, the FTC *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation*, reporting that 44 major food and beverage marketers spent \$1.6 billion in 2006 to promote their products to children and adolescents in the U.S. The report called for companies "to adopt and adhere to meaningful, nutrition-based standards for marketing their products to children under 12." On December 15, 2009, the FTC hosted a public forum, *Sizing Up Food Marketing and Childhood Obesity*. On April 28, 2011, the Interagency Working Group on Food Marketed to Children – made up of representatives of the FTC, FDA, USDA, and CDC – issued for comment proposed voluntary principles designed to encourage more effective industry self-regulation. On December 22, 2012, the FTC issued *A Review of Food Marketing to Children and Adolescents: Follow-Up Report*, which announced the results of a study of food and beverage industry marketing expenditures and activities directed to children and teens.

VIII. OVER-THE-COUNTER DRUGS AND TREATMENTS, DIETARY SUPPLEMENTS, WEIGHT LOSS PRODUCTS, AND OTHER HEALTH-RELATED PROMOTIONS

- A. Pursuant to the FTC-FDA Liaison Agreement, the FTC has primary responsibility for over-the-counter (OTC) drug advertising, while the FDA has primary responsibility for OTC drug labeling, prescription drug labeling, and prescription drug advertising. See Working Agreement Between the FTC and FDA, 3 Trade Reg. Rep. ¶ 9851 (CCH) (1971).
- B. OTC Drugs: Section 15 of the FTC Act defines the terms "drug" to include articles intended "for use in the diagnosis, cure, mitigation, treatment, or prevention of disease" or intended "to affect the structure or any function of the body." Representative drug cases:
- United States v. Bayer Corp., No. CV 00-132 (NHP) (D.N.J. Jan. 11, 2000) (consent decree) (challenging unsubstantiated claims that regular use of aspirin is appropriate therapy for the prevention of heart attacks and strokes in the general population)

- Novartis Corp. v. FTC, 223 F.3d 783 (D.C. Cir. 2000) (upholding Commission finding that marketer of Doan’s pills misrepresented that product is superior to other analgesics for treating back pain)
- Pfizer, Inc., 126 F.T.C. 847 (1998); Del Pharmaceuticals, Inc., 126 F.T.C. 775 (1998); and Care Technologies, Inc., 126 F.T.C. 830 (1998) (consent orders) (challenging claims for anti-lice shampoos)
- Johnson & Johnson Consumer Products, 121 F.T.C. 22 (1996) (consent order) (challenging sexually-transmitted disease prevention claims for K-Y Plus Spermicidal Lubricant)
- United States v. Sterling Drug, Inc., No. CA-90-1352 (D.D.C. June 12, 1990) (consent decree) (\$375,000 civil penalty for unsubstantiated claims for Midol, in violation of previous order)

C. Devices, Cosmetics, Treatments, and Other Health-Related Claims or Promotions: Section 15 of the FTC Act defines “device” to include “instruments, apparatus, and contrivances” intended “for use in the diagnosis, cure, mitigation, treatment, or prevention of disease” or intended “to affect the structure or any function of the body.” That section defines “cosmetic” to include “articles to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof intended for cleansing, beautifying, promoting attractiveness, or altering the appearance.” In addition, the FTC enforces the Contact Lens Rule, 16 C.F.R. § 31, which mandates procedures for prescribers and sellers to release and verify prescriptions. After a September 21, 2015, conference, the FTC issued an Enforcement Policy Statement regarding marketing claims for OTC homeopathic drugs. Representative cases dealing with health-related products and services:

- FTC v. Regenerative Medical Group, Inc., No. 8:18-CV-01838-AG-KES (C.D. Cal. Oct. 18, 2018) (stipulated order) (partially suspended \$3.3 million judgment for unsubstantiated claims for purported stem cell treatments for Parkinson’s disease, autism, macular degeneration, stroke, kidney disease, and other serious conditions)
- FTC v. Global Concepts Limited, Inc., No. 0:18-CV-60990 (S.D. Fla. May 2, 2018) (stipulated order for permanent injunction) (partially suspended \$47 million judgment for deceptive hearing claims for MSA 30X sound amplifier)
- Mikey & Momo, Inc., C-4655 (May 3, 2018) (consent order) (challenging deceptive mosquito-repellent and anti-Zika claims for Aromaflage perfume and candles)
- FTC v. Aura Labs, Inc., 8:16-CV-02147-DOC-KES (C.D. Cal. Dec. 12, 2016) (stipulated permanent injunction) (challenging accuracy claims for mobile app advertised to measure blood pressure)

- Mars Petcare US, Inc., C-4599 (Aug. 4, 2016) (consent order) (challenging misleading longevity claims for Eukanuba dog food)
- FTC v. Viatek Consumer Products Group, No. 1:15-cv-33 (E.D. Tenn. Feb. 20, 2015) (stipulated order) (\$300,000 to settle charges for deceptive claims for mosquito repellent wristbands, in violation of 2003 FTC order)
- FTC v. v. LearningRx Franchise Corp., No. 1:16-CV-01159-RM (D. Colo. May 18, 2016) (stipulated order) (\$200,000 redress for deceptive claims that learning programs were clinically proven to permanently improve ADHD, autism, dementia, Alzheimer's disease, strokes, concussions, etc., and would substantially improve grades, test scores, and job and athletic performance)
- FTC v. Mercola.com LLC, No. 16CV4282 (N.D. Ill. Apr. 14, 2016) (stipulated order) (refunds for consumers for deceptive "safe" tanning claims and anti-aging claims for tanning beds)
- FTC v. Lumos Labs, Inc., No. 3:16-CV-00001 (N.D. Cal. Jan. 5, 2016) (stipulated final judgment) (\$2 million to settle charges that company made deceptive claims about Lumosity "brain training" program)
- FTC v. Tommie Copper, Inc., No. 7:15-CV-09304-VB (S.D.N.Y. Dec. 2, 2015) (stipulated judgment) (\$1.35 million to settle charges that company's copper-infused clothing relieved pain and inflammation caused by arthritis and other diseases)
- Carrot Neurotechnology, Inc., C-4567 (Sept. 17, 2015) (consent order) (\$150,000 disgorgement to settle allegations that company made deceptive vision improvement claims for Ultimeyes app)
- FTC v. Zadro Health Solutions, Inc., No. 8:15-CV-1314 DOC (C.D. Cal. Aug. 20, 2015) (stipulated order) (partially suspended \$629,359 judgment for deceptive disinfectant claims for Nano-UV devices)
- FTC v. Angel Sales, No. 1:15-cv-06542 (N.D. Ill. Aug. 20, 2015) (stipulated order) (suspended \$656,423 judgment for deceptive disinfectant claims for shUVee devices)
- FTC v. New Consumer Solutions LLC, No. 1:15-cv-01614 (N.D. Ill. Feb 25, 2015) (stipulated judgment) (challenging claim that Mole Detector app could detect symptoms of melanoma)
- Health Discovery Corporation, C-4516 (consent order) (Feb. 25, 2015) (challenging claim that MelApp mobile app could detect symptoms of melanoma)

- Focus Education, LLC, 159 F.T.C. 1345 (2015) (consent order) (challenging claims that computer game would improve the focus, memory, behavior, and school performance of children, including those with ADHD)
- FTC v. DERMAdoctor, Inc., No. 14-01129-CV-W-BP (W.D. Mo. Dec. 23, 2014) (stipulated order) (challenging deceptive claims for Photodynamic Therapy Liquid Red Light Anti-Aging Lotion)
- FTC v. Solace International, No. 3:14-cv-00638-MMD-WGC (D. Nev. Dec. 23, 2014) (stipulated injunction) (challenging deceptive claims that DermaTend was a safe at-home way to remove moles and genital warts)
- L’Oreal USA, Inc., C-4489 (June 30, 2014) (consent order) (challenging false and unsubstantiated claims that Génifique and Youth Code products provided anti-aging benefits by targeting users’ genes)
- Lornamead, Inc., C-4488 (May 28, 2014) (consent order) (\$500,000 redress for deceptive efficacy claims for Lice Shield line of lice prevention products)
- FTC v. Springtech 77376, LLC d/b/a Cedarcide.com, No. CV12-4631 JCS (N.D. Cal. July 18, 2013) (stipulated order) (\$4.8 million suspended judgment for deceptive claims for anti-lice and bedbug products)
- FTC v. RMB Group, LLC, No. CV-12-4632 EDL (N.D. Cal. Sept. 10, 2012) (stipulated order) (challenging deceptive claims for Rest Easy anti-bedbug product)
- Brain-Pad, Inc., C-4375 (Aug. 16, 2012) (consent order) (challenging unsubstantiated claims that company’s mouth guards reduced the risk of sports-related concussions)
- FTC and Florida AG v. Alcoholism Cure Corp., No. 3:10-CV-266-F-34TEM (M.D. Fla. July 19, 2012) (judgment) (\$700,000 redress for company’s deceptive claims about alcohol treatment program and practice of responding to consumers’ attempts to cancel by threatening to publicly revealing their alcohol dependence)
- United States v. MyCuteLens.com, No. 1:11-CV-03419- JRT-LIB (D. Minn. Nov. 28, 2011); United States v. BuyExclusive.net, No. 1:11-CV-05723-DLI-RER (E.D.N.Y. Nov. 28, 2011); United States v. Royal Tronics, Inc. d/b/a MyCandyEyes.com, No. 0:11-CV-62491-DMM (S.D. Fla. Nov. 28, 2011) (consent decrees) (\$97,000 in civil penalties from companies selling cosmetic contacts without a prescription)
- Dermapps, Koby Brown, and Gregory Pearson, 152 F.T.C. 466 (2011), and Andrew N. Finkel, 152 F.T.C. 490 (2011) (consent orders) (\$15,000 total redress from marketers of two mobile apps that claimed to treat acne)

- United States v. Jakeshop USA, LLC, No. 1:11-CV-11221-MLW (D. Mass. July 20, 2011) (consent decree) (\$200,000 civil penalty for selling contact lenses to consumers without a prescription)
- Oreck Corp., 151 F.T.C. 289 (2011) (consent order) (\$750,000 redress to settle charges that company made false and unproven claims that Oreck Halo vacuum cleaner and Oreck ProShield Plus air cleaner can reduce risk of flu and other illnesses and eliminate virtually all common germs and allergens)
- United States v. Gothic Lenses LLC, No. 1:11-CV-0159 (N.D. Ga. Jan. 26, 2011) (consent decree) (\$50,000 civil penalty for selling contact lenses to consumers without a prescription)
- FTC v. Xacta 3000, Inc., No. 3:09-CV-00399-JAP-TJB (D.N.J. Nov. 4, 2010) (stipulated order) (suspended \$14.5 million judgment for deceptive claims that Kinoki Foot Pads would remove toxins, treat high blood pressure and depression, and cause weight loss)
- ***Operation Health Care Hustle***: On August 11, 2010, the FTC and 24 state agencies charged companies with falsely marketing “medical discount plans” as health insurance. See, e.g., FTC and Tennessee v. United States Benefits, LLC, No. 3:10-0733 (M.D. Tenn. Nov. 7, 2011).
- Indoor Tanning Association, C-4290 (May 19, 2010) (consent order) (challenging trade association’s deceptive health and safety claims about indoor tanning)
- FTC v. Roex, Inc., No. SA-CV-090266 (C.D. Cal. Mar. 6, 2009) (final order) (\$3 million redress for deceptive claims disseminated through a call-in radio program for device sold to treat cancer and supplements advertised to treat or prevent cancer, AIDS, diabetes, Alzheimer’s disease, Parkinson’s disease, and other conditions)
- United States v. See Right Vision and Vision Contact Lenses, No. 08- CIV-11793 (D. Mass. Dec. 11, 2008) (consent decree) (\$27,000 civil penalty for selling cosmetic contact lenses without a prescription)
- United States v. Contact Lens Heaven, Inc., No. 08CV61713 (S.D. Fla. Dec. 11, 2008) (consent decree) (partially suspended \$233,498 civil penalty for selling cosmetic contact lenses without a prescription)
- FTC v. Myfreemedicine.com, LLC, No. CV5 1607 (W.D. Wash. Mar. 15, 2007) (stipulated permanent injunction) (challenging deceptive practice of representing that consumers who paid company \$199 could get free prescription medicine)

- FTC v. Q-Ray Company, No. 03C 3578 (N.D. Ill. Sept. 20, 2006), aff'd, 512 F.3d 858 (7th Cir. 2008) (\$16 million redress for deceptive pain relief claims for metal bracelet)
- United States v. Walsh Optical, Inc., No.: 06-3591 (D.N.J. Aug. 7, 2006) (\$40,000 civil penalty for failing to verify consumers' contact lens prescriptions, in violation of the Contact Lens Rule)
- FTC v. Media Maverick, Inc., No. 04-3395-SVW (CWx) (C.D. Cal. Oct. 25, 2004) (stipulated order) (\$400,000 redress for deceptive pain relief claims for the Balance Bracelet)
- FTC v. Smart Inventions, Inc., No. CV 04-4431 Mm(ex) (C.D. Cal. Sept. 18, 2007) (stipulated order for permanent injunction) (up to \$2.5 million redress for deceptive claims for Biotape, adhesive strips advertised to relieve pain)
- FTC v. Pharmacycards.com, No. CV-S-04-0712-RCJ-RJJ (D. Nev. July 19, 2005) (default judgment and order) (challenging practice of making unauthorized withdrawals from consumers' checking accounts for unordered "discount pharmacy cards")
- FTC v. Seville Marketing, Ltd., No. C04-1181L (W.D. Wash. May 19, 2005) (stipulated final judgment) (challenging efficacy claims for at-home HIV test kits advertised as 99.4% accurate, but with error rates of 59.3%)
- Laser Vision Institute, 136 F.T.C. 1 (2003); and LCA-Vision, Inc. d/b/a LasikPlus, 136 F.T.C. 41 (2003) (consent orders) (challenging claims that LASIK would eliminate the need for glasses, contact lenses, reading glasses, and bifocals and would eliminate the risk of haloing and glare)
- FTC v. CSCT, Inc., No. 03 C 00880 (N.D. Ill. Feb. 17, 2004) (stipulated judgment) (in conjunction with Canadian and Mexican authorities, challenging anti-cancer claims by Canadian company for electromagnetic treatments in Tijuana clinic)
- FTC v. Dr. Clark Research Ass'n, No. 1:03CV0054 (N.D. Ohio Dec. 3, 2004) (stipulated judgment) (ordering refunds for deceptive anti-cancer claims for devices and dietary supplements)
- FTC v. Walker, No. C-02-5169 RJB (W.D. Wash. Oct. 28, 2002) (stipulated judgment) (challenging efficacy claims for purported cancer treatments)
- FTC v. Sani-Pure Food Laboratories, No. 02-CV-4608 (D.N.J. Oct. 4, 2002) (final order) (challenging role of testing laboratory in providing false test results for a purported do-it-yourself home anthrax test)

- FTC v. BioPulse International, Inc., No. C023511 (N.D. Cal. July 23, 2002) (stipulated judgment) (challenging deceptive cancer treatment claims made by California company for insulin-induced hypoglycemic sleep therapy and acoustic light wave therapy offered in its Tijuana, Mexico, clinic)
- FTC v. Vital Living Products, Inc., No. 3:02CV74-MU (W.D.N.C. Feb. 27, 2002) (stipulated order) (challenging deceptive claims that do-it-yourself test kit could detect presence of anthrax bacteria and spores)
- FTC v. Western Dietary Products Co., No. C01-0818R (W.D. Wash. June 14, 2001) (permanent injunction), and Jaguar Enterprises, 132 F.T.C. 229 (2001) (consent order) (as part of Operation Cure.All, challenging deceptive representations that electronic devices could treat AIDS, Alzheimer's disease, cancer, and other serious conditions)
- FTC v. Medimax, Inc., No. 99-1485-CIV (M.D. Fla. Mar. 22, 2000), and FTC v. Cyberlinx Marketing, No. V-S-99-1564-PMP-LRL (D. Nev. Nov. 8, 1999) (stipulated orders) (holding that marketers falsely represented that home test kits could accurately detect HIV, ordering full restitution, and imposing bond and lifetime ban on sale of unapproved devices)
- Magnetic Therapeutic Technologies, Inc., 128 F.T.C. 380 (1999) (consent order) (challenging claims that purported magnetic therapy devices could treat a multitude of diseases, including cancer, high blood pressure, HIV, multiple sclerosis, and diabetic neuropathy)
- American College for Advancement in Medicine, 127 F.T.C. 890 (1999) (consent order) (challenging representations that chelation therapy is an effective treatment for arteriosclerosis)
- London International Group, 125 F.T.C. 726 (1998) (consent order) (challenging comparative efficacy claims for Ramses condoms)
- Natural Innovations, Inc., 123 F.T.C. 698 (1997) (consent order) (challenging pain relief claims for the Stimulator, a device emitting a purported acupressure-like electrical charge)
- Zygon International, Inc., 122 F.T.C. 195 (1996) (consent order) (\$195,000 redress for deceptive claims for The Learning Machine, a device purported to enable users to lose weight, quit smoking, increase IQ, and learn foreign languages overnight)
- Numex Corp., 116 F.T.C. 1078 (1993) (consent order) (challenging arthritis treatment and pain relief claims for roller device)
- Viral Response Systems, Inc., 115 F.T.C. 676 (1992) (consent order) (challenging claims that inhaler device can remedy colds)

D. Dietary Supplements, Herbal Products, and Related Advertising Claims: The FTC has challenged deceptive claims for dietary supplements and related products through law enforcement, industry outreach, and education. The Commission issued ***Dietary Supplements: An Advertising Guide for Industry***, describing how the basic principles of advertising law apply to the marketing of dietary supplements. Representative cases:

- FTC v. Nobetes Corp., No 2:18-CV-10068 (C.D. Cal. Dec. 4, 2018) (stipulated order) (challenging deceptive diabetes claims, misleading expert and consumer endorsements, and poorly disclosed terms of “free trial”)
- FTC v. Redwood Scientific Technologies, Inc., No. ED 18-CV-02104 SJO (PLAx) (C.D. Cal. Oct. 25, 2018) (complaint filed) (challenging claims for purportedly homeopathic oral strips advertised for smoking cessation, weight loss, and sexual enhancement)
- FTC v. CellMark BioPharma, No. 2:18-CV-00014-JES-CM (M.D. Fla. Jan. 11, 2018) (stipulated order) (challenging claims that dietary supplement treats “chemo fog” and drink mix treats malnutrition experienced by some cancer patients)
- FTC v. NextGen Nutritionals, LLC, No. 8:17-CV-2807-T-36AEP (M.D. Fla. Nov. 20, 2017) (stipulated order) (partially suspended \$1.3 million judgment for deceptive treatment claims for HIV, MS, high blood pressure, and other serious conditions; false weight loss claims; and use of fake testimonials and certification seals)
- FTC and Maine v. Health Research Laboratories, LLC, No. 2:17-CV-00467-JDL (D. Me. Nov. 30, 2017) (partially suspended \$3.7 million judgment for deceptive claims that supplements could treat liver disease, Alzheimer’s disease, dementia, and other serious conditions and for deceptive “risk free” trial offer)
- FTC v. Catlin Enterprises, No. 1:17-CV-403 (W.D. Tex. May 4, 2017) (stipulated final judgment) (\$6.6 million suspended judgment for false and deceptive opiate withdrawal claims for dietary supplements Withdrawal Ease and Recovery Ease)
- FTC v. Supple LLC, No. 1:16-CV-1325 (E.D. Wis. Oct. 5, 2016) (stipulated judgment) (partially suspended \$150 million judgment for deceptive joint pain relief claims for glucosamine and chondroitin liquid supplement)
- FTC v. COORGA Nutraceuticals Corp., No. 15-CV-72-S (D. Wyo. Sept. 23, 2016) (order for summary judgment) (ruling that company made misleading claims that “Grey Defence” would reverse or prevent gray hair)

- FTC v. Sunrise Nutraceuticals, LLC, No. 9:15-CV-81567 (S.D. Fla. July 6, 2016) (stipulated judgment) (\$235,000 redress for false and deceptive claims that dietary supplement Elimidrol could treat opiate withdrawal)
- FTC v. Brain Research Labs, LLC, No. 8:15-cv-01047 (C.D. Cal. July 8, 2015) (stipulated judgment) (\$1.4 million to settle charges that marketers of made false and unsubstantiated claims that Procera AVH was clinically proven to improve memory and cognitive function)
- POM Wonderful LLC v. FTC, 777 F.3d 478 (D.C. Cir. 2015) (upholding FTC ruling that advertisers made false and unsubstantiated heart disease, cancer, and erectile dysfunction claims for POM Wonderful 100% Pomegranate Juice and POMx supplements)
- FTC v. NourishLife LLC, No. 1:15-cv-00093 (N.D. Ill. Jan. 9, 2015) (stipulated order) (partially suspended \$3.68 million judgment for deceptive claims that dietary supplements were proven to treat childhood speech disorders, including those associated with autism)
- FTC v. TriVita, Inc., No. 2:14-CV-01557-DLR (D. Az. Jul 15, 2014) (\$3.5 million redress for deceptive claims that cactus-based Nopalea beverage relieves pain, reduces joint and muscle swelling, alleviates respiratory problems, and relieves skin conditions)
- i-Health, Inc., and Martek Biosciences Corp., C-4486 (June 9, 2014) (consent order) (challenging deceptive claims that BrainStrong Adult will improve adult memory and prevent cognitive decline)
- FTC v. Wellness Support Network, No. 10-4879 (N.D. Cal. Mar. 7, 2014) (final judgment) (\$2.2 million redress for deceptive diabetes prevention and treatment claims for Diabetic Pack and Insulin Resistance Pack)
- Foru International Corp., C-4457, and Genelink, Inc., C-4456 (Jan. 7, 2014) (consent orders) (challenging deceptive claims about supplements and skincare products advertised as genetically customized)
- FTC v. Central Coast Nutraceuticals, No. 10C4931 (N.D. Ill. Jan. 9, 2012) (stipulated order) (\$1.5 million redress for deceptive claims that acai berry supplements and “colon cleansers” could cause weight loss and prevent cancer, falsely claiming products were endorsed by Oprah Winfrey and Rachael Ray, and making unauthorized charges to consumers’ credit cards for “free” or “risk free” trial offers)
- NBTY, Inc., 151 F.T.C. 201 (2010) (consent order) (\$2.1 million redress for deceptive brain and eye development claims for Disney- and Marvel Heroes-licensed children’s multivitamins)

- Mark Dreher, C-4306 (Nov. 16, 2010) (consent order) (challenging role of then-Vice President of Science and Regulatory Affairs of POM Wonderful LLC in making false and unsubstantiated claims that POM Wonderful 100% Pomegranate Juice and POMx supplements could prevent or treat heart disease and prostate cancer)
- FTC v. Direct Marketing Concepts, Inc., 624 F.2d 1 (1st Cir. 2010) (upholding \$48.2 million judgment against marketers of Supreme Greens and Coral Calcium dietary supplements)
- FTC v. Iovate Health Sciences USA, Inc., No. 10-CV-587 (W.D.N.Y. July 29, 2010) (stipulated judgment) (\$5.5 million redress for deceptive health claims for Accelis, nanoSLIM, Cold MD, Germ MD, and Allergy MD)
- FTC v. Walgreens Co., No.1:10-CV-01813 (N.D. Ill. Mar. 23, 2010) (stipulated order) (\$6 million redress for deceptive claims that Wal-Born product could prevent and treat colds and flu)
- ***Omega-3 Fatty Acid Supplements:*** On February 16, 2010, the FTC sent warning letters to 11 companies that promote Omega-3 fatty acid supplements, telling them to review their product packaging and labeling to make sure they do not violate federal law by making baseless claims about how the supplements benefit children's brain and vision function and development.
- FTC v. National Urological Group, Inc., No. 1:04-CV-3294-CAP (N.D. Ga. Jan. 15, 2009) (final judgment) (\$15.8 million redress for deceptive claims for purported weight loss and erectile dysfunction products). See also FTC v. National Urological Group, Inc., (N.D. Ga. Aug. 20, 2014 and Sept. 8, 2014) (contempt order) (\$40 million contempt order against defendants found to be in violation of earlier order and order jailing corporate officers for failure to comply with terms of earlier ruling)
- FTC v. CVS Pharmacy, Inc., No. CA-09-420 (D.R.I. Sept. 8, 2009) (stipulated order) (\$2.8 redress for deceptive claims that AirShield product could prevent and treat colds and flu)
- Daniel Chapter One, D-9329 (Dec. 24, 2009) (Commission Decision) (holding company and corporate officer liable for deceptive claims that shark cartilage and herbal formulations would prevent, treat, and cure cancer, and heal effects of chemotherapy and radiation), aff'd, 405 Fed. Appx. 505 (D.C. 2010). See also United States v. Daniel Chapter One, No. 10-1362 (D.D.C. May 9, 2012) (order holding Daniel Chapter One, James Feijo and Patricia Feijo in civil contempt)
- FTC v. Rite Aid Corp., No. 1:09-CV-01333-JEJ (M.D. Pa. July 13, 2009) (stipulated order) (\$500,000 redress for deceptive claims that Germ Defense could prevent and treat colds and flu)

- United States v. QVC, Inc., No. 04-CV-1276 (E.D. Pa. Mar. 19, 2009) (consent decree) (\$6 million redress for deceptive claims for For Women Only weight loss pills, Lite Bites bars and shakes, and Bee-Alive Royal Jelly energy supplements, and \$1.5 civil penalty for deceptive claims for Lipofactor Cellulite Target Lotion, in violation of 2000 FTC order)
- ***CURE-ious Cancer Cure Sweep:*** Herbs for Cancer, D-9331 (Apr. 3, 2009) (Decision) (challenging deceptive cancer claims for herbal teas); FTC v. Westberry Enterprises, (W.D. La. Sept. 18, 2008) (stipulated order) (\$15,000 for deceptive cancer claims for herbal tea containing burdock root, sheep sorrel, cat's claw, slippery elm bark, and other ingredients); FTC v. Clark, (W.D. Ky. Sept. 18, 2008) (stipulated order) (\$25,000 for deceptive cancer claims for products containing laetrile, apricot seeds, okra-pepsin-E3, and coral calcium); FTC v. Nu-Gen Nutrition, Inc., No.1:08-CV-05309 (N.D. Ill. Sept. 18, 2008) (stipulated order) (\$246,000 redress for deceptive cancer claims for products containing cantron, apricot seeds, and laetrile; Bioque Technologies, Inc., C-4237 (Oct. 24, 2008) (challenging deceptive melanoma treatment claims for Serum GV) Native Essence Herb Co., D-9328 (Apr. 3, 2009) (challenging deceptive cancer prevention and cure claims for essiac tea and cat's claw products); Cleansing Time Pro, C-4238 (Oct. 24, 2008) (challenging deceptive claims that products containing black salve could treat cancer, HIV, SARS, and Avian Flu); Premium Essiac Tea 4less, C-4239 (Sept. 18, 2008) (challenging deceptive claims that products containing essiac teas could treat cancer, AIDS, ulcers, and hepatitis C) (consent orders).
- FTC v. Airborne, Inc., No. CV-08-05300 (C.D. Cal. Aug. 14, 2008) (stipulated judgment) (total of up to \$30 million in redress to settle FTC and class actions alleging false and unsubstantiated cold prevention and germ-fighting claims for Airborne)
- FTC v. North American Herb and Spice Co., No. 08 CV 3169 (N.D. Ill. Aug. 12, 2008) (stipulated judgment) (\$2.5 million redress for deceptive claims that oregano-based dietary supplements are scientifically proven to prevent or treat colds and flu, boost the immune system, and kill avian bird flu virus, hepatitis C, staph, and other pathogens)
- Springboard and Pro Health Labs, 144 F.T.C. 893 (2007); Elation Therapy, Inc., C-4204; Women's Menopause Health Center, 144 F.T.C. 1141 (2007); The Green Willow Tree LLC, 144 F.T.C. 963 (2007); Health Science International, Inc., 144 F.T.C. 1029 (2007); Progesterone Advocates Network, 144 F.T.C. 1087 (2007); and Herbs Nutrition Corporation, 145 F.T.C. 83 (2008) (consent orders) (challenging deceptive claims for alternative hormone replacement therapy products)
- FTC v. Pacific Herbal Sciences, Inc., (C.D. Cal. May 29, 2007) (stipulated judgment) (\$172,500 redress for deceptive weight loss, anti-aging, and disease treatment claims for oral sprays sold via spam that claimed to contain human growth hormone)

- FTC v. Sunny Health Nutrition Technology & Products, No. 8:06-CV-2193-T-24EAJ (M.D. Fla. Apr. 24, 2007 and Nov. 28, 2006) (stipulated order) (\$1.9 million redress for deceptive claims for HeightMax, dietary supplement purporting to make teens and young adults taller)
- FTC v. Seasilver USA, Inc., No. CV-S-03-0676-RLH (LRL) (D. Nev. July 24, 2006), aff'd, No. 06-16373 (9th Cir. 2008) (\$120 million order for company's failure to comply with \$3 million redress order). See FTC v. Seasilver USA, Inc., No. CV-S-03-0676-RLH (D. Nev. June 19, 2003) (stipulated judgment) (challenging deceptive claims for Seasilver, a dietary supplement advertised to treat serious diseases, including AIDS and cancer)
- FTC v. Berkeley Premium Nutraceuticals, Inc., No. 1:06-CV-51 (S.D. Ohio July 22, 2009) (stipulated judgment) (alleging that marketers made deceptive claims for Avlimil, purported treatment for female sexual dysfunction, and Rogisen, purported treatment for night vision problems)
- United States v. NBTY, Inc., No. CV-05-4793 (E.D.N.Y. Oct. 12, 2005) (\$2 million civil penalty against company formerly known as Nature's Bounty for violating terms of FTC order by making deceptive claims that Royal Tongan Limu was clinically proven to treat diabetes, Alzheimer's disease, and cancer and that Body Success PM Diet Program increases metabolism and causes weight loss, even during sleep)
- FTC v. Direct Marketing Concepts, Inc., 624 F.2d 1 (1st Cir. 2010) (upholding \$48.2 million judgment against marketers of Supreme Greens and Coral Calcium dietary supplements for deceptive claims that products could prevent or treat serious conditions such as cancer)
- FTC v. Emerson Direct, Inc., No 2-05-CV-377-AM-33 (M.D. Fla. Aug. 23, 2005) (stipulated order) (\$1.3 million redress for deceptive claims that Smoke Away would allow smokers to quit smoking quickly and without cravings and for deceptive use of purported expert endorsements)
- FTC v. Harry, No. 04C-4790 (N.D. Ill. June 15, 2005) (stipulated order) (\$485,000 redress and \$5.9 million suspended judgment for unsubstantiated anti-aging claims for purported human growth hormone product and violations of CAN-SPAM Act)
- FTC v. Braswell, No. CV 03-3700 DT (PJWx) (C.D. Cal. 2005 and 2006) (stipulated judgments) (\$5 million redress, lifetime ban, and \$30 million suspended judgment from multiple individual and corporate defendants for deceptive claims that products could treat asthma, diabetes, Alzheimer's disease, overweight, and sexual dysfunction)

- FTC v. Great American Products, Inc., No. 3:05-CV-00170-RV-MD (N.D. Fla. May 20, 2005), aff'd, 200 Fed. Appx. 897 (4th Cir. 2006) (up to \$20 million redress for deceptive anti-aging claims for purported human growth hormone product, deceptive format for radio and TV infomercials, and violations of the Telemarketing Sales Rule)
- United States v. Body Wise International, Inc., No. SACV-05-43 (DOC) (Anx) (C.D. Cal. Jan. 18, 2005) (stipulated order) (\$3.5 million civil penalty to FTC and California for deceptive representations that AG-Immune dietary supplement treats numerous diseases, including cancer, HIV/AIDS and asthma, in violation of a 1995 FTC order)
- FTC v. Sagee U.S.A. Group, Inc., No. CV04 10560 GPS (CWx) (C.D. Cal. Aug. 10, 2006) (stipulated judgment) (\$10,396 redress and lifetime ban from selling health-related products for violation of an FTC order). See also FTC v. Sagee U.S.A. Group, Inc. (C.D. Cal. Jan. 5, 2005) (stipulated judgment) (challenging claims in Chinese-language ads that sagee could treat epilepsy, Alzheimer's disease, Parkinson's disease, stroke, and other conditions)
- FTC v. VisionTel Communications LLC, No. 1:04CV01412 (D.D.C. Aug. 26, 2004) (stipulated judgment) (\$750,000 redress for deceptive efficacy and safety claims for Impulse Female Herbal Blend and Maximus Male Herbal Blend, dietary supplements advertised to treat sexual dysfunction)
- FTC v. Hitech Marketing, Scientific Life Nutrition, and Rejuvenation Health Corp., No. 04C-4790 (N.D. Ill. July 27, 2004) (temporary restraining order) (challenging claims for Supreme Formula HGH and Youthful Vigor HGH, allegedly bogus human growth hormone products sold via spam)
- Nutramax Laboratories, Inc., 138 F.T.C. 380 (2004) (consent order) (challenging deceptive claims that Senior Moment could prevent memory loss and restore memory function)
- Dynamic Health Of Florida, LLC, D-9317 (June 16, 2004) (consent order) (challenging deceptive libido-enhancement representations for Fabulously Feminine, a dietary supplement containing L-arginine, ginseng, damiana leaf, ginkgo biloba, and horny goat weed)
- Vital Basics, Inc., 137 F.T.C. 254, and Creative Health Institute, Inc., 137 F.T.C. 350 (2004) (consent orders) (\$1 million redress for deceptive claims that Focus Factor could improve focus, concentration, or memory in children, adults, and older persons, and for deceptive sexual performance claims for V-Factor)
- United States v. Estate of Michael Levey, No. CV 03-4670 GAF (AJWx) (C.D. Cal. Mar. 9, 2004) (consent decree) (\$2.2 million redress for deceptive weight loss and arthritis cure claims for dietary supplements)

- Unither Pharma, Inc., and United Therapeutics Corp., 136 F.T.C. 145 (2003) (consent order) (challenging claims that bar containing amino acid reduces the risk of heart disease and reverses damage to the heart)
- FTC v. Kevin Trudeau, No. 98C0168 and No. 03C904 (N.D. Ill. Sept. 4, 2004) (stipulated order) (\$2 million redress for deceptive claims that Coral Calcium Supreme can treat cancer, multiple sclerosis, heart disease, and other serious diseases); FTC v. Robert Barefoot, No. 03C904 (N.D. Ill. Jan. 22, 2004) (stipulated order) (challenging deceptive claims that Coral Calcium Supreme can treat cancer, multiple sclerosis, heart disease, and other diseases). See also FTC v. Trudeau, 662 F.3d 947 (7th Cir. 2011) (upholding \$37 million redress order).
- United States v. ValueVision International, Inc., No. 03-2890 (D. Minn. Apr. 17, 2003) (consent decree) (\$215,000 civil penalty for violations of FTC order related to unsubstantiated health claims for dietary supplement)
- Snore Formula, Inc., 136 F.T.C. 214 (2003) (consent order) (challenging unsubstantiated claims about product's efficacy in preventing sleep apnea and significantly reducing snoring)
- FTC v. Vital Dynamics, Inc., No. 029816FMC(MBX) (C.D. Cal. Dec. 26, 2002), and FTC v. Ernest, No. 03-437RSWL (SHSx) (C.D. Cal. Jan. 17, 2003) (stipulated orders) (challenging deceptive breast enlargement representations for Isis System)
- FTC v. Blue Stuff, Inc., No. Civ-02-1631W (W.D. Okla. Nov. 18, 2002) (stipulated order) (\$3 million redress for deceptive claims for Blue Stuff pain reliever and two dietary supplements advertised to reduce cholesterol and reverse bone loss)
- Kris A. Pletschke d/b/a Raw Health, 133 F.T.C. 574 (2002) (consent order) (challenging deceptive claims that colloidal silver product could treat 650 diseases, eliminate pathogens, and is proven to kill anthrax, Ebola virus, and flesh-eating bacteria)
- Natural Organics, Inc., 132 F.T.C. 589 (2001) (consent order), Efamol Nutraceuticals, Inc., C-3958 (May 23, 2000) (consent order), and New Vision International, Inc., 127 F.T.C. 278 (1999) (consent orders) (challenging efficacy claims for dietary supplements marketed to treat ADD and hyperactivity)
- FTC v. Liverite Products, Inc., No. SA 01-778 AHS (ANx) (S.D. Cal. Aug. 21, 2001) (stipulated order) (challenging deceptive claims that dietary supplement was effective in treating hepatitis C, cirrhosis, and hang-overs and could prevent liver damage and side effects from use of drugs for HIV and hepatitis C, chemotherapy, and anabolic steroids)

- FTC v. Western Botanicals, Inc., No. CIV.S-01-1332 DFL GGH (E.D. Cal. July 11, 2001); and FTC v. Christopher Enterprises, Inc., No. 2:01 CV-0505 ST (D. Utah Dec. 6, 2001) (stipulated orders) (prohibiting sale of comfrey for internal use without proof of safety and requiring warnings on labels and ads that internal use can cause serious liver damage or death)
- Panda Herbal Int'l, Inc., 132 F.T.C. 125 (2001) (consent order) (challenging claims that St. John's Wort product could safely treat AIDS, tuberculosis, hepatitis B, and other serious conditions and requiring warning that St. John's Wort can have dangerous interactions for pregnant women and patients taking certain prescription drugs)
- ForMor, Inc., 132 F.T.C. 72 (2001) (consent order) (challenging claims that products containing St. John's Wort, colloidal silver, and shark cartilage could treat AIDS, tuberculosis, cancer, dysentery, and other conditions and requiring warning that St. John's Wort can have dangerous interactions for patients taking certain prescription drugs and for pregnant women)
- Aaron Co., 132 F.T.C. 174 (2001) (consent order) (challenging claims that products containing colloidal silver could treat cancer, multiple sclerosis, and AIDS, that products containing chitin could cause weight loss without diet and exercise, and requiring safety warnings on promotional materials for ephedra products)
- MaxCell BioScience, Inc., 132 F.T.C. 1 (2001) (consent order) (challenging claims that products containing DHEA could reverse the aging process and treat or prevent age-related diseases such as atherosclerosis, arthritis, high blood pressure, and elevated cholesterol and ordering \$150,000 redress)
- Tru-Vantage International, LLC, 133 F.T.C. 229 (2002) (consent order) (challenging deceptive anti-snoring and sleep apnea claims for Snor-enz, a supplement containing oils and vitamins)
- SmartScience Laboratories, Inc., C-3980 (Nov. 7, 2000) (challenging pain relief claims for Joint Flex, a topically applied cream containing glucosamine and chondroitin sulfate)
- FTC v. Rexall Sundown, Inc., No. 00-706-CIV (S.D. Fla. Mar. 11, 2003) (stipulated order) (up to \$12 million redress for deceptive efficacy representations by the marketers of Cellasene, a purported anti-cellulite dietary supplement)
- FTC v. Lane Labs-USA, Inc., No. 00 CV 3174 (D.N.J. June 28, 2000) (stipulated order) (\$1 million judgment for unsubstantiated cancer treatment claims for BeneFin shark cartilage product, and SkinAnswer anti-skin cancer cream). See also FTC v. Lane Labs-USA, Inc., 624 F.3d 575 (3d Cir. 2010).

- Natural Heritage Enterprises, C-3941 (May 23, 2000) (consent order) (challenging claims that essiac tea, a mixture of burdock and rhubarb root, sheep sorrel, and slippery elm bark, was effective in curing cancer, diabetes, AIDS, and feline leukemia)
- CMO Distribution Centers of America, Inc., C-3942 (May 23, 2000) (consent order) (challenging claims that product containing cetylmyristoleate could treat arthritis and other conditions and had been proven through clinical testing and recognized by the medical community to be a breakthrough in arthritis treatment)
- EHP Products, Inc., C-3940 (May 23, 2000) (consent order) challenging claims that product containing cetylmyristoleate could prevent and treat rheumatoid arthritis, osteoarthritis, and other conditions, and that scientific studies and the issuance of patents proved effectiveness of product)
- J & R Research, Inc., C-3961 (July 25, 2000) (consent order) (challenging claims that supplement containing pycnogenol was effective in treating ADD, cancer, heart disease, arthritis, diabetes, and multiple sclerosis)
- FTC v. Rose Creek Health Products, Inc., No. CS-99-0063-EFS (E.D. Wash. May 1, 2000) (consent decree) (\$375,000 redress for deceptive claims that Vitamin O could prevent cancer, pulmonary disease, and other conditions by providing oxygen to the body)
- Quigley Corp., C-3926 (Feb. 10, 2000) (consent order), and QVC, Inc., C-3955 (June 16, 2000) (consent order) (challenging unsubstantiated claims that Cold-Eeze zinc supplement would prevent colds, relieve allergy symptoms, and reduce the severity of cold symptoms in children)
- FTC v. Met-Rx USA, No. SAC V-99-1407 (D. Colo. Nov. 15, 1999), and FTC v. AST Nutritional Concepts & Research, No. 99-WI-2197 (C.D. Cal. Nov. 15, 1999) (stipulated orders) (challenging unsubstantiated safety claims for purported body building supplements containing androgen and other steroid hormones and requiring disclosures in labeling and ads of the risks of breast enlargement, testicle shrinkage, and infertility in males, and increased facial and body hair, voice deepening, and clitoral enlargement in females)
- Body Systems Technology, Inc., 128 F.T.C. 299 (1999) (as part of first phase of Operation Cure.All, challenging deceptive claims about effectiveness of shark cartilage in preventing or treating cancer and effectiveness of uña de gato, or Cat's Claw, in the treatment of cancer, HIV/AIDS, and arthritis.)
- FTC v. American Urological Corp., No. 98-CVC-2199-JOD (N.D. Ga. Apr. 29, 1999) (permanent injunction) (\$18.5 million judgment against marketers of Vægra, a purported impotence treatment)

- Bogdana Corp., 126 F.T.C. 37 (1998) (consent order) (challenging claims that Cholestaway and Flora Source could lower blood pressure, reduce cholesterol, and treat AIDS and chronic fatigue syndrome)
- Nutrivida, Inc., 126 F.T.C. 339 (1998) (consent order) (challenging claims for shark cartilage product purported to treat cancer, arthritis, diabetes, and other serious conditions)
- Venegas, Inc., 125 F.T.C. 266 (1998) (consent order) (challenging deceptive claims that product containing wheat germ, bran, soybean extract, and seaweed could treat diabetes, anemia, high blood pressure, and other serious conditions)
- Global World Media Corp., 124 F.T.C. 426 (1997) (consent order) (challenging safety claims and requiring safety disclosures in ads for Herbal Ecstasy, ephedra-based product advertising as a natural high)
- Home Shopping Network, Inc., 122 F.T.C. 227 (1996) (consent order) (challenging unsubstantiated claims for vitamin and stop-smoking sprays); and United States v. Home Shopping Network, Inc., No. 99-897-CIV-T-25C (M.D. Fla. Apr. 15, 1999) (consent decree) (\$1.1 million civil penalty for violating FTC order barring false and unsubstantiated claims for skin care, weight-loss, and PMS and menopause products)
- FTC v. Redhead, No. 93-1232-JO (D. Ore. June 20, 1994) (stipulated permanent injunction) (challenging deceptive claims that algae-based product could treat AIDS)
- United States v. General Nutrition Corp., No. 94-686 (W.D. Pa. Apr. 28, 1994) (stipulated permanent injunction) (\$2.4 million civil penalty for unsubstantiated disease prevention, weight loss, and muscle building claims for dietary supplements)

E. Weight Loss and Fitness: The FTC has challenged deceptive weight loss claims for products, services, and exercise devices through traditional law enforcement actions and industry outreach and education.

1. Industry Guidance. In September 2002, FTC staff issued *Report on Weight Loss Advertising: An Analysis of Current Trends*, a study of deceptive themes found in diet ads. The FTC held a workshop in November 2002 to consider efforts to combat fraud in weight loss advertising and issued a follow-up report, *Deception in Weight Loss Advertising: Seizing Opportunities and Building Partnerships to Stop Weight Loss Fraud*, in December 2003. The agency published *Red Flags: A Reference Guide for Media on Bogus Weight Loss Claim Detection*, revising that guidance in a 2014 publication, *Gut Check*. In April 2005, the FTC released a report studying industry compliance with calls for more effective self-regulation. According to *2004 Weight-Loss Advertising Survey: A Report From the Staff of the Federal Trade*

Commission, the percentage of ads for weight loss products that contain claims that the FTC considers to be patently false dropped from almost 50% in 2001 to 15% in 2004.

2. Representative weight loss and fitness cases:

- FTC v. Cure Encapsulations, Inc., No. 1:19-CV-00982 (E.D.N.Y. Feb. 26, 2019) (stipulated order) (partially suspended \$12.8 million judgment to settle charges that defendants made false and unsubstantiated claims for garcinia cambogia weight loss pill and paid a third-party website to post fake reviews on Amazon)
- FTC v. Roca Labs, Inc., No. 8:15-CV-02231-MSS-TBM (M.D. Fla. Jan. 4, 2019) (final judgment) (challenging defendants' deceptive weight loss claims and their practice of enforcing "gag clauses" to stop consumers from posting negative reviews)
- FTC v. NutriMost LLC, No. 2:17-CV-00509-NBF (W.D. Pa. Apr. 21, 2017) (stipulated final judgment) (\$2 million redress for deceptive claims that weight loss product would help consumers permanently lose "20 to 40+ pounds in 40 days" without significantly cutting calories)
- FTC v. Nicholas Scott Congleton and Dylan Loher, No. 8:14-CV-0155-SDM-TGW (M.D. Fla. Nov. 14, 2016) (order) (\$30 million judgment against Pure Green Coffee pitchman, who used false diet claims, testimonials, and news websites). See also FTC v. NPB Advertising, Inc., No. 8:14-CV-0155-SDM-TGW (M.D. Fla. Nov. 17, 2015) (stipulated order) (partially suspended \$30 million judgment for deceptive weight loss claims for dietary supplement containing green coffee bean extract promoted, among other places, on The Dr. Oz Show)
- FTC v. Lunada Biomedical, Inc., No 2:15-CV-03380-MWF (PLAx) (C.D. Cal. May 20, 2016) (stipulated order) (\$40 million partially suspended judgment for deceptive claims that Amberen causes weight loss, fat loss, and increased metabolism in women over 40)
- FTC v. HCG Diet Direct, LLC, No. 2:14-CV-00015-NVW (D. Az. Feb. 25, 2016) (order) (lifting suspension of \$3.2 million judgment for weight loss claims for product marketed as homeopathic HCG drops based on defendants' untruthful financial information)
- FTC v. Sale Slash, LLC, No. CV15-03107 (C.D. Cal. Feb. 8, 2016) (stipulated order) (\$10 million judgment for false weight loss claims, unauthorized celebrity endorsements, use of bogus news sites, and violations of the CAN-SPAM Rule)

- FTC v. Original Organics LLC, No. 2:16-DC-00023-GZS (D. Me. Feb. 5, 2016) (partially suspended \$16 million judgment to settle FTC-Maine AG action challenging illegal billing practices and deceptive diet claims for AF Plus and Final Trim)
- Crystal Ewing, Classic Productions, Inc., and Ricki Black, (D. Nev. Nov. 17, 2015) (stipulated order) (\$2.7 judgment against Ewing and corporate defendant and partially suspended \$1.6 million judgment against Black for deceptive weight loss claims for W8-B-Gone, CITRI-SLIM 4, and Quick & Easy)
- FTC v. Genesis Today, Pure Health, and Lindsey Duncan, No. 1:15-cv-62 (W.D. Tex. Jan. 26, 2015) (\$9 million redress for deceptive weight loss claims for green coffee bean extract made through campaign that included appearances on Dr. Oz Show)
- FTC v. DERMAdoctor, Inc., No. 14-01129-CV-W-BP (W.D. Mo. Dec. 23, 2014) (stipulated order) (challenging deceptive reduction claims for Shrinking Beauty)
- FTC v. Solace International, Inc., No. 3:14-cv-00638-MMD-WGC (D. Nev. Dec. 23, 2014) (stipulated permanent injunction) (challenging deceptive weight loss claims for Lipydryl)
- FTC v. HCG Platinum, LLC, No. 2:13-CV-02215-HRH (D. Az. Oct. 30, 2013) (Dec. 11, 2014) (stipulated judgment) (partially suspended \$10 million judgment for deceptive claims for HCG Platinum line of purported weight loss products)
- Wacoal America, Inc., C-4496 (Sept. 29, 2014) (consent order) (\$1.3 million for deceptive reduction claims for caffeine-infused shapewear)
- Norm Thompson Outfitters, Inc., C-4495 (Sept. 29, 2014) (consent order) (\$230,000 redress for deceptive reduction claims for caffeine-infused shapewear and false claim that products were endorsed by Dr. Oz)
- United States v. ICON Health and Fitness, Inc., No. 1:14-CV-1578 (D.D.C. Sept. 14, 2014) (stipulated order) (\$3 million civil penalty for deceptive weight loss and fitness claims for ab GLIDER, in violation of 1997 FTC order)
- HealthyLife Sciences LLC, C-4492, and John Matthew Dwyer III, C-4493 (Sept. 11, 2011) (consent orders) (challenging false and deceptive claims that Healthe Trim would cause substantial weight loss and banning officer from weight loss industry)

- FTC v. Applied Food Sciences, Inc., No. 1-14-CV-00851 (W.D. Tex. Sept. 8, 2014) (stipulated order) (\$3.5 million to settle charges that company used flawed study results to make baseless weight loss claims about green coffee extract to retailers, who repeated claims to consumers)
- FTC v. 7734956 Canada Inc., No. 1:14-CV-02267-CCB (D. Md. July 25, 2014) (stipulated order) (\$500,000 redress for deceptive weight loss claims for Double Shot Weight Regulator)
- FTC v. Sensa Products, LLC, No. 11CV72 (N.D. Ill. Jan. 7, 2014) (stipulated judgment) (\$26.5 million redress for deceptive weight loss claims and misleading endorsements for Sensa)
- L'Occitane, Inc. C-4445 (Jan. 7, 2014) (consent order) (\$450,000 redress for deceptive slimming claims for Almond Beautiful Shape and Almond Shaping Delight skin creams)
- FTC v. Clickbooth.com, LLC, No. 1:12-CV-09087 (N.D. Ill. Nov. 14, 2012) (\$2 million redress to settle charges that affiliate marketers make deceptive weight loss claims on bogus news sites about acai berry supplements and “colon cleansers”)
- United States v. Jason Pharmaceuticals, Inc., No. 1:12-CV-01476 (D.D.C. Sept. 10, 2012) (consent decree) (\$3.7 million civil penalty from subsidiary of Medifast for violations of FTC order)
- FTC v. Fitness Brands, No. 1:12-CV-23065-CMA (S.D. Fla. Aug. 23, 2012) (stipulated judgment) (\$15 - \$25 million redress for deceptive weight loss and fitness claims for Ab Circle Pro)
- FTC v. Skechers U.S.A. Inc., No. 1:12-CV-01214-JG (N.D. Ohio May 16, 2012) (stipulated judgment) (\$40 million redress for deceptive claims that Skechers Shape-ups and other shoes would help people lose weight, and strengthen and tone their buttocks, legs and abdominal muscles)
- FTC v. IMM Interactive d/b/a COPEAC and Intermark Media, No. 1:11-CV-02484 (N.D. Ill. Mar. 21, 2012); FTC v. Coulomb Media, No. 2:11-CV-11618-RHC-LJM (E.D. Mich. Mar. 21, 2012); FTC v. DLXM LLC, No. CV 11-1889 (E.D.N.Y. Jan. 25, 2012); FTC v. Vaughn, No. 2:11-CV-00630-RAJ (W.D. Wash. Jan. 25, 2011); FTC v. Dunlevy, No. 1:11-CV-01226-TWT (N.D. Ga. Jan. 25, 2012); FTC v. Labra, No. 1:11-CV-02485 (N.D. Ill. Jan. 25, 2012); and FTC v. Ambervine Marketing, No. 1:11-CV-02487 (N.D. Ill. Jan. 25, 2012); and FTC v. Circa Direct, No. 1:11-CV-02172-RMB-AMD (D.N.J. Oct. 19, 2012) (stipulated judgments) (challenging affiliate marketers’ practice of using bogus news websites to market acai berry diet products)

- FTC v. Central Coast Nutraceuticals, Inc., No. 10C4931 (N.D. Ill. Jan. 9, 2012) (stipulated order) (\$1.5 million redress for deceptive claims that acai supplements and “colon cleansers” could cause weight loss and prevent cancer, falsely claiming that products were endorsed by Oprah Winfrey and Rachael Ray, and making unauthorized charges to consumers’ credit cards for “free” or “risk free” trial offers)
- FTC v. Stella Labs, LLC, No. 2:09-CV-01262-WJM-CCC (D.N.J. Nov. 3, 2011) (stipulated judgment) (\$22.5 million judgment against defendants that sold ingredient purporting to be hoodia to others that marketed weight loss products)
- FTC v. Reebok International Ltd., No. 1:11-CV-02046-DCN (N.D. Ohio Sept. 28, 2011) (stipulated judgment) (\$25 million redress for deceptive claims regarding the ability of Reebok EasyTone and RunTone shoes to provide extra toning and strengthening of leg and buttock muscles)
- Beiersdorf, Inc., 152 F.T.C. 414 (2011) (consent order) (\$900,000 redress for deceptive claims that Nivea My Silhouette! skin cream can significantly reduce users’ body size)
- FTC v. Bronson Partners, LLC, 654 F.3d 359 (2d Cir. 2011) (affirming \$1.9 million redress for deceptive claims for Chinese Diet Tea and Bio-Slim Patch)
- United States v. QVC, Inc., No. 04-CV-1276 (E.D. Pa. Mar. 19, 2009) (consent decree) (\$6 million redress for deceptive claims for For Women Only weight loss pills, Lite Bites weight loss bars and shakes, and Bee-Alive Royal Jelly energy supplements, and \$1.5 civil penalty for deceptive claims for Lipofactor Cellulite Target Lotion, in violation of 2000 FTC order)
- FTC v. Telebrands Corp., No. 2:07CV3525 (D.N.J. Jan. 14, 2009) (stipulated final order) (\$7 million redress for false weight loss and muscle development claims for Ab Force electronic abdominal belt). See also Telebrands Corp. v. FTC, 457 F.3d 354 (4th Cir. 2006), aff’g, 140 F.T.C. 278 (2005).
- FTC v. Spear Systems, Inc., No. 07C-5597 (N.D. Ill. July 15, 2008) (stipulated judgment against certain defendants) (\$29,000 disgorgement from international marketers who used illegal spam to drive traffic to their websites where they sold hoodia products deceptively advertised to cause rapid, substantial weight loss)

- FTC v. Sili Neutraceuticals, LLC, No. 07C 4541 (N.D. Ill. Feb. 4, 2008) (permanent injunction) (\$2.5 million redress for using illegal email to disseminate deceptive claims for hoodia weight-loss products and human growth hormone anti-aging products)
- FTC v. Centro Natural Services, Inc., No. SACV06-989 JVS (RNBx) (C.D. Cal. Jan. 30, 2008) (stipulated order) (\$2.3 million suspended judgment for deceptive weight loss claims for Centro Natural de Salud Obesity Treatment)
- FTC v. Diet Coffee, Inc., No. 1:08-CV-0094-JSR-DCF (S.D.N.Y. Jan. 15, 2008) (stipulated order) (\$923,910 suspended judgment for deceptive weight loss claims for “diet coffee” containing hoodia)
- United States v. Bayer Corp., No. 07-01(HAA) (D.N.J. Jan. 4, 2007) (consent decree) (\$3.2 million civil penalty for deceptive weight loss claims for One-A-Day WeightSmart, disseminated in violation of an earlier FTC order)
- FTC v. Chinery, No. 05-3460 (GEB) (D.N.J. Jan. 4, 2007) (stipulated order) (at least \$8 million redress for deceptive weight loss claims for Xenadrine EFX, deceptive testimonials, and failure to disclose material connection between advertiser and endorsers); Cytodyne, LLC, 140 F.T.C. 191 (2005) (consent order) (\$100,000 redress for deceptive claims for Xenadrine EFX)
- FTC v. Window Rock Enterprises, Inc., No.: CV04-8190 DSF (JTLx) (C.D. Cal. Jan. 4, 2007 and Sept. 21, 2005) (stipulated orders) (\$12 million in cash and assets for deceptive claims that CortiSlim and CortiStress can cause weight loss and reduce the risk of, or prevent, serious health conditions)
- TrimSpa, Inc., 143 F.T.C. 269 (2007) (consent order) (\$1.5 million redress for deceptive claims for that one of TrimSpa’s ingredients, *hoodia gordonii*, enables users to lose weight by suppressing the appetite)
- Basic Research, D-9318 (May 11, 2006) (consent order) (\$3 million redress for deceptive representations for Leptoprin, Anorex, Dermalin, and other purported weight loss products and PediaLean, a purported weight loss product for children)
- FTC v. Kingstown Associates, Ltd., No.: 03-CV-910A (W.D.N.Y. Sept. 15, 2005) (stipulated order) (\$150,000 redress for deceptive claims for Hydro-Gel Slim Patch and Slenderstrip and order banning UK defendants from advertising or selling supplement, food, drug, or weight loss products)

- FTC v. FiberThin LLC, (S.D. Cal. June 14, 2005) (stipulated order) (\$1.5 million redress and \$41 million suspended judgment for deceptive weight loss and metabolism enhancement claims for FiberThin, Propolene, Excelerene, and MetaboUp)
- FTC v. SG Institute of Health & Education, No. 04-61627 (S.D. Fla. Dec. 15, 2004) (stipulated order), and FTC v. Transdermal Products Int'l Marketing Corp., No. 04-CV-5794 (E.D. Pa. Aug. 20, 2007) (order) (\$180,000 redress for role of manufacturer and retailer in making deceptive claims for purported weight loss patches)
- FTC v. National Institute for Clinical Weight Loss, Inc., No. 1:04-CV-3294 (N.D. Ga. Jan. 15, 2009) (final judgment) (\$15 million redress for deceptive claims for Thermalean, Lipodrene, and Spontane-ES)
- ***Operation Big Fat Lie:*** FTC v. AVC Marketing, No. 04C6915 (N.D. Ill. June 20, 2005) (stipulated judgment) (\$400,000 redress for deceptive weight loss claims for Himalayan Diet Breakthrough); FTC v. Iworx, No. 2:04-CV-00241-GPS (D. Me. May 19, 2005) (stipulated judgment) (partially suspended \$20 million judgment from marketer of UltraLipoLean); FTC v. CHK Trading Corp., No. 04-CV-8686 (S.D.N.Y. July 26, 2005) (stipulated judgment); FTC v. Femina, Inc., No. 04-61467 (S.D. Fla. May 17, 2005) (stipulated judgment) (suspended \$43,000 judgment for deceptive weight loss claims for 1-2-3 Reduce Fat, Silhouette Patch, and Fat Seltzer Reduce)
- FTC v. Harry Siskind, No. SA02CA1151EP (W.D. Tex. Oct. 22, 2004) (stipulated order) (\$155 million judgment for falsifying financial statement to hide assets from the FTC)
- FTC v. Slim Down Solution, LLC, No. 03-80051 (S.D. Fla. Oct. 19, 2004) (modified order) (challenging deceptive claims that Slim Down Solution and ingredient D-glucosamine could block fat absorption and cause consumers to lose weight without dieting)
- FTC v. Pinnacle Marketing, No. 04-CV-185-PC (D. Maine Aug. 26, 2004) (stipulated judgment) (\$212,000 redress for deceptive claims for Ultra Carb weight loss product)
- FTC v. VisionTel Communications LLC, No. 1:04CV01412 (D.D.C. Aug. 26, 2004) (stipulated judgment) (\$750,000 redress for deceptive claims for Chito Trim and Turbo Tone diet products and two supplements advertised to treat sexual dysfunction)
- FTC v. Kamarfu Enterprises, Inc., No. 04-21280 (S.D. Fla. June 17, 2004) (stipulated order) (\$30,000 redress for deceptive claims for 1-2-3 Diet Kit advertised in Spanish-language media)

- Dynamic Health of Florida, LLC, 141 F.T.C. 287 (2006), and Jonathan Barasch, 138 F.T.C. 355 (2004) (consent orders) (challenging deceptive representations for Pedia Loss, a purported weight loss product for children)
- FTC v. Advanced Patch Technologies, No. 1:04-CV-0670 (N.D. Ga. Mar. 9, 2004) (stipulated judgment) (more than \$1 million redress for false weight loss claims for Peel Away the Pounds diet patch); and (N.D. Ga. Sept. 30, 2008) (\$\$110,539 for violating 2004 orders by continuing to make false weight loss claims)
- FTC v. The Fountain of Youth Group, No. 3:04-CV-47-J-99HTS (M.D. Fla. Jan. 28, 2004) (stipulated order) (\$6 million suspended judgment for deceptive weight loss claims for Skinny Pills, Skinny Pills for Kids, and other diet products)
- FTC v. Universal Nutrition Corp., No. 1-03-CV-3822 (N.D. Ga. Dec. 9, 2003) (stipulated judgment) (\$1 million redress for deceptive weight loss claims for ThermoSlim, a purported diet product containing ephedra and other ingredients)
- FTC v. Beauty Visions Worldwide, No. 03 CV 0910 (SC) (W.D.N.Y. Oct. 12, 2004) (stipulated order) (partially suspended \$1.4 million judgment for fulfillment house's role in marketing Hydro-Gel Slim Patch and Slenderstrip, seaweed-based patches advertised to cause weight loss without diet or exercise)
- FTC v. Savvier, Inc., No. LACV 03-8159 FMC (C.D. Cal. Sept. 1, 2004) (stipulated judgment) (\$2.6 million redress for deceptive weight loss representations for BodyFlex products, including claim that users will lose 4 to 14 inches in the first seven days)
- FTC v. No. 9068-8425 Quebec, Inc., No. 1:02:CV-1128 (N.D.N.Y. July 10, 2003) (stipulated order) (partially suspended \$12 million judgment for deceptive diet claims for Quick Slim Fat Blocker and Cellu-Fight)
- United States v. Estate of Michael Levey, No. CV-03-4670 GAF (AJWx) (C.D. Cal. July 1, 2003) (\$2.2 million redress for deceptive safety and efficacy claims for ephedra-based weight loss products)
- FTC v. USA Pharmacal Sales, Inc., (M.D. Fla. July 1, 2003) (stipulated judgment) (\$175,000 redress for deceptive safety and efficacy claims for ephedra-based weight loss products)
- FTC v. Health Laboratories of North America, Inc., (D.D.C. July 1, 2003) (stipulated judgment) (\$195,000 redress for deceptive safety and efficacy claims for ephedra weight loss products)

- FTC v. Mark Nutritionals, Inc., No. SA02CA1151EP (W.D. Tex. Dec. 8, 2003) (stipulated order) (\$1 million redress in state and federal actions and \$1 million bond for deceptive claims for Body Solutions, marketed through endorsements by radio personalities)
- FTC v. United Fitness of America, No. CVS 020648-KJD (D. Nev. July 21, 2003) (stipulated judgment) (\$5 million redress for deceptive fat loss and muscle building claims for Fast Abs belt); FTC v. Hudson Berkley Corp., No. CVS 020649-PMP (D. Nev. July 1, 2003) (permanent injunction) (holding defendants liable for \$83 million redress for deceptive fat loss and muscle building claims for Abtronic belt); FTC v. AbFlex USA, Inc. and Ab Energizer, L.L.C., No. 02CV888H-AJB (S.D. Cal. Apr. 22, 2005) (stipulated order) (\$1.4 redress for deceptive fat loss and muscle building claims for abdominal belt)
- Weider Nutrition International, Inc., C-3983 (Nov. 17, 2000) (consent order) (\$400,000 redress for deceptive claims for PhenCal, advertised as safe and effective alternative to drugs Phen-Fen)
- FTC v. Enforma Natural Products, No. 04376JSL(CWx) (C.D. Cal. Apr. 26, 2000) (stipulated order) (\$10 million redress for deceptive fat absorption, fat blocking, and weight loss claims). See FTC v. Enforma Natural Products, Inc., No. 04376JSL (CWx) (C.D. Cal. Jan. 18, 2005) (stipulated order) (resolving contempt proceedings by banning defendants from marketing weight loss products)
- Herbal Worldwide Holding Corp., 126 F.T.C. 356 (1998) (consent order) (challenging deceptive diet claims for product containing chitin, psyllium, glucomannan, and apple pectin)
- TrendMark International, Inc., 126 F.T.C. 365 (1998) (consent order) (challenging deceptive weight loss and cholesterol-reduction claims for chitin product)
- FTC v. SlimAmerica, Inc., No. 97-6072-Civ (S.D. Fla. 1999) (permanent injunction) (\$8.3 million redress from marketer of purported weight loss products)
- ***Operation Waistline***: See, e.g., Bodywell, Inc., 123 F.T.C. 1577 (1997); Cambridge Direct Sales, 123 F.T.C. 1596 (1997); 2943174 Canada Inc., 123 F.T.C. 1465 (1997) (consent orders) (challenging diet claims for SeQuester, Lipitrol, Fat Burner, Slimming Insoles, the Cambridge Diet, and other products)

- ***Project Workout:*** Abflex, U.S.A., Inc., 124 F.T.C. 354 (1997); Kent and Spiegel Direct, Inc., 124 F.T.C. 300 (1997); Icon Health and Fitness, Inc., 124 F.T.C. 215 (1997); and Life Fitness, 124 F.T.C. 236 (consent orders) (challenging deceptive calorie-burning claims for the Abdomenizer, the Lifecycle, and the Proform Cross Walk Treadmill)
- Jenny Craig, Inc., 125 F.T.C. 333 (1998) (consent order) (challenging deceptive claims for weight loss program)
- Weight Watchers International, Inc., 124 F.T.C. 610 (1997) (consent order) (challenging deceptive claims for weight loss program)
- Nutrition 21, 124 F.T.C. 1 (1997) (consent order) (challenging deceptive weight loss claims for products containing chromium picolinate)
- NordicTrack, Inc., 121 F.T.C. 907 (1996) (consent order) (challenging deceptive weight loss study claims for exercise device)
- Schering Corp., 118 F.T.C. 1030 (1994) (consent order) (challenging deceptive weight loss and fiber content claims for Fiber-Trim tablet)
- Nutra/System, Inc., 116 F.T.C. 1408 (1993) (consent order) (challenging deceptive claims for weight loss program)

IX. ENVIRONMENTAL AND ENERGY-RELATED ADVERTISING

- A. ***Guides for the Use of Environmental Marketing Claims***, 16 C.F.R. § 260. After workshops and public comment, the FTC issued Environmental Marketing Guides in 1992, revising them in 1996, 1998, and 2012. The Guides offer interpretations of how FTC caselaw applies to green marketing claims. Through definitions and examples, the Guides address the use of terms like biodegradable, recyclable, recycled, and ozone-friendly, as well as general environmental benefit claims like environmentally safe or environmentally friendly. They also establish that disclosures must be clear and prominent.
- B. ***Warning Letters***. On February 3, 2010, the FTC sent warning letters to 78 companies that advertised their products as bamboo when, in fact, they were made of rayon, a manmade fiber created from cellulose found in plants and trees and processed with chemicals that release air pollution. In 2014 and 2015, the FTC sent warning letters to marketers of “oxodegradable” plastic waste bags that their claims may be deceptive under the Green Guides. FTC staff sent warning letters on September 14, 2015, to five groups that offer environmental certifications or seals and 32 businesses that display them, raising concerns about possibly deceptive claims.

C. Representative “environmentally friendly,” certification, or related cases:

- United States v. Nordstrom, Inc., 1:15-CV-02130; United States v. Bed Bath & Beyond, Inc., No. 1:15-CV-02129; United States v. J.C. Penney Co., No. 1:15-CV-02128; and United States v. Backcountry.com, No. 1:15-CV-02127 (D.D.C. Dec. 9, 2015) (\$1.3 million total civil penalties for labeling and advertising rayon products as bamboo)
- United States v. Leon Max, Inc., No. 1:13-CV-00003; United States v. Sears, Roebuck and Co., Kmart Corp., and Kmart.com, LLC, No. 1:13-CV-00005; United States v. Macy’s, Inc., No. 1:13-CV-00004; and United States v. Amazon.com, Inc., No. 1:13-CV-00002-TFH (D.D.C. Jan. 3, 2013) (stipulated judgments) (\$1.26 million total civil penalties for labeling and advertising products as bamboo, when they were made of rayon)
- Nonprofit Management LLC, 151 F.T.C. 144 (2011) (consent order) (challenging the marketing of false “Tested Green” certifications that involved no environmental testing and were purportedly “endorsed” by two firms, which the company owned)
- Sami Designs, LLC, d/b/a Jonäno, C-4279; CSE, Inc., d/b/a MAD MOD, C-4280; Pure Bamboo, LLC, C-4278 (Aug. 11, 2009); and The M Group, Inc., d/b/a Bamboosa, D-9340 (consent orders) (charging that companies deceptively advertised rayon products as bamboo and deceptively claimed products were manufactured using an environmentally friendly process, retained natural antimicrobial properties of bamboo, and were biodegradable)

D. Representative degradability cases:

- ECM BioFilms, Inc., No. 15-4339 (6th Cir. Mar. 16, 2017) (affirming FTC ruling that company made false and unsubstantiated biodegradability claims)
- Nice-Pak Products, Inc., C-4556 (May 18, 2015) (consent order) (challenging deceptive claims that moist toilet tissue was flushable and safe for sewer and septic tanks)
- Down to Earth Designs, Inc. d/b/a gDiapers, C-4443 (Jan. 17, 2014) (consent order) (challenging deceptive claims about diapers’ biodegradability, compostability, and other environmentally friendly attributes)
- FTC v. AJM Packaging Corp., No. 1:13-CV-1510 (D.D.C. Oct. 29, 2013) (stipulated order) (\$450,000 civil penalty for violating FTC order barring deceptive biodegradability claims)

- Clear Choice Housewares, Inc., 156 F.T.C. 495 (2013); Carnie Cap, Inc., 156 F.T.C. 447 (2013); American Plastic Manufacturing, Inc., C-4478; MacNeill Engineering Company, Inc., 156 F.T.C. 447 (2013) (consent orders) (challenging biodegradability claims for plastic products)
- Dyna-E International Corp., D-9336 (Aug. 26, 2009); Kmart Corp., C-4263 (June 9, 2009); and Tender Corp., C-4261 (June 9, 2009) (consent orders) (challenging deceptive claims that towels, paper plates, and wipes were biodegradable when a substantial majority of solid waste is disposed of by methods that don't allow products to completely break down)
- Archer Daniels Midland Co., 117 F.T.C. 403 (1994) (consent order) (challenging deceptive biodegradable and landfill benefit claims for plastic products containing corn starch additive)
- Mobil Oil Corp., 116 F.T.C. 113 (1993) (consent order) (challenging deceptive biodegradable and landfill benefit claims for Hefty trash bags)

E. Representative “free of” or “zero” cases:

- Moonlight Slumber, LLC, C-4634 (Sept. 28, 2017) (consent order) (challenging deceptive claims that baby mattresses were organic and free of volatile organic compounds)
- Benjamin Moore & Co., Inc., C-4646; Imperial Paints, C-4647; ICP Construction, Inc., C-4648; and YOLO Colorhouse, C-4648 (July 11, 2017) (consent orders) (challenging deceptive claims that paints were emission- and VOC-free and safe for babies and other sensitive populations)
- Relief-Mart, Inc., 156 F.T.C. 284 (2013); EcoBaby Organics, Inc., 156 F.T.C. 334 (2013) ; and Essentia Natural Memory Foam Company, 156 F.T.C. 360 (2013) (consent orders) (challenging deceptive claims that mattresses are free of VOCs)
- Sherwin-Williams Company, 155 F.T.C. 332 (2012) (consent order); and PPG Architectural Finishes, Inc., 155 F.T.C. 305 (2012) (consent order) (challenging deceptive claim that interior paint contained “zero” VOCs)

F. Representative recycled content or recyclability cases:

- Engineered Plastic Systems, LLC, C-4485 (Sept. 11, 2014) (consent order) (challenging deceptive recycled content claims for plastic lumber products)
- American Plastic Lumber, Inc., C-4478 (June 19, 2014) (consent order) (challenging deceptive recycled content claims for plastic lumber products)
- N.E.W. Plastics Corp., C-4449 (Feb. 18, 2014) (consent order) (challenging deceptive claims about recycled content and recyclability of two brands of plastic lumber)

- FTC v. AJM Packaging Corp., No. 1:13-CV-1510 (D.D.C. Oct. 29, 2013) (stipulated order) (\$450,000 civil penalty for violating FTC order barring deceptive recyclability claims)
- LePage's, Inc., 118 F.T.C. 31 (1994) (consent order) (challenging deceptive recyclability claims for tape's plastic dispenser and paperboard card where few facilities exist to recycle either material)
- Keyes Fibre Co., 118 F.T.C. 150 (1994) (consent order) (challenging deceptive biodegradability and recyclability claims for Chinnet plates where few facilities exist to recycle food-contaminated waste)

G. Representative cases challenging claims regarding ozone/CFCs

- Creative Aerosol Corp., 119 F.T.C. 13 (1995) (consent order) (challenging deceptive "Environmentally Safe Contains No Fluorocarbons" claims for aerosol soaps containing VOCs and ozone-depleting chemicals)
- Redmond Products, Inc., 117 F.T.C. 71 (1994) (consent order) (challenging deceptive green claims for Aussie hair products that contained VOCs that can contribute to smog formation)

H. Representative cases challenging "all natural" claims

- California Naturel Inc., D-9370 (Dec. 12, 2016) (Commission Opinion) (ruling that company's "all natural" claim was deceptive because 8% of its sunscreen was made of dimethicone, a synthetic ingredient)
- Trans-India Products, Inc., C-4582 (2016); Erickson Marketing Group Inc., C-4583 (2016); ABS Consumer Products, LLC, C-4584 (2016); Beyond Coastal, C-4585 (2016) (consent orders) (challenging deceptive "all natural" or "100% natural" claims for personal care products containing synthetic ingredients)

I. Representative cases challenging environmental health or safety claims:

- FTC v. Volkswagen Group of America, Inc., No. 3:15-MD-2672 (N.D. Cal. June 28, 2016) (partial stipulated order) (\$10 billion to compensate owners and lessees and to settle charges that VW made false "clean diesel" claims for 2.0L vehicles equipped with defeat device that cheated on emissions testing). See also FTC v. Volkswagen Group of America, Inc., No. 3:15-MD-2672 (N.D. Cal. Feb. 1, 2017) (second partial stipulated order) (related settlement for owners of 3.0L diesels)
- FTC v. TradeNet Marketing, Inc., No. 99-944-CIV-T-24B (M.D. Fla. Apr. 21, 1999) (consent order) (challenging deceptive claims for a laundry detergent substitute advertised to clean clothes without causing water pollution)

- Safe Brands Corp., 121 F.T.C. 379 (1996) (consent order) (challenging deceptive claims that Sierra antifreeze was safe if ingested, environmentally safe, and safer for the environment than conventional antifreeze)
- Orkin Exterminating Co., 117 F.T.C. 747 (1994) (consent order) (challenging deceptive claims that company's lawn pesticides are "practically non-toxic" and pose no significant risk to human health or environment)
- Mr. Coffee, Inc., 117 F.T.C. 156 (1994) (consent order) (challenging deceptive claims paper filters were manufactured by a chlorine-free process that was not harmful to the environment)
- The Vons Companies, 113 F.T.C. 779 (1990) (consent order) (challenging deceptive claims for pesticide-free produce sold in grocery stores)

J. Representative cases challenging energy savings claims or violations of energy-related regulations:

- FTC v. Lights of America, Inc., No. SACV10-1333 JVS (MLGx) (C.D. Cal. Feb. 20, 2014) (final judgment) (\$21 million judgment for exaggerated claims about the light output and life expectancy of defendant's LED bulbs)
- FTC v. Green Foot Global, LLC, No. 2:13-CV-02064 (D. Nev. Nov. 22, 2013) (\$800,000 redress for deceptive fuel economy and emissions reduction claims for EnviroTab fuel additive)
- Long Fence & Home, LLLP, C-4352; Serious Energy, Inc., C-4359; Gorell Enterprises, Inc., C-4360; THV Holdings LLC, C-4361; and Winchester Industries, C-4362 (Feb. 22, 2012) (consent orders) (challenge deceptive energy-saving and cost-saving claims for replacement windows)
- FTC v. Dutchman Enterprises, No. 09-141 (FSH) (D.N.J. Dec. 20, 2011) (stipulated order for permanent injunction) (challenging as deceptive company's claims that device can boost gas mileage by 50% and "turn any vehicle into a hybrid")
- Homeeverything.com, C-4304; Appliancebestbuys.com, D-9347; Abt Electronics, Inc., C-4302; P.C. Richard & Son, Inc., C-4303; Universal Appliances, Kitchens, and Baths, Inc., C-4319 (consent orders) (Nov. 1, 2010) (\$400,000 in total civil penalties against retailers for failure to post EnergyGuide information on websites)
- FTC v. International Research and Development Company of Nevada, No. 04C 6901 (N.D. Ill. Aug. 22, 2006) (\$4.2 million redress and lifetime ban for deceptive fuel-saving and emission-reduction claims for FuelMAX and Super FuelMAX)

- Dura Lube, Inc., D-9292 (May 5, 2000) (consent order) (challenging deceptive claims that engine treatment could reduce wear, prolong engine life, reduce emissions, and increase gas mileage by up to 35%)
- Castrol North America Inc., 128 F.T.C. 682 (1999), and Shell Chemical Co., 128 F.T.C. 749 (1999) (consent orders) (challenging deceptive power and acceleration claims for Syntec fuel additives manufactured by Shell and marketed by Castrol)
- Ashland, Inc., 125 F.T.C. 20 (1998) (consent order) (challenging misleading claims about Valvoline TM8 Engine Treatment's ability to reduce engine wear and improve fuel economy)
- Exxon Corp., 124 F.T.C. 249 (1997) (consent order) (challenging misleading claims about gasoline's ability to clean engines and reduce maintenance costs)
- United States v. STP Corp., No. 78 Civ. 559 (S.D.N.Y. Dec. 1, 1995) (stipulated order) (\$888,000 civil penalty for violation of order prohibiting deceptive claims for motor oil additives)
- Unocal Corp., 117 F.T.C. 500 (1994) (consent order) (challenging unsubstantiated performance claims for higher octane fuels)
- Osram Sylvania, Inc., 116 F.T.C. 1297 (1993) (consent order) (challenging deceptive claim that Energy Saver light bulbs will save energy, conserve natural resources, and reduce electricity costs when company failed to disclose product provided less light than bulbs they are designed to replace)
- General Electric Co., 116 F.T.C. 95 (1992) (consent order) (challenging deceptive claim that Energy Choice light bulbs will save energy, reduce pollution, and reduce electricity costs when company failed to disclose that product provided less light than bulbs they are designed to replace)

X. TOBACCO

- A. The Cigarette Act originally gave the FTC administrative responsibility for rotational plans for health warnings on packaging and advertising. The 2009 Family Smoking Prevention and Tobacco Control Act, 21 U.S.C. §387, gives FDA specific jurisdiction to regulate tobacco products, including advertising, marketing, and packaging. In addition, the Act set out a new regulatory scheme for health warnings, giving the HHS Secretary authority to revise the warnings. The Act transferred responsibility for the review and approval of health warning plans from the FTC to FDA, and in June 2010 FDA took over responsibility for smokeless tobacco health warnings. However, for cigarettes, the Act ties the effective date of that transfer to the issuance of new health warning labels by FDA. FDA issued new warnings in June 2011, but those warnings were challenged on First Amendment grounds.

B. The FTC reports annually on the amount spent on the advertising and promotion of cigarettes and smokeless tobacco. See, e.g., Federal Trade Commission Cigarette Report for 2011 (May 2013).

C. Representative tobacco cases:

- ***E-liquid warning letters.*** On May 1, 2018, the FTC and FDA sent warning letters to manufacturers, distributors, and retailers of e-liquids used in e-cigarettes that used packaging that looked like candy, juice boxes, and other food popular with young children. According to the letters, ingesting as little as a teaspoon of the liquid could be fatal to toddlers.
- Stoker, Inc., 131 F.T.C. 1139 (2001) (alleging that company violated the Smokeless Tobacco Act by failing to place health warnings in conspicuous and legible type and in a conspicuous and prominent place on smokeless tobacco packaging)
- Swisher International, Inc., Havatampa, Inc., Consolidated Cigar Corp., General Cigar Holdings, Inc., John Middleton, Inc., Lane Limited, and Swedish Match North America, C-3964 through C-3970 (Aug. 25, 2000) (consent orders) (requiring nation's seven largest cigar companies to include warnings about health risks of cigar use in ads and packaging)
- Santa Fe Natural Tobacco Company, Inc., C-3952 (June 16, 2000) (consent order) (challenging claim that Natural American Spirit cigarettes are safer than other cigarettes because they contain no additives)
- Alternative Cigarettes, Inc., C-3956 (June 16, 2000) (consent order) (challenging claim that Pure, Glory, Herbal Gold, and Magic cigarettes are safer than other cigarettes because they contain no additives)
- R.J. Reynolds Tobacco Co., 128 F.T.C. 262 (1999) (consent order) (challenging deceptive claims for Winston "no additives" cigarettes and requiring disclosures that "No additives in our tobacco does NOT mean a safer cigarette")
- American Tobacco Co., 119 F.T.C. 3 (1995) (consent order) (challenging deceptive claim that "10 packs of Carlton have less tar than one pack" of other brands)
- Pinkerton Tobacco Co., 115 F.T.C. 60 (1992) (consent order) (challenging as violations of television advertising ban the display of Redman Tobacco brand name and selling message on signs, vehicles, uniforms, etc., at company-sponsored televised events)
- R.J. Reynolds Tobacco Co., 113 F.T.C. 344 (1990) (consent order) (challenging deceptive claims regarding findings of scientific study on health effects of smoking)

XI. ALCOHOL

- A. Reports to Congress: In September 1999, the FTC issued *Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers*. Based on data submitted by eight marketers pursuant to Section 6(b) of the FTC Act, the FTC recommended that the industry: 1) create independent review boards to consider complaints from consumers and competitors; 2) raise the current standard that permits advertising placement in media where just over 50% of the audience is 21 or older; and 3) adopt a series of best practices to curb on-campus and spring break sponsorships, block underage access to websites, disallow placement on television shows with large underage audiences, and restrict paid product placements to R-rated or NC-17 movies. In September 2003, the FTC issued *Alcohol Marketing and Advertising: An FTC Report to Congress*. In response to inquiries about flavored malt beverages, the FTC concluded that marketers have generally complied with 2002 voluntary alcohol codes regarding ad placement. The FTC said it would continue to monitor new placement standards requiring that adults constitute 70% of the audience for advertising and the effectiveness of third-party and other review programs. The FTC issued a June 2008 report examining industry efforts to reduce the likelihood that alcohol advertising targets those under 21 and announcing a new system for monitoring industry compliance with self-regulatory programs. In April 2012, the FTC announced it was requiring 14 advertisers to provide data for a fourth study on the effectiveness of voluntary industry guidelines for reducing advertising and marketing to underage audiences. For the first time, the FTC requested information on Internet and digital marketing and data collection practices. Released in March 2014, that study reported 93% compliance with placement guidelines and included additional recommendations to the industry.
- B. Education and Outreach. The FTC supports the www.dontserveteens.gov initiative, in cooperation with Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau, other government agencies, consumer groups, and industry associations.
- C. Representative alcohol cases:
- Phusion Projects, LLC, C-4382 (Feb. 12, 2013) (consent order) (challenging false claims that a 23.5-ounce, 11 or 12% alcohol by volume can of Four Loko contains alcohol equivalent to one or two 12-ounce beers and requiring relabeling and repackaging)
 - ***Warning letters to sellers of caffeinated alcohol drinks***. On Nov. 17, 2010, the FTC sent warning letters to United Brands Co., seller of Joose and Max; Phusion Products LLC, seller of Four Loko and Four Maxed; Charge Beverages Corporation, seller of Core High Gravity, Core Spiked, and El Jefe; and New Century Brewing Company, seller of Moonshot, warning that the marketing of caffeinated alcohol drinks may constitute an unfair or deceptive practice.

- Constellation Brands, Inc., C-4266 (June 10, 2009) (consent order) (challenging deceptive claims for Wide Eye, a caffeinated alcohol product)
- Allied Domecq Spirits and Wine Americas, Inc. d/b/a Hiram Walker, 127 F.T.C. 368 (1999) (consent order) (challenging misrepresentation of Kahlua White Russian pre-mixed cocktail as a low-alcohol beverage)
- Beck's North America, Inc., 127 F.T.C. 379 (1999) (consent order) (challenging depiction in Beck's beer ads of potentially dangerous and illegal conduct)
- Canandaigua Wine Co., 114 F.T.C. 349 (1991) (consent order) (alleging that advertising and packaging of Cisco misrepresented the product as a wine cooler or other low-alcohol, single-serving drink, when in fact a single bottle of Cisco had the same quantity of alcohol as five one-ounce servings of 80 proof vodka)

XII. TELEMARKETING, 900 NUMBERS, AND TELECOMMUNICATIONS

- A. Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994, 15 U.S.C. § 6101: Pursuant to this law, the FTC promulgated and amended the ***Telemarketing Sales Rule***, 16 C.F.R. § 310. To protect consumers from deceptive and abusive telemarketing practices, the Rule:
1. Requires telemarketers promptly to disclose to consumers the fact that it is a sales call, the identity of the seller, the nature of the product offered, and if it is a prize promotion, the fact that no purchase is necessary to win, as well as to make certain disclosures before asking consumers for any credit card or bank account information or before they make arrangements for a courier to pick up payment.
 2. Contains broad prohibitions against misrepresentations regarding any of the information required to be disclosed and regarding any material aspect of the performance, efficacy, or nature of the goods or services.
 3. Prohibits telemarketers from debiting checking account without the consumer's express, verifiable authorization, and from making misleading statements to induce consumers to pay for goods or services.
 4. Bars anyone from giving substantial assistance to a telemarketer when the person knows or consciously avoids knowing that the telemarketer is engaged in conduct that would violate certain provisions of the rule
 5. Prohibits telemarketers from calling before 8 a.m. and after 9 p.m., and from calling consumers who have said they do not want to be called.
 6. Bars telemarketing calls that deliver prerecorded messages, unless a consumer previously has agreed to accept such calls from the seller.

7. Provides that violations of the rule may result in civil penalties of up to \$11,000. The rule is enforceable by the FTC, and also by the 50 state attorneys general, who can get orders that apply nationwide against fraudulent telemarketers.

After notice and public comment, the FTC amended the Telemarketing Sales Rule on November 18, 2015, to – among other things – ban four payment methods favored by scammers.

B. ***Law Enforcement:*** The FTC has undertaken a vigorous program of law enforcement against telemarketers who violate the TSR, Section 5, and other provisions. The agency has specifically challenged the role of parties under the “assisting and facilitating” provision of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(b). Representative cases:

- United States v. Sunkey Publishing, No. 3:18-CV-01444-HNJ (N.D. Ala. Sept. 6, 2018) (alleging that lead generator violated the Telemarketing Sales Rule and the FTC Act by placing hundreds of thousands of calls to phone numbers on the National Do Not Call Registry and by using URLs like army.com and navyenlist.com to mimic the look of genuine military recruiting sites, using false statements to get consumers’ personal information, and then selling it to for-profit education companies)
- United States v. InfoCision, Inc., No. 5:18-CV-64 (N.D. Ohio Jan. 10, 2018) (\$250,000 civil penalty for millions of calls that telemarketer placed on behalf of charitable organizations falsely stating it was not calling to solicit contributions)
- FTC v. First Consumers LLC, No. 14-1608 (E.D. Pa. Mar. 12, 2014) (order) (\$10 million judgment and lifetime telemarketing ban in fraud that targeted older consumers)
- FTC, Kansas, Minnesota, North Carolina, and Illinois v. Meggie Chapman, 714 F. 3d 1211 (10th Cir. 2013) (upholding \$1.6 million redress for assisting and facilitating scheme that deceived consumers by falsely promising “guaranteed” federal grants)
- FTC v. INC21.com, No. 3:10-CV-00022-WHA (N.D. Cal.) (Sept. 30, 2010) (order) (\$38 million to settle claims that companies used offshore telemarketers and local exchange telephone companies to place unauthorized charges on telephone bills of thousands of small businesses and consumers)
- FTC v. Helping Hands of Hope, Inc., No. CV080908 PHX-JAT (D. Ariz. Apr. 8, 2010) (stipulated order) (\$26 million suspended judgment for telemarketer’s practice of deceiving consumers into buying household items priced substantially higher than retail by falsely promising the proceeds would benefit charities)

- ***Operation Tele-PHONEY.*** On May 20, 2008, the FTC and 30 international, federal, state, and local agencies announced a 180-case sweep against deceptive telemarketing operations
- C. ***Do Not Call:*** On December 18, 2002, the FTC amended the TSR to add the National Do Not Call Registry, 16 C.F.R. § 310 (2003). The Registry's constitutionality was upheld in Mainstream Marketing Services v. FTC, 358 F.3d 1228 (10th Cir. 2004). On September 1, 2009, an amendment to the Rule took effect, banning most robocalls, prerecorded commercial telemarketing calls placed without consumers' express written consent.
1. The Rule and subsequent amendments requires telemarketers to scrub lists of consumers who do not wish to receive such calls, and impose civil penalties for violations; imposes restrictions on call abandonment; requires telemarketers to transmit Caller ID information; pursuant to the USA PATRIOT Act, requires telemarketers calling to solicit charitable contributions to disclose promptly the name of the organization making the request and that the purpose of the call is to ask for a charitable contribution; bans unauthorized billing and prohibits telemarketers from processing any billing information for payment without the express informed consent of the customer or donor; and bans the use of prerecorded messages except in very narrow circumstances.
 2. Representative Do Not Call cases:
 - United States v. Dish Network, 309-CV-03073-JES-CHE (June 6, 2017) (permanent injunction) (\$280 million civil penalty in federal-state action finding Dish Network violated TSR by initiating, or causing others to initiate, calls to numbers on Do Not Call Registry)
 - United States v. Feature Films for Families, Inc., (D. Utah June 2, 2016) (jury verdict) (finding that defendants engaged in unlawful telemarketing, including making more than 117 million calls to consumers in violation of the Telemarketing Sales Rule)
 - FTC v. Wordsmart Corp., No 14-CV-2348-AJB-RBB (S.D. Cal. Oct. 9, 2014) (stipulated order) (partially suspended \$18.7 million judgment for Do Not Call violations and deceptive claims about product's ability to improve children's grades and test scores)
 - United States v. Versatile Marketing Solutions, No. 1:14-CV-10612-PBS (D. Mass. Mar. 12, 2014) (stipulated order) (partially suspended \$3.4 million penalty for Do Not Call violations by home security company that bought names and numbers from lead generators)
 - United States v. Mortgage Investors Corporation of Ohio, Inc., No. 8:13 CV 1647 (M.D. Fla. June 27, 2013) (stipulated judgment) (\$7.5 million civil penalty for Do Not Call and Mortgages Acts and Practice Advertising Rule violations targeting servicemembers)

- United States v. Electric Mobility Corp. and Michael J. Flowers, No. 1:11-CV-02218-RMB (D.N.J. Apr. 21, 2011) (stipulated order) (\$100,000 civil penalty for using numbers gathered from sweepstakes entry forms to contact numbers on the Do Not Call Registry)
- United States v. New Edge Satellite, Inc., No. 2:09-CV-11100-MOB-PJK (E.D. Mich. Sept. 22, 2009) (\$570,000 suspended civil penalty against authorized dealer of Dish Network for Do Not Call violations)
- United States v. Vision Quest, LLC, No. 2:09-CV-II 102-AJT-VMM (E.D. Mich. Sept. 22, 2009) (suspended \$690,000 civil penalty against authorized Dish Network dealer for Do Not Call violations)
- United States v. Global Mortgage Funding, Inc., No. SA CV 07-1275 DOC (PJW) (C.D. Cal. July 23, 2009) (five-year ban for telemarketer who called thousands of numbers on the Do Not Call Registry and failed to transmit accurate Caller ID information)
- FTC v. Voice Touch, Inc., No. 09CV2929 (N.D. Ill. Aug. 23, 2010) (stipulated judgment) (\$3 million total redress for deceptive auto warranty robocalls)
- United States v. DirecTV, Inc., No. 09-02605 PA (FMOx) (C.D. Cal. Apr. 16, 2009) (stipulated judgment) (\$2.31 million civil penalty for calling numbers on the Do Not Call Registry and placing or causing an affiliate to place pre-recorded outbound calls, in violation of the Telemarketing Sales Rule)
- United States v. Comcast Corp., No. 2:09-CV-01589-HB (E.D. Pa. Apr. 16, 2009) (stipulated judgment) (\$900,000 for violations of the entity-specific provisions of the Do Not Call Registry)
- United States v. Westgate Resorts, Ltd., No. 6:09-CV104-ORL-19-GLK (M.D. Fla. Jan. 27, 2009) (stipulated judgment) (\$900,000 civil penalty for timeshare seller's calls to numbers on Do Not Call Registry after buying numbers from lead generator that collected information without clearly disclosing that consumers would receive telemarketing calls)
- United States v. All in One Vacation Club, No. 6:09-CV-103-ORL-31DAB (M.D. Fla. Jan. 27, 2009) (stipulated judgment) (\$275,000 civil penalty for calls to numbers of the Do Not Call Registry placed after consumers filled out sweepstakes forms that included fine-print "waiver" that defendants claimed gave them the right to call)

- United States v. ADT Security Services, (S.D. Fla.); United States v. Ameriquest Mortgage Co., (C.D. Cal.); United States v. Craftmatic Industries, (E.D. Pa.); United States v. Guardian Communications, (C.D. Ill.); United States v. Direct Security Services, (D. Kan.); United States v. Alarm King, (C.D. Cal. Nov. 7, 2007); and United States v. Global Mortgage Funding, (C.D. Cal. July 29, 2009) (stipulated judgments) (\$7.7 million total civil penalties for Do Not Call violations)
- United States v. Scorpio Systems, No. 06-1928 (MLC) (D.N.J. May 6, 2008) (stipulated order) (\$530,000 civil penalty for telemarketer's violation of Do Not Call Rule by using bogus Caller ID information)
- United States v. Bookspan, No. 06 786 (E.D.N.Y. Feb. 23, 2006) (stipulated judgment) (\$680,000 civil penalty to settle charges that Book-of-the-Month Club Partnership called over 100,000 consumers on Do Not Call Registry and continued calling customers who specifically asked not to be called)
- United States v. Entrepreneurial Strategies, Ltd., No.: 2:06-CV-15 (WCO) (N.D. Ga. Jan. 24, 2006) (stipulated order) (\$13,454 civil penalty in first case for violations of the "assisting and facilitating" provision of Telemarketing Sales Rule by setting up sham nonprofit corporation to evade Do Not Call requirements)
- United States v. FMFG, Inc., No.: 3:05-CV-00711 (D. Nev. May 27, 2007) (judgment and order) (challenging bed company's sales calls to consumers on the Do Not Call Registry under the pretext of conducting a sleep survey)
- United States v. DirecTV, Inc., No. SACV05 1211 (C.D. Cal. Dec. 13, 2005) (\$5.3 million civil penalty for Do Not Call violations by satellite TV company and companies it hired to do telemarketing)
- United States v. Braglia Marketing Group, No. CV-S-04-1209-DHW-PAL (D. Nev. Feb 15, 2005) (stipulated order) (\$3500 civil penalty and suspended judgment of \$526,000 for Do Not Call violations)
- United States v. Flagship Resort Development Corp., No. CV-S-04-1209- DHW-PAL (D. Nev. Feb 15, 2005) (stipulated judgments) (\$500,000 civil penalty for Do Not Call violations)

3. Representative robocall cases:

- United States v. KFJ Marketing, 2:16-CV-01643 (C.D. Fla. Nov. 8, 2017) (stipulated order) (\$155,000 civil penalty against alleging lead generator that placed 1.3 million illegal robocalls to pitch solar panel installation)

- United States v. Lilly Management and Marketing, LLC d/b/a USA Vacation Station, No. 6:16-CV-435-ORL-37-DAB (M.D. Fla. Mar. 17, 2016) (stipulated order) (partially suspended \$1.2 million civil penalty for placing millions of illegal robocalls to pitch vacation packages)
- FTC and State AGs v. Caribbean Cruise Line, Inc., 0:15-CV-60423 (S.D. Fla. Mar. 4, 2015) (stipulated order for permanent injunction) (partially suspended judgment of more than \$13 million for deceptive “survey” robocalls to illegally pitch cruises)
- FTC v. Worldwide Info Services, Inc., No. 6:14-CV-8-ORL-28DAB (M.D. Fla. Nov. 13, 2014) (permanent injunction) (challenging illegal use of robocalls to pitch deceptive “free” medical alert systems to older consumers)
- The Cuban Exchange, No. 1:12-CV-5890 (E.D.N.Y. Sept. 9, 2014) (default judgment) (challenging robocall operation that impersonated the FTC in an attempt to trick consumers into turning over bank account data and other sensitive information)
- United States v. Skyy Consulting, Inc., also d/b/a CallFire, No. 13-CV-2136 (N.D. Cal. May 14, 2013) (stipulated order) (\$75,000 civil penalty for assisted and facilitated clients in placing illegal robocalls via voice-over-Internet broadcasting)
- United States v. Roy M. Cox, Jr., and Castle Rock Capital Management, Inc., No. 8:11-CV-01910-DOC-JPR (C.D. Cal. Feb. 18, 2013) (stipulated judgment) (challenging illegal robocalls, Do Not Call violations, and masked Caller ID information, in violation of Telemarketing Sales Rule)
- FTC v. Paul Navestad and Cash Grant Institute, No. 09-CV-6329 (W.D.N.Y. Apr. 2, 2012) (decision and order) (\$30 million in civil penalties and \$1.1 million disgorgement for illegal robocalls and deceptive government grant claims)
- United States v. Brian Ebersole, Voice Marketing, Inc., and B2B Voice Broadcasting, Inc., No. 3:12-CV-00105 (D. Nev. Feb. 29, 2012) (stipulated judgment) (challenging actions of defendants who marketed robocall services to other companies)
- United States v. JGRD, Inc., VoiceBlaze, Charles Joseph Garis, Jr., and Randall Keith Delp, No. 2:12-CV-00945-MSG (E.D. Pa. Feb. 24, 2012) (stipulated order) (challenging action of defendants who marketed robocall services to other companies)

- FTC v. Direct Financial Management, Inc., No. 10-C-7194 (N.D. Ill. Feb. 8, 2012) (stipulated judgment) (partially suspended \$13.1 million judgment for illegal debt relief robocalls)
- United States v. Americall Group, No. 1:11-CV-08895 (N.D. Ill. Dec. 16, 2011) (stipulated order) (\$500,000 civil penalty for telemarketer's interference with consumers' entity-specific Do Not Call requests and transmission of deceptive Caller ID information)
- FTC v. JPM Accelerated Services Inc., No. 09-CV-2021 (M.D. Fla. Dec. 6, 2010) (stipulated judgment) (challenging robocalls falsely promising to reduce consumers' credit card interest rates)
- United States v. The Talbots, Inc., No. 10-CV-10698 (D. Mass. Apr. 27, 2010), and United States v. SmartReply, Inc., No. CV 10-03087 (C.D. Cal. Apr. 27, 2010) (stipulated judgments) (\$161,000 total civil penalties against clothing retailer and telemarketer for robocalls that failed to give consumers proper notice of their right to opt out of receiving telemarketing calls)
- FTC v. Transcontinental Warranty, Inc., No. 09-CV-2927 (N.D. Ill. Sept. 1, 2009) (\$24 million suspended judgment for placing millions of deceptive robocalls to sell consumers vehicle service contracts under the guise that they were extensions of original vehicle warranties)
- United States v. The Broadcast Team, No. 6:05-CV-01920-PCF-JGG (M.D. Fla. Feb. 2, 2007) (\$1 million civil penalty for telemarketer's improper use of prerecorded messages, in violation of Do Not Call)

D. ***Telephone Disclosure and Dispute Resolution Act of 1992, 15 U.S.C. § 5701.*** Pursuant to this statute, the FTC promulgated the 900 Number Rule, 16 C.F.R. § 308, requiring specific disclosures for 900 numbers, such as the cost of the call and that individuals under 18 must have parental permission to call; and banning advertising directed to children under 12. Representative cases:

- FTC v. 800 Connect, Inc., No. 03-60150 (S.D. Fla. Feb. 3, 2003) (stipulated judgment) (\$735,000 redress for unauthorized charges for directory information services after callers misdialed toll-free numbers for companies like FedEx or Sovereign Bank)
- FTC v. Access Resource Services, Inc., No. 02-60226-CIV (S.D. Fla. Nov. 4, 2002) (stipulated judgment) (\$500 million in debt forgiveness and \$5 million in disgorgement from operators of Miss Cleo psychic lines for violations of Pay-Per-Call Rule)

- E. ***Joint FTC-FCC Policy Statement on the Advertising of Dial-Around and Other Long-Distance Services to Consumers:*** On November 4, 1999, the FTC and FCC co-sponsored a Joint Forum on Advertising and Marketing of Dial-Around and Other Long-Distance Services to Consumers. The agencies issued a joint policy statement on March 1, 2000, offering guidance on the application of truth-in-advertising principles to advertising for long-distance services.

XIII. INTERNET COMMERCE, COMPUTERS, DEVICES, AND MOBILE MARKETING

- A. The FTC applies established Section 5 principles to internet commerce, advertising for computers and software, and mobile marketing. On May 3, 2000, FTC staff published a working paper, *Dot Com Disclosures: Information about Online Advertising*, providing guidance to businesses on how FTC rules and guides apply on the Internet. Staff updated that guidance in 2013 in *.com Disclosures, How to Make Effective Disclosures in Digital Advertising*. FTC staff issued *Beyond Voice: Mapping the Mobile Marketplace*, an April 2012 report exploring consumer protection issues arising in mobile commerce. On April 26, 2012, the FTC sponsored *Paper, Plastic . . . or Mobile? A Workshop on Mobile Payments* and followed up with a report on March 8, 2013. FTC staff issued a 2014 report, *What's the Deal? An FTC Study on Mobile Shopping Apps*. In 2016, Congress passed the Consumer Review Fairness Act, which – among other things – makes it illegal for companies to include standardized provisions that threaten or penalize people for posting honest reviews online.
- B. Representative cases challenging deceptive practices related to advertising and marketing of computers, devices, software, and related products and services:
- FTC v. Office Depot, Inc. and Support.com, Inc., No. 9:19-CV-80431 (S.D. Fla. Mar. 27, 2019) (stipulated order) (\$35 million total financial remedy to settle charges that companies tricked customers into spending millions of dollars on computer repair services by deceptively claiming their software had found malware symptoms on consumers' computers)
 - Lenovo, Inc., C-4636 (Sept. 5, 2017) (consent order) (alleging that computer manufacturers preloaded advertising software on some laptops that compromised security protections)
 - Network Solutions, LLC, 159 F.T.C. 1859 (2015) (consent order) (alleging company failed to clearly and conspicuously disclose materials limitations on advertised “30 Day Money Back Guarantee” for web services)
 - Sony Computer Entertainment America LLC, 159 F.T.C. 1128 (2014) (consent order) (challenging misrepresentations about capabilities of PS Vita handheld gaming device)
 - MPHJ Technology Investments, 159 F.T.C. 1004 (2014) (consent order) (challenging deceptive claims by patent assertion entity)

- FTC v. PCCare247, No. 12CIV7189 (May 17, 2013), and FTC v. Marczak, No. 12CIV7192 (May 17, 2013) (stipulated judgments); FTC v. Pecon Software, No. 12CIV7186; FTC v. Zeal IT Pvt Solutions, No. 12CIV7188; FTC v. Lakshmi Infosoul Services, No. 12CIV7191; and FTC v. Finmaestros, No. 12CIV7195 (S.D.N.Y. July 24, 2014) (default judgments and permanent injunctions) (challenging tech support scams in which telemarketers masqueraded as computer companies and offered to remotely “fix” problems for a fee)
- FTC v. Innovative Marketing, Inc., No. RDB-08CV3233 (D. Md. Oct. 2, 2012) (stipulated order) (\$163 million judgment and \$8.2 million redress related to scareware scheme in which company falsely claimed scans had detected viruses, spyware, and illegal pornography on consumers’ computers and then sold them products purported to fix the problem). See also FTC v. Ross, 743 F.3d 886 (4th Cir. 2014) (upholding personal liability of more than \$163 million for role in scareware scheme).
- America Online, Inc., 137 F.T.C. 117 (2004) (consent order) (challenging company’s practice of continuing to bill internet service subscribers after they asked to cancel their subscriptions)
- Bonzi Software, Inc., C-4126 (consent order) (Oct. 13, 2004) (challenging deceptive representations that InternetALERT software significantly reduced the risk of Internet attacks and unauthorized access into computers)
- FTC v. D Squared Solutions, L.L.C., No. AMD 03 CV310 (D. Md. Aug. 9, 2004) (stipulated order) (challenging company’s practice of sending Windows Messenger Service pop-up ads to sell pop-up blocking software)
- FTC v. Network Solutions, Inc., Civ. No. 03 1907 (D.D.C. Sept. 12, 2003) (stipulated order) (alleging that company that provides domain name registration services to consumers unlawfully tricked consumers into transferring their Internet domain name registrations to the company)
- Palm, Inc., 133 F.T.C. 715 (2002) (consent order) (challenging ads for personal digital assistants that represented that products came with built-in wireless access and e-mail while revealing in a four-point disclosure “Application software and hardware add-ons may be optional and sold separately. Applications may not be available on all Palm handhelds”)
- FTC v. Netpliance, Inc., No. A-01-CA 420SS (W.D. Tex. July 2, 2001) (consent decree) (challenging deceptive claims about performance capabilities of internet access device, requiring clear and conspicuous disclosure of additional fees and long-distance charges, imposing \$100,000 civil penalty for Mail Order Rule violations, and ordering company to refund amounts illegally charged to consumers’ credit cards)

- Gateway Corp., 131 F.T.C. 1208 (2001) (consent order) (challenging deceptive ads for free or flat-fee internet services that disclosed in a footnote that many consumers would incur additional telephone charges)
- Juno Online Services, Inc., 131 F.T.C. 1249 (2001) (consent order) (challenging deceptive representations about cost to consumers of company's "free" and fee-based dial-up Internet access services, including failure to honor cancellations during purported free trial period)
- Hewlett-Packard Co., 131 F.T.C. 1086 (2001), and Microsoft Corp., 131 F.T.C. 1113 (2001) (consent orders) (challenging deceptive claims that personal digital assistance came with built-in wireless access and email while revealing in fine print "Modem required. Sold separately.")
- Sharp Electronics Corp., 131 F.T.C. 560 (2001) (consent order) (challenging deceptive upgradability claims for handheld personal computers and requiring company to provide low-cost upgrade)
- WebTV Networks, Inc., C-3988 (Dec. 12, 2000) (consent order) (challenging deceptive claims about capabilities of WebTV and requiring clear disclosure of long distance charges that some consumers incur, reimbursement to subscribers for phone charges)
- BUY.COM, Inc., C-3978, Value America, Inc., C-3976, and Office Depot, Inc., C-3977 (Sept. 8, 2000) (consent orders) (challenging promotions for low-cost computers that failed to disclose restrictions on the offers, including that consumers had to sign a contract for three years of service from ISP)
- Tiger Direct, Inc., 128 F.T.C. 517 (1999) (consent order) (alleging that mail order seller of computers misrepresented terms of warranties)
- Apple Computer, Inc., 128 F.T.C. 190 (1999) (consent order) (challenging practice of charging computer purchasers for technical support despite advertising that services were free)
- Dell Computer Corp., 128 F.T.C. 151 (1999) (consent order) (challenging under Section 5 and the Consumer Leasing Act television, print and Internet ads for consumer leases that placed material cost information in inconspicuous fine print)
- Micron Electronics, Inc., 128 F.T.C. 137 (1999) (consent order) (alleging Section 5 and Consumer Leasing Act violations for TV, print and Internet ads for consumer leases that placed material cost information in fine print)
- Gateway 2000, Inc., 126 F.T.C. 888 (1998) (consent order) (\$290,000 redress for deceptive claims regarding company's money-back guarantee policy and on-site warranty services)

- America Online, Inc., 125 F.T.C. 403 (1998); Prodigy Services Corp., 125 F.T.C. 430 (1998); and CompuServe, Inc., 125 F.T.C. 451 (1998) (consent orders) (challenging deceptive representations about terms and conditions of free trial offers for online services)
- Apple Computer, Inc., 124 F.T.C. 184 (1997) (consent order) (challenging claims that PCs were presently upgradeable to PowerPC technology)
- Hayes Microcomputer Products, Inc., 118 F.T.C. 1159 (1994) (consent order) (challenging claims that use of competitors' modems creates a substantial risk of data transmission failure)

C. Representative cases involving online advertising and marketing:

- FTC v. iBackPack of Texas, LLC, No. 3:19-CV-00160 (S.D. Tex. May 6, 2019) (complaint filed) (alleging that defendant made deceptive claims on crowdfunding platforms about raising money for the development of a high-tech backpack, while using the funds for personal expenses)
- FTC v. Reservation Counter, No. 2:17-cv-01304-RJS D. Utah Dec. 22, 2017) (alleging third-party hotel room resellers misled consumers to believe they were reserving rooms directly with the hotel, and failed to adequately tell consumers that credit cards would be charged immediately)
- FTC v. iWorks, Inc., No. 2:10-CV-02203 (D. Nev. Aug. 29, 2016) (stipulated order) (partially suspended \$281 million judgment to settle charges that defendants illegally lured consumers into "trial" memberships for bogus government-grant and money-making promotions, and charged them monthly fees without authorization)
- FTC v. Erik Chevalier d/b/a The Forking Path, No. 3:15-CV-1029-AC (D. Or. June 11, 2015) (stipulated order) (in FTC's first crowdfunding case, alleging that project creator raised money through Kickstarter, but used funds for personal expenses)
- FTC and State of Connecticut v. TicketNetwork, Inc., Ryadd, Inc., and SecureBoxOffice, LLC, No. 3:14-CV-1046 (D. Conn. July 23, 2014) (stipulated order) (alleging ads and websites misled consumers into thinking they were buying tickets at face value from event venue when they were often paying higher prices from resellers' sites)
- FTC v. Swish Marketing, Inc., No. C09-03814 (N.D. Cal. July 21, 2011) (final judgment) (\$4.8 million redress for misleading practice of inducing payday loan applicants into paying for an unrelated debit card through the use of a deceptive pre-checked box on an online loan application)

- FTC v. Javian Karnani and Balls of Kryptonite, LLC, No. 09-CV-5276 (C.D. Cal. June 9, 2011) (stipulated order) (\$500,000 suspended judgment for U.S. company's practices of deceiving consumers into thinking they were buying electronic from a U.K. company and misleading them about warranty rights and right to return or exchange goods under U.K. law)
- FTC v. Google Money Tree, No. 09-CV-01112 (D. Nev. Oct. 10, 2010) (stipulated judgment against certain defendants) (\$3.5 million to settle charges that online marketers falsely claimed ties to Google, sold bogus work-at-home schemes, and charged hidden monthly fees)
- FTC v. Ticketmaster L.L.C. and TicketsNow.com, Inc., No. 10-CV-01093 (N.D. Ill. Feb. 18, 2010) (stipulated judgment) (alleging that Ticketmaster and affiliates used deceptive bait-and-switch tactics by telling customers attempting to get tickets for Bruce Springsteen concerts that no tickets were available and then steering them to TicketsNow, where tickets were sold at substantially more than face value)
- FTC v. Pricewert LLC, No. 09-CV-2407 (N.D. Cal. May 19, 2010) (order) (shutting down ISP that recruited, hosted, and actively participated in the distribution of spyware, viruses, spam, child pornography, and other harmful electronic content)
- FTC v. Digital Enterprises, Inc. d/b/a movieland.com, No: CV06-4923 CAS (AJWx) (C.D. Cal. Sept. 13, 2007) (stipulated order) (\$500,000 redress for company's practice of falsely claiming that consumers owed money for downloading movies and then barraging consumers with pop-ups demanding payment)
- FTC v. J.K. Publications, Inc., No. CV-99-0044 ABC (AJWx) (C.D. Cal. Sept. 4, 2000) (\$37.5 million judgment against company that bought lists of credit card numbers from California bank and fraudulently charged consumers – many of whom didn't own computers – for visits to adult websites they had not made)
- FTC and New York v. Crescent Publishing Group, No. 00- CV-6315 (S.D.N.Y. Nov. 5, 2001) (stipulated judgment) (\$30 million redress against operators of adult websites for advertising free tour of websites while billing consumers' credit cards for unauthorized monthly fees)
- FTC v. Rennert, No. CV-S-00-0861-JBR (D. Nev. July 6, 2000) (stipulated order) (challenging deceptive claims for a purported online pharmacy)
- FTC v. Lane Labs-USA, Inc., No. 00 CV 3174 (D.N.J. June 28, 2000) (stipulated order) (challenging deceptive use of embedded terms like "non-toxic cancer therapy" and "cancer treatment" in metatags for site featuring unsubstantiated claims for BeneFin, a shark cartilage product). See also FTC v. Lane Labs-USA, Inc., 624 F.3d 575 (3d Cir. 2010).

- Natural Heritage Enterprises, C-3941 (May 23, 2000) (consent order) (challenging deceptive use of metatags, mouseover text, and hyperlinks in ads representing that essiac tea could treat cancer, diabetes, and HIV/AIDS)
- FTC v. Periera, (E.D. Va. Sept. 22, 1999) (preliminary injunction) (challenging practice of pagejacking – duplicating legitimate sites and then diverting users to sexually explicit adult sites – and mouse trapping – disabling browsers’ exit commands)
- FTC v. iMall, Inc., (C.D. Cal. Apr. 12, 1999) (stipulated judgment) (\$4 million redress and imposing lifetime ban on participation in Internet-related business venture for promoters of deceptive Internet business opportunities)
- FTC v. Audiotex Connection, C97-0726 (E.D.N.Y. Nov. 4, 1997) (\$2.7 million credit for unauthorized charges stemming from modem hijacking scheme in which defendants switched consumers from local ISP to international telephone lines)
- FTC v. Fortuna Alliance, LLC, No. C96-0799 (W.D. Wash. Oct. 30, 1997) (contempt action for failure to pay \$2 million redress pursuant to settlement stemming from Internet pyramid scheme)
- FTC v. Hare, No. 98-8194-CIV (S.D. Fla. Sept. 8, 1998) (stipulated permanent injunction) (challenging practices of marketer who advertised nonexistent merchandise through online auction houses and imposing lifetime ban on online commerce)
- FTC v. Corzine, No. CIV-S-94-1446 (E.D. Cal. Sept. 12, 1994) (stipulated permanent injunction) (first FTC law enforcement action involving deceptive claims conveyed via the Internet)

D. Representative cases concerning mobile apps, mobile marketing, mobile bills, smartphones, etc.:

- FTC and AT&T Mobility LLC, 883 F.3d 848 (9th Cir. 2018) (en banc) (ruling that FTC Act’s common carrier exemption is activity-based and thus trial court correctly denied defendant’s motion to dismiss FTC’s deceptive advertising action)
- FTC and New Jersey v. Equiliv Investments, (D.N.J. June 29, 2015) (stipulated order) (challenged Prized reward app’s false claim to be free of malware when app loaded malicious software on consumers’ phones to mine virtual currency)
- FTC v. New Consumer Solutions LLC, No. 1:15-cv-01614 (N.D. Ill. Feb 25, 2015) (stipulated order) (challenging deceptive claim that Mole Detector app could detect symptoms of melanoma)

- Health Discovery Corporation, C-4516 (consent order) (Feb. 25, 2015) (challenging deceptive claim that MelApp mobile app could detect symptoms of melanoma)
- FTC v. Straight Talk Wireless (TracFone Wireless, Inc.), No. 3:15-cv-00392 (N.D. Cal. Jan. 25, 2015) (\$40 million redress for deceptive “unlimited” data claims while company throttled customers who used certain amounts of data)
- FTC v. T-Mobile USA, Inc., (W.D. Wash. Dec. 19, 2014) (stipulated order) (at least \$90 million redress for mobile cramming, unlawfully billing consumers for unauthorized third-party charges)
- FTC v. Acquinity Interactive, LLC, No. 1:13-CV-05380 (N.D. Ill. Oct. 22, 2014) (stipulated judgment) (\$10 million to settle charges related to “free gift card” spam text messages, robocalling, and mobile cramming)
- FTC v. AT&T Mobility, LLC, No. 1:14-CV-3227-HLM (N.D. Ga. Oct. 8, 2014) (stipulated order) (\$80 million redress to settle charges related to mobile cramming, unlawfully billing consumers for unauthorized third-party charges)
- FTC v. CPATank, Inc., No. 1:14-CV-01239 (N.D. Ill. Feb. 28, 2014) (stipulated judgment) (\$200,000 judgment for sending unwanted text message spam that deceptively advertised “free” gift card promotion)
- FTC v. SubscriberBASE Holdings, Inc., No. 1:13-CV-01527 (N.D. Ill. Feb. 18, 2014) (stipulated order) (\$2.5 million redress and orders against 12 defendants for sending unwanted text message spam that deceptively advertised “free” gift cards)
- Apple, Inc., C-4444 (Jan. 15, 2014) (consent order) (minimum of \$32.5 million to settle allegations that company charged for children’s in-app purchases without account holders’ authorization)
- FTC v. Tatto, Inc., No. 2:13-CV-08912-DSF-FFM (C.D. Cal. August 5, 2014 and June 3, 2014) (stipulated orders) (more than \$11 million to settle charges that certain defendants crammed unauthorized charges on consumers’ mobile phone bills)
- FTC v. WiseMedia, LLC, No. 1:13-CV-1234 (N.D. Ga. Nov. 21, 2013) (stipulated order) (challenging mobile cramming of charges for premium SMS services consumers didn’t authorize)
- United States v. National Attorney Collection Services, No. 2:13-CV-06212 (C.D. Cal. Sept. 25, 2013) (stipulated order) (first FTC case addressing use of text messages in context of Fair Debt Collection Practices Act)

- FTC v. Jesta Digital, LLC, No. 1:13-CV-01272 (D.D.C. Aug. 21, 2013) (\$1.2 million to settle charges that company Jesta crammed unwanted charges onto consumers' cell phone bills)
- Filiquarian Publishing, LLC, C-4401 (consent order) (Jan. 10, 2013) (alleging marketer of mobile app that offered tools for screening employees violated Fair Credit Reporting Act)
- FTC v. Flora, No. SACV11-00299-AG-(JEMx) (C.D. Cal. Sept. 29, 2011) (stipulated permanent injunction) (challenging marketer's practice of sending out 5.5 million unsolicited text messages pitching deceptive mortgage modification site)
- Dermapps, Koby Brown, and Gregory Pearson, 152 F.T.C. 466 (2011), and Andrew N. Finkel, 152 F.T.C. 490 (2011) (consent orders) (\$15,000 total redress from marketers of two mobile apps that claimed to emit lights to treat acne)
- United States v. W3 Innovations, No. CV-11-03958-PSG (N.D. Cal. Aug. 15, 2011) (in first FTC case involving mobile apps, \$50,000 civil penalty for collecting and disclosing personal information from children under age 13 without parents' consent, in violation of COPPA)

E. **Spam:** The FTC enforces the CAN-SPAM Rule, 16 C.F.R. § 316, promulgated pursuant to the CAN-SPAM Act of 2003, and has challenged practices as violations of Section 5. On September 16, 2004, the FTC published *A CAN-SPAM Informant Reward System*, a Report to Congress considering whether a reward system could be designed to improve the effectiveness of CAN-SPAM enforcement. On October 11, 2004, 19 agencies from 15 countries announced the Action Plan on Spam Enforcement. The FTC and National Institute of Standards and Technology hosted an *Email Authentication Summit* on November 9, 2004, to explore technology that could reduce spam. According to a November 28, 2005, FTC staff report, *Email Address Harvesting and the Effectiveness of Anti-Spam Filters*, ISP filters block as much as 95% of unsolicited e-mail. On April 23, 2007, the FTC convened a workshop, *Proof Positive: New Directions in ID Authentication*, to explore methods to reduce identity theft through authentication. Representative spam cases:

- FTC v. Flora, No. SACV11-00299-AG-(JEMx) (C.D. Cal. Sept. 29, 2011) (stipulated permanent injunction) (challenging marketer's practice of sending out 5.5 million text messages and illegal spam pitching deceptive mortgage modification site)
- FTC v. Atkinson, No. 08CV5666 (N.D. Ill. Nov. 30, 2009) (\$15 million default judgment for role in international operation selling sex pills, prescription drugs, and diet pills via spam sent with false headers and without an opt-out link or physical postal address)

- FTC v. Spear Systems, Inc., No. 07C-5597 (N.D. Ill. July 2, 2009 and July 15, 2008) (stipulated order) (in first US SAFEWEB Act case, \$3.7 million judgment against some defendants and \$29,000 disgorgement from others who initiating emails that contained false “from” addresses and deceptive subject lines, and failed to provide opt-out link and postal address)
- United States v. Cyberheat, Inc., No. CIV 05-0457 (D. Ariz. Mar. 4, 2008) (permanent injunction) (\$413,000 civil penalty for adult website’s violations of CAN-SPAM Act and Section 5 for paying affiliates to drive traffic to its site through the use of illegal email)
- United States v. Member Source Media, Inc., No.: CV-08 0642 (N.D. Cal. Jan. 30, 2008) (stipulated judgment) (\$200,000 civil penalty for deceptive claim that recipient of spam email had won free prizes)
- FTC v. Sili Neutraceuticals, LLC, No. 07C 4541 (N.D. Ill. Feb. 4, 2008) (permanent injunction) (\$2.5 million for using illegal email to disseminate deceptive claims for hoodia weight-loss products and human growth hormone anti-aging products)
- FTC v. Yesmail, Inc., No. 06-6611 (N.D. Cal. Nov. 6, 2006) (\$50,717 civil penalty for violation of CAN-SPAM Act when company’s anti-spam software filtered out certain “reply to” unsubscribe requests from recipients, which resulted in company’s failure to honor unsubscribe requests)
- FTC v. Cleverlink Trading Limited, No. 05C 2889 (N.D. Ill. Sept. 14, 2006) (stipulated judgment) (\$400,000 disgorgement for sending “date lonely wives” spam that contained misleading headers and subject lines and didn’t include required opt-out mechanism, valid address, and disclosure that message was sexually explicit, in violation of the CAN-SPAM Act)
- United States v. Kodak Imaging Network, Inc., No. C-06-3117 (N.D. Cal. May 11, 2006) (\$26,331 civil penalty for sending commercial email that failed to contain opt-out mechanism, failed to disclose that consumers have the right to opt out of receiving further mailings, and failed to include a valid physical postal address, in violation of the CAN-SPAM Act)
- United States v. Jumpstart Technologies, No. C-06-2079 (MHP) (N.D. Cal. Mar. 23, 2006) (\$900,000 civil penalty for disguising commercial e-mails as personal messages and for misleading consumers about the terms and conditions of its FreeFlixTix promotion, in violation of the CAN-SPAM Act)
- FTC v. Matthew Olson and Jennifer Leroy, No.C05-1979 (JCC) (W.D. Wash. Apr. 17, 2006) (stipulated judgment); FTC v. Brian McMullen, No. 05C 6911 (N.D. Ill. Sept. 14, 2006) (stipulated order); and FTC v. Zachary Kinion, No. 05C 6737 (N.D. Ill. Sept. 14, 2006) (stipulated order) (charging that defendants hijacked consumers’ computers and used them to send spam with false “from” information and misleading subject lines)

- FTC v. Global Web Promotions Pty Ltd., No.: 04C 3022 (N.D. Ill. Sept. 20, 2005) (\$2.2 million redress for deceptive claims for purported human growth hormone product sold via spam)
- FTC v. Global Net Solutions, Inc., No. CV-S-05-0002-PMP-LRL (D. Nev. Aug. 5, 2005) (permanent injunction) (\$621,000 penalty and imposition of monitoring program for violating CAN-SPAM Act and FTC's Adult Labeling Rule by failing to label sexually explicit content; using false header and subject information; failing to include required opt-out; failing to identify email as advertising; and failing to provide a valid postal address)
- FTC v. Phoenix Avatar, LLC, No. 04C 2897 (N.D. Ill. Mar. 31, 2005) (stipulated judgment) (in FTC's first CAN-SPAM case, \$230,000 suspended judgment for illegal spam advertising bogus diet patches)
- FTC v. GM Funding, Inc., No. SACV 02-1026 DOC (MLGx) (C.D. Calif. Nov. 20, 2003) (stipulated judgment) (challenging spoofing – the use of forged e-mail headers – as a violation of Section 5)
- FTC v. Walker, No. C02-5169 RJB (W.D. Wash. Oct. 28, 2002) (stipulated order) (challenging bogus cancer cure marketed via spam)
- ***Operation Netforce***: On April 2, 2002, the FTC, 8 state law enforcers and 4 Canadian agencies brought 63 actions targeting deceptive spam and online fraud. The agencies sent more than 500 warning letters to senders of deceptive spam. Partners also sent letters to 75 spammers warning them that deceptive “unsubscribe” or “remove me” claims are illegal.

F. ***Spyware and Adware***. On April 19, 2004, the FTC convened a public workshop to consider the consumer protection and privacy implications of the use of spyware, adware, and related technologies. On March 7, 2005, the FTC issued a staff report, *Monitoring Software on Your PC: Spyware, Adware, and Other Software*, summarizing the issues and drawing some conclusions from information presented at the workshop. Representative cases:

- FTC v. CyberSpy Software, LLC, No. 08-CV-01872 (M.D. Fla. June 2, 2010) (stipulated order) (barring sellers of the RemoteSpy keylogger from advertising that the spyware can be disguised and installed on someone else's computer without the owner's knowledge)
- FTC v. Pricewert LLC, No. 09-CV-2407(N.D. Cal. May 19, 2010) (order) (shutting down ISP that recruited, hosted, and participated in distribution of spyware, viruses, spam, child pornography, and other harmful content)

- DirectRevenue LLC, 143 F.T.C. 732 (2007) (consent order) (\$1.5 million disgorgement for company's unfair and deceptive practice of downloading adware onto consumers' computers without clear and conspicuous disclosure and obstructing its removal)
- Sony BMG Music Entertainment, 143 F.T.C. 777 (2007) (consent order) (challenging company's practice of selling CDs without telling consumers they contained software limiting devices on which the music could be played, restricted number of copies that could be made, and containing technology monitoring consumers' listening habits to send them marketing messages)
- Zango, Inc., 143 F.T.C. 313 (2006) (consent order) (\$3 million disgorgement to settle charges that company formerly known as 180solutions, Inc., used unfair and deceptive methods to download adware and obstruct consumers from removing it)
- FTC v. ERG Ventures, No. CV-00578-LRH-VPC (D. Nev. Oct. 1, 2007) (stipulated order) (\$330,000 redress for downloading spyware programs onto computers without consumers' consent, degrading computers' performance, tracking Internet activity, and sending disruptive ads)
- FTC v. Enternet Media, No. CV05-7777CAS (AJWx) (C.D. Cal. Sept. 6, 2006) (stipulated order) (\$2 million redress for practice of installing spyware and adware on consumers' computers by promising free lyric files, browser upgrades, and ring tones and affiliates' promise of free music)
- FTC v. Seismic Entertainment Productions, Inc., No. 04-CV-0377-JD (D.N.H. May 4, 2006) (stipulated order) (\$4 million redress to settle charges that spyware company used a purported anti-spyware program to hijack computers, change their settings, barrage them with pop-up ads, and install adware and other software programs that monitor consumers' web surfing)
- FTC v. Odysseus Marketing, No. 1:05-CV-00330-SM (D.N.H. Oct. 5, 2005) (stipulated order) (\$500,000 bond and \$1.75 million suspended judgment for offering free software that claimed to make consumers anonymous when using P2P file sharing programs without disclosing it installed harmful software). See FTC v. Odysseus Marketing, No. 2008 DNH 183 (D.N.H. July 30, 2009) (holding three defendants in contempt for violating order).
- Advertising.com, Inc., C-4147 (consent order) (Sept. 16, 2005) (challenging company's distribution of free software advertised to protect consumers against hacker attacks, without clearly disclosing that adware was bundled with software)
- FTC v. Trustsoft, Inc., Civ. No. H 05 1905 (S.D. Tex. Jan. 5, 2006) (stipulated order) (\$1.9 million redress for deceptive claims that Spykiller software remotely scanned computers for spyware)

- FTC v. Maxtheater, Inc., No. 05 -CV-0069-LRS (E.D. Wash. Dec. 5, 2005) (stipulated order) (\$76,000 redress for practice of offering spyware detection scans that falsely detected spyware in an effort to sell consumers ineffective anti-spyware products)
- G. ***Peer-to-Peer File Sharing Technology.*** On December 15-16, 2004, the FTC convened a public workshop to explore consumer protection and competition issues associated with the distribution and use of peer-to-peer (P2P) file-sharing and followed up with a June 23, 2005, staff report. Representative cases:
- Franklin’s Budget Car Sales, Inc., d/b/a Franklin Toyota/Scion, C-4371 (June 7, 2012) (alleging that P2P software on company’s network put sensitive personal information at risk)
 - EPN, Inc., d/b/a Checknet, Inc., C-4370 (June 7, 2012) (alleging that P2P software on company’s network put sensitive personal information at risk)
 - FTC v. Frostwire LLC, No. 1:11-CV-23643 (S.D. Fla. Oct. 11, 2011) (stipulated order) (alleging that P2P file-sharing app developer’s product caused consumers to unwittingly expose sensitive information stored on mobile devices to disclosure and misled users about which downloaded files would be shared)
 - FTC v. MP3downloadcity.com, No. CV-05-7013 CAS (FMOx) (C.D. Cal. May 25, 2006) (stipulated judgment) (\$15,000 redress for deceptive claims that service would allow users of peer-to-peer file-sharing programs to transfer copyrighted materials without violating the law)

XIV. CONSUMER PRIVACY AND DATA SECURITY

- A. The FTC continues to examine consumer privacy and data security issues through reports to Congress, public workshops, and law enforcement, both under Section 5 and laws like the Fair Credit Reporting Act, Gramm-Leach-Bliley Safeguards Rule, etc. On December 1, 2010, FTC staff issued *A Preliminary Report on Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers*. The Commission issued a final report on March 26, 2012, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers*, calling for privacy by design, simplified choices for businesses and consumers, and greater transparency in how companies collect and use consumers’ information.
- B. ***PrivacyCon.*** On January 14, 2016, the FTC convened PrivacyCon, a conference of white-hat researchers, academics, industry representatives, consumer advocates, and law enforcers to discuss consumer privacy and data security. The FTC hosted the second PrivacyCon on January 12, 2017, and announced the third event for February 28, 2017.
- C. ***Behavioral Advertising, Online Profiling, and Tracking.*** On March 13, 2001,

the FTC held a workshop to explore how businesses merge and exchange consumer information. The FTC sponsored a town hall meeting on November 1, 2007, *Behavioral Advertising: Tracking, Targeting, and Technology*. On February 12, 2009, the FTC issued a staff report, *Self-Regulatory Principles for Online Behavioral Advertising: Tracking, Targeting, and Technology*. A workshop on November 16, 2015, explored the consumer implications of cross-device tracking.

- D. ***Health Privacy.*** On August 17, 2009, the FTC issued the Health Breach Notification Rule, 16 C.F.R. § 318, requiring companies that provide online repositories that people can use to keep track of their health information and related businesses to notify consumers when the security of their health information has been breached.
- E. ***Internet of Things.*** On November 19, 2013, the FTC held a workshop to address consumer privacy and security ramifications of increased connectivity of household devices, issued a report on January 27, 2015, *The Internet of Things: Privacy and Security in a Connected World*, and has taken law enforcement action to challenge practices that allegedly violate the FTC Act.
- F. ***Mobile Privacy.*** On February 1, 2013, the FTC issued a staff report, *Mobile Privacy Disclosures: Building Trust through Transparency*.
- G. ***Activities of data brokers.*** On December 18, 2012, the FTC announced a study to examine the collection and use of consumer data by data brokers, including orders to nine companies for information on industry practices. On May 7, 2013, FTC staff sent letters to ten data brokers warning that their practices could violate the FCRA after a test-shopping operation indicated the companies were willing to sell consumer information without honoring FCRA requirements. The FTC issued a report, *Data Brokers: A Call for Transparency and Accountability*, on May 27, 2014, recommending that Congress consider legislation to make data broker practices more visible to consumers and to give consumers greater control over the personal information about them collected and shared by data brokers. The FTC sponsored a workshop, *Big Data: A Tool for Inclusion or Exclusion?*, to explore the use of big data and its impact on consumers, including low-income and underserved consumers, and followed up with a report on January 6, 2016.
- H. ***Facial Recognition Technology.*** On December 8, 2011, the FTC sponsored *Face Facts: A Forum on Facial Recognition Technology* to explore the privacy implications of new product and services. FTC staff followed up with an October 2012 report, *Facing Facts: Best Practices for Common Uses of Facial Recognition Technologies*.
- I. ***RFID Technology.*** On June 24, 2004, the FTC convened a workshop to explore the consumer implications of radio frequency identification technology and followed up with a report, *Radio Frequency Identification: Applications and Implications for Consumers*. On September 23, 2008, the FTC sponsored an international workshop on the emerging applications of RFID technology.

- J. ***Privacy Online: Fair Information Practices in the Electronic Marketplace.*** In May 2000, the FTC issued a third Report to Congress about online privacy, announcing the results of a survey showing that only 20% of the busiest commercial sites implement all four fair information practices. The FTC recommended that Congress enact legislation to ensure a minimum level of privacy protection for consumers and to establish basic standards of practice for the collection of information online.
- K. ***Report to Congress on Privacy Online:*** On June 4, 1998, the FTC reported the results of privacy policies of more than 1400 websites, raised concerns about adequacy of self-regulatory efforts, and called for legislation to address concerns about children's privacy online. The Report identified four core principles of fair information practices: Notice, Choice, Access, and Security.
- L. Representative privacy and data security cases:
- James V. Grago, Jr., C-4678 (Apr. 24, 2019) (consent order) (alleging operators of online rewards site used inadequate security that allowed hackers to gain access to consumers' sensitive information through company's network)
 - Uber Technologies, Inc., C-4662 (Oct. 26, 2018) (consent order) (alleging that ride service violated Section 5 by failing to monitor employee access to consumers' personal information and by failing to reasonably secure sensitive consumer data stored in the cloud). See also Uber Technologies, Inc., File No. 152-3054 (proposed consent order issued for public comment Apr. 12, 2018) (withdrawing proposed settlement and issuing revised proposed settlement based on company's alleged failure to disclose additional data breach that occurred during the pendency of FTC's initial investigation)
 - ReadyTech Corp., C-4659 (consent order published for public comment July 2, 2018) (alleging that company falsely claimed participation in EU-US Privacy Shield Framework)
 - LabMD, Inc. v. FTC, 894 F.3d 1221 (11th Cir. 2018) (vacating Commission ruling in data security action)
 - BLU Products, C-4657 (Apr. 30, 2018) (consent order) (alleging mobile phone maker allowed a China-based service provider to collect personal information about consumers without their knowledge or consent despite promises that data would be secure and private)
 - Tru Communication, Inc., C-4628; Md7, LLC, C-4629; and Decusoft, LLC, C-4630 (Sept. 8, 2017) (consent orders) (alleging in separate complaints that companies falsely claimed participation in EU-US Privacy Shield Framework)

- Lenovo, Inc., C-4636 (Sept. 5, 2017) (consent order) (alleging that computer manufacturers preloaded advertising software on some laptops that compromised security protections)
- TaxSlayer, LLC., C-4626 (Aug. 29, 2017) (consent order) (alleging that online tax preparation company violated Gramm-Leach-Bliley Act's Privacy Rule and Safeguards Rule)
- FTC v. VIZIO, Inc., No. 2:17-CV-00758 (D.N.J. Feb. 6, 2017) (stipulated order) (\$2.2 million to settle FTC and New Jersey charges that manufacturer installed software to collect viewing data on 11 million consumers' televisions without consumers' knowledge or consent)
- FTC v. Upromise, Inc., No. 1:17-CV-10442 (D. Mass. Mar. 17, 2017) (\$500,000 civil penalty for membership reward service's violation of 2012 FTC order requiring company to make disclosures about its data collection and use and to obtain third-party assessments of its data collection toolbar.
- Turn Inc., C-4612 (Dec. 20, 2016) (consent order) (alleging that company deceived consumers by tracking them online and through their mobile apps, even after consumers opted out of tracking)
- FTC v. Ashley Madison, No. 1:16-CV-02438 (D.D.C. Dec. 14, 2016) (partially suspended \$8.75 million judgment to settle FTC and state charges stemming from data breach that exposed 36 million users' profile information)
- United States v. InMobi Pte. Ltd., No. 3:16-CV-03474 (N.D. Cal. June 22, 2016) (stipulated order) (\$950,000 civil penalty for deceptively tracking the locations of hundreds of millions of consumers – including children – without consent, in violation of the FTC Act and COPPA)
- Practice Fusion, Inc., C-4591 (June 8, 2016) (consent order) (alleging that company deceived consumers about privacy of doctor reviews and inadequately disclosed that patient survey responses would be posted on a public website)
- Very Incognito Technologies, C-4580 (May 4, 2016) (consent order) (challenging company's false claim that it was in compliance with Asia-Pacific Economic Cooperation Cross-Border Privacy Rules)
- ASUSTeK Computer Inc., C-4587 (Feb. 26, 2016) (consent order) (challenging security flaws in routers and insecure "cloud" services that rendered company's claims and practices deceptive and unfair)

- FTC v. LeapLab, LLC, No. 2:14-CV-02750-NVW (D. Ariz. Feb. 18, 2016) (stipulated order) (suspended \$5.7 million judgment and unsuspended \$4.1 million default judgment for data brokers' sale of consumers' personal information to scammers who debited millions from their accounts)
- FTC v. LifeLock, Inc., No. 2:10-CV-00530-MHM (D. Ariz. Jan. 5, 2016) (amended order) (\$100 million to settle contempt charges that LifeLock violated terms of 2010 court order requiring company to secure consumers' personal information and prohibiting deceptive advertising)
- Henry Schein Practice Solutions, Inc., C-4575 (consent order) (\$250,000 to settle charges that marketers of dental office management software falsely advertised level of encryption it provided to protect patient data)
- Oracle Corporation, C-4571 (Dec. 29, 2015) (consent order) (challenging deceptive claims about security updates to Java SE)
- FTC v. Wyndham Worldwide Corporation, 799 F.3d 236 (3d Cir. 2015) (upholding FTC's jurisdiction to challenge certain security practices as unfair or deceptive, in violation of the FTC Act). See also FTC v. Wyndham Worldwide Corporation, No. 2:13-CV-01887-ES-JAD (D.N.J. Dec. 9, 2015) (settling charges that company's practices unfairly exposed consumers' payment card information to hackers in three separate breaches)
- Nomi Technologies, Inc., C-4538 (Apr. 23, 2015) (consent order) (alleging that retail tracking firm misled consumers about opt-out choices)
- Jerk.com, D-9361 (Mar. 25, 2015) (Commission Opinion) (ruling that company falsely stated that content had been created by other users when most had been harvested from Facebook and that buying a membership would allow them to change "Jerk" profile)
- Craig Brittain, C-4564 (Jan. 29, 2015) (consent order) (challenging "revenge porn" website operator's unfair and deceptive practices and false claims related to takedown services)
- TRUSTe, 159 F.T.C. 970 (2014) (consent order) (challenging deceptive claims by privacy certification about its recertification practices and that it is a non-profit)
- FTC v. Bayview Solutions, LLC, No. 1: 14-cv-01830 (D.D.C. Nov. 12, 2014); and FTC v. Cornerstone and Company, LLC, 1:14-cv-01479-RC (D.D.C. Nov. 12, 2014) (stipulated preliminary injunctions) (alleging debt broker exposed on a website the personal information of purported debtors)

- Snapchat, Inc., C-4501 (May 14, 2014) (consent order) (challenging misleading claims about app's ability to delete messages permanently, amount of personal data app collected, and security measures taken to protect that data from unauthorized disclosure)
- FTC v. Infotrack Information Services, No. 1:14-CV-02054 (N.D. Ill. Apr. 9, 2014) (consent order) (\$1 million civil penalty for FCRA violations by data broker for providing reports to users without taking reasonable steps to make sure they were accurate, and without making sure users had permissible reason)
- FTC v. Instant Checkmate, No. 3:14-CV-00675-H-JMA (S.D. Cal. Apr. 9, 2014) (consent order) (\$525,000 FCRA civil penalty for data broker's providing reports to users without taking reasonable steps to make sure they were accurate, and without making sure users had permissible reason)
- Fandango, LLC, C-4481 (Mar. 28, 2014) (consent order) (alleging that movie ticket company misrepresented the security of its mobile app and failed to secure the transmission of personal information)
- Credit Karma, Inc., C-4480 (Mar. 28, 2014) (consent order) (alleging that credit information company misrepresented the security of its mobile app and failed to secure the transmission of personal information)
- American Apparel, Inc., C-4459 (May 9, 2014); Fantage.com, Inc., Tennessee Football, Inc., PDB Sports, d/b/a Denver Broncos Football Club, Atlanta Falcons Football Club, LLC, BitTorrent, Inc., Baker Tilly Virchow Krause, LLP, Apperian, Inc., Receivable Management Services Corp., Reynolds Consumer Products, Inc., Level 3 Communications, LLC, DDC Laboratories, Inc., DataMotion, Inc., and Charles River Laboratories, Int'l, (Feb. 10, 2014 and Jan. 21, 2014) (consent orders) (alleging that companies falsely claimed they were abiding by U.S.-EU Safe Harbor Framework)
- GMR Transcription Services, Inc., C-4482 (Jan. 31, 2014) (consent order) (alleging that inadequate data security measures of medical transcription company unfairly exposed consumers' personal medical information)
- Accretive Health, Inc., C-4432 (consent order) (Dec. 31, 2013) (alleging that inadequate data security measures of medical billing services unfairly exposed sensitive consumer data to risk of theft or misuse)
- Goldenshores Technologies, LLC, C-4446 (Dec. 5, 2013) (consent order) (alleging that flashlight app developer deceived consumers about how their geolocation information would be shared with advertising networks and other third parties)

- Aaron's, Inc., C-4442 (Oct. 22, 2013) (consent order) (challenging rent-to-own franchisor's role in using undisclosed webcams and location tracking software to monitor users of rented computers)
- TRENDnet, Inc., C-4426 (Sept. 4, 2013) (consent order) (alleging that the lax security practices of a marketer of video cameras designed to allow consumers to monitor their homes remotely resulted in unauthorized access to consumers' video feeds)
- HTC America, Inc., 155 F.T.C. 1617 (2013) (consent order) (alleging that mobile device manufacturer failed to take reasonable steps to secure smartphones when it introduced security flaws that placed sensitive consumer information at risk)
- United States v. Path, Inc., No. C-13-0448 (N.D. Cal. Feb. 1, 2013) (alleging that social networking app made deceptive privacy claims and ordering \$800,000 civil penalty for violations of the Children's Online Privacy Protection Rule)
- CBR Systems, Inc., 155 F.T.C. 841 (2013) (consent order) (alleging that cord blood company's inadequate security practices contributed to a breach that exposed Social Security, credit, and debit card numbers of nearly 300,000 consumers)
- Filiquarian Publishing, LLC, 155 F.T.C. 859 (2013) (consent order) (alleging that marketer of mobile app that offered tools for screening prospective employees violated the Fair Credit Reporting Act)
- Epic Marketplace, Inc., and Epic Media Group, LLC, C-4389 (Dec. 5, 2012) (consent order) (alleging that online advertising company used history sniffing to illegally gather data about consumers)
- United States v. PLS Financial Services, Inc., PLS Group, Inc., and The Payday Loan Store of Illinois, Inc., No. 1:12-CV-08334 (N.D. Ill. Nov. 7, 2012) (\$101,500 civil penalty for violations of GLB Safeguards Rule and Privacy Rule by related payday loan and check cashing companies stemming from sensitive consumer financial data found in dumpsters)
- DesignerWare, LLC, 155 F.T.C. 421 (2012); Timothy Kelly and Ronald P. Koller, 155 F.T.C. 452 (2012); Aspen Way Enterprises, 155 F.T.C. 483 (2012); B. Stamper Enterprises, 155 F.T.C. 509 (2012); C.A.L.M. Ventures, Inc., 155 F.T.C. 535 (2012); J.A.G. Rents, LLC, d/b/a ColorTyme, 155 F.T.C. 561 (2012); Red Zone Investment Group, 155 F.T.C. 587 (2012); Showplace, Inc., 155 F.T.C. 613 (2012) ; and Watershed Development Corp., 155 F.T.C. 639 (2012) (consent orders) (challenging software developer and rent-to-own retailers' practice of using undisclosed webcams and location tracking software to monitor users of rented computers)

- Compete, Inc., D-4384 (Oct. 22, 2012) (consent order) (challenging web analytics company's failure to honor privacy promises and use of tracking software that gathered personal data without disclosing the extent of what it was collecting)
- Google Inc., No. 5:12-CV-04177-HRL (N.D. Cal. Aug. 9, 2012) (stipulated order) (\$22.5 million civil penalty to settle charges that company violated 2011 FTC order by misrepresenting privacy assurances to users of Apple's Safari browser)
- Franklin's Budget Car Sales, Inc., d/b/a Franklin Toyota/Scion, C-4371 (June 7, 2012) (alleging that P2P software on company's network put sensitive personal information at risk)
- EPN, Inc., d/b/a Checknet, Inc., C-4370 (June 7, 2012) (alleging that P2P software on company's network put sensitive personal data at risk)
- Myspace LLC, C-4369 (May 8, 2012) (consent order) (alleging social networking site misled users about sharing personal data with advertisers, in violation of statements made in the company's privacy policy)
- Upromise, Inc., C-4351 (Jan. 5, 2012) (consent order) (alleging college savings membership service's web browser toolbar collected personal information without adequately disclosing extent of data it collected)
- Facebook, Inc., C-4365 (Nov. 29, 2011) (consent order) (alleging that company engaged in deceptive and unfair practices by violating privacy promises and by failing to disclose the effect changes in privacy practices had on users' privacy settings)
- ScanScout, Inc., 152 F.T.C. 1019 (2011) (consent order) (challenging deceptive claims that consumers could opt out of receiving targeted ads by changing their web browser settings to block cookies when, in fact, company used Flash cookies, which browser settings couldn't block)
- FTC v. Frostwire LLC, No. 1:11-CV-23643 (S.D. Fla. Oct. 11, 2011) (stipulated order) (alleging P2P file-sharing app developer's product caused consumers to unwittingly expose sensitive information stored on devices to disclosure)
- United States v. Teletrack, Inc., No. 1:11-CV-2060 (N.D. Ga. June 27, 2011) (\$1.8 million civil penalty for selling credit reports to marketers, in violation of the Fair Credit Reporting Act) (stipulated judgment)
- Ceridian Corp., 151 F.T.C. 514 (2011) (consent order) (alleging that HR services company failed adequately to protect network from reasonably foreseeable attacks and stored personal information in clear text indefinitely without business need)

- Lookout Services, Inc., 151 F.T.C. 532 (2011) (consent order) (alleging company that marketed product for employer compliance with immigration laws didn't honor promise to keep data reasonably secure, resulting in unauthorized access to sensitive information)
- Google Inc., 152 F.T.C. 435 (2011) (consent order) (alleging that company engaged in deceptive practices and violated its privacy promises when it launched Google Buzz social network)
- Chitika, Inc., 151 F.T.C. 514 (2011) (consent order) (challenging company's practice of tracking consumers' online activities even after they had chosen to opt out of online tracking)
- SettlementOne Credit Corporation, 152 F.T.C. 344 (2011); ACRAnet, Inc., 152 F.T.C. 367 (2011); and Fajilan and Associates, Inc., d/b/a Statewide Credit Services, 152 F.T.C. 389 (2011) (consent orders) (alleging that companies that resold credit reports didn't take reasonable steps to protect consumers' personal information, thus allowing hackers to access the data)
- FTC v. EchoMetrix, Inc., No.: CV10-5516 (E.D.N.Y. Nov. 30, 2010) (stipulated order) (alleging that seller of web monitoring software failed to adequately inform parents using its product that information collected about their children would be disclosed to third-party marketers)
- US Search, Inc., 151 F.T.C. 184 (2010) (consent order) (challenging deceptive claims that online data broker could for a fee "lock" consumers' records so others couldn't see or buy them)
- Rite Aid Corp., C-4308 (July 27, 2010) (consent order) (challenging as a deceptive and unfair trade practice the discarding of trash that contained consumers' personal data, including pharmacy labels and job applications)
- Twitter, Inc., 151 F.T.C. 162 (2010) (consent order) (alleging that social networking service deceived consumers and put their privacy at risk by failing to safeguard personal information, resulting in unauthorized administrative control by hackers)
- Dave & Buster's, Inc., C-4291 (consent order) (June 8, 2010) (alleging that restaurant chain left consumers' credit and debit card information vulnerable to hackers, resulting in fraudulent charges)
- FTC v. LifeLock, Inc., Robert Maynard, Jr., and Todd Davis, No. 2:10-CV-00530-NVW (D. Az. Mar. 9, 2010) (total of \$12 million to settle FTC-State AG charges that company used false claims to promote its purported identity protection services). See also FTC v. LifeLock, Inc., No. 2:10-CV-00530-MHM (D. Ariz. Jan. 5, 2016) (amended order) (\$100 million to settle contempt charges that LifeLock violated terms of 2010 court order)

- FTC v. ControlScan, Inc., No. 1:10-CV-00532-JEC (N.D. Ga. Feb. 25, 2010) (alleging that company that issued privacy and security certifications for online retailers misled consumers about how often it monitored sites and steps it took to verify their practices)
- FTC v. Navone, No. 2:08-CV-01842 (D. Nev. Jan. 20, 2010) (stipulated order) (\$35,000 civil penalty from mortgage broker who discarded consumers' tax returns, credit reports, and other sensitive data in a dumpster)
- United States v. ChoicePoint Inc., No.1-06-CV-198 (N.D. Ga. Oct. 19, 2009) (stipulated judgment) (\$275,000 judgment for failing to implement a comprehensive information security program protecting consumers' sensitive information, as required by 2006 court order, resulting in a data breach that compromised the personal information of 13,750 people)
- World Innovators, Inc., C-4282; ExpatEdge Partners, LLC, C-4269; Onyx Graphics, C-4270; Directors Desk LLC, C-4281; Progressive Gaitways LLC, C-4271; and Collectify LLC, C-4272 (Oct. 6, 2009) (consent orders) (alleging that companies falsely claimed they were abiding by U.S.-EU Safe Harbor Framework)
- Sears Holdings Management Corp., C-4264 (June 4, 2009) (consent order) (challenging practice of inviting consumers' to download software without adequately disclosing it would monitor nearly all behavior on that computer)
- James B. Nutter & Co., C-4258 (May 5, 2009) (consent order) (alleging that mortgage company violated Safeguards Rule by failing to provide reasonable and appropriate security for sensitive consumer information, and Privacy Rule by failing to provide notices or providing inaccurate notices)
- United States v. Rental Research Services, Inc., (D. Minn. Mar. 5, 2009) (consent order) (alleging that company that sells reports to landlords about potential renters failed to implement procedures to verify new customers and thus sold sensitive data to ID thieves, in violation of Fair Credit Reporting Act and FTC Act)
- CVS Caremark Corp., C-4259 (Feb. 18, 2009) (consent order) (alleging that pharmacy chain failed to implement reasonable procedures for securely disposing of personal information, did not adequately train employees, did not use reasonable measures to assess compliance, and did not employ a reasonable process for discovering and remedying risks to personal information)
- Compgeeks.com, C-4252 (Feb. 5, 2009) (consent order) (alleging that company routinely stored sensitive data in unencrypted text on its network and did not adequately assess that applications and network were vulnerable to reasonably foreseeable risks, such as SQL injection attacks)

- Premier Capital Lending, Inc., C-4241 (Nov. 6, 2008) (consent order) (alleging that company failed to provide reasonable security to protect sensitive customer data when it allowed a third-party home seller to access data that a hacker then used to illegally access consumers' credit reports)
- FTC v. Action Research Group, No. 6:07-CV-0227-ORL-22JGG (M.D. Fla. May 28, 2008) (stipulated order) (\$600,000 in disgorgement for "pretexting" scheme – obtaining consumers' phone records under false pretenses and without their knowledge or consent and selling the records to third parties)
- TJX Companies, C-4227 (consent order) (Mar. 27, 2008) (alleging that company created unnecessary risk by storing and transmitting personal information in plain text, failing to use readily available security to limit wireless access, and failing to use strong passwords, firewalls, and security patches)
- Reed Elsevier Inc., C-4226 (consent order) (Mar. 27, 2008) (alleging that companies created unnecessary risk to personal data by failing to require periodic changes of user credentials, failing to suspend credentials after unsuccessful login tries, allowing customers to store credentials in vulnerable format, and failing to implement low-cost defenses to foreseeable attacks)
- United States v. ValueClick, Inc., No. CV08-01711 MMM (Rzx) (C.D. Cal. Mar. 17, 2008) (stipulated judgment) (challenging company's deceptive claim in its privacy policies that it encrypted customer information when it either failed to encrypt or used an insecure, non-standard form of encryption)
- Goal Financial, 145 F.T.C. 142 (2008) (consent order) (alleging student loan company's failure to take reasonable security measures to protect sensitive customer data violated Safeguards Rule, Privacy Rule, and Section 5)
- FTC v. Accusearch, Inc., No. 06-CV-0105 (D. Wyo. Jan. 28, 2008) (court decision ordering \$200,000 disgorgement from information broker who advertised and sold confidential consumer telephone records to third parties without the consumers' knowledge or consent)
- Life is good, Inc., 145 F.T.C. 192 (2008) (consent order) (alleging retailer unnecessarily risked security of consumers' credit card information by storing it indefinitely in clear text on its network, failing to implement low-cost readily available defenses to foreseeable attacks, and failing to employ reasonable measures to detect unauthorized access)
- United States v. American United Mortgage Co., No. 07C 7064 (N.D. Ill. Dec. 18, 2007) (stipulated judgment) (\$50,000 civil penalty for mortgage company's practice of leaving loan documents with consumers' sensitive information in and around unsecured dumpster)

- FTC v. Information Search, Inc., No. 1:06-CV-01099-AMD (D. Md. Feb. 22, 2007) (stipulated order) (alleging that defendants and additional defendants in separate actions filed elsewhere obtained and sold consumers' confidential telephone records in violation of federal law)
- Guidance Software, 143 F.T.C. 528 (2006) (consent order) (alleging that company's failure to take reasonable security measures to protect sensitive customer data contradicted the security promises made on its website)
- FTC v. Integrity Security & Investigation Services, Inc., No. 2:06-CV-241-RGD-JEB (E.D. Va. Oct. 4, 2006) (stipulated order) (challenging company's selling of confidential customer phone records to third parties as an unfair trade practice)
- CardSystems Solutions, Inc., 142 F.T.C. 1019 (2006) (consent order) (challenging as unfair trade practice companies' failure to take appropriate security measures to protect the sensitive information of tens of millions of consumers, resulting in millions of dollars in fraudulent purchases)
- United States v. ChoicePoint Inc., No.1-06-CV-198 (N.D. Ga. Jan. 26, 2006) (stipulated judgment) (\$10 million civil penalty and \$5 million redress for data breach that led to compromise of financial records of 163,000 consumers and violations of the Fair Credit Reporting Act)
- DSW, Inc., D-4157 (Dec. 1, 2005) (consent order) (challenging as an unfair trade practice shoe store's failure to take appropriate security measures to protect sensitive consumer information)
- CartManager International, C-4135 (Apr. 26, 2005) (consent order) (alleging that company that provides "shopping cart" software to online merchants rented personal information about merchants' customers to marketers, knowing that such disclosure contradicted merchants' privacy policies)
- Superior Mortgage Corp., 140 F.T.C. 926 (2005) (consent order) (challenging violations of FTC Act and Safeguards Rule for company's failure to provide reasonable security for sensitive customer data and false claim it encrypted data submitted online)
- BJ's Wholesale Club, 140 F.T.C. 465 (2005) (consent order) (challenging as an unfair trade practice warehouse store's failure to take appropriate security measures to protect sensitive consumer information)
- Petco Animal Supplies, Inc., 139 F.T.C. 102 (2005) (consent order) (challenging security flaws on company's website that allowed access to consumers' personal information, including credit card numbers)

- Bonzi Software, Inc., 138 F.T.C. 738 (2004) (consent order) (challenging deceptive representations that InternetALERT software significantly reduced the risk of Internet attacks and unauthorized access into computers)
- Gateway Learning Corp., 138 F.T.C. 443 (2004) (consent order) (alleging that privacy policy of marketer of Hooked On Phonics promised to protect personal information and then changed its policy and sold information without consumers' consent)
- Tower Records/Books/Video and TowerRecords.com, 137 F.T.C. 444 (2004) (consent order) (challenging security flaws on website that allowed access to consumers' personal information)
- Guess?, Inc., and Guess.com, Inc., 136 F.T.C. 507 (2003) (consent order) (alleging that security flaws on company's website placed consumers' credit card numbers at risk to hackers)
- Educational Research Center of America, Inc., 135 F.T.C. 578 (2003) (consent order) (alleging that practice of collecting personal information from students as young as ten claiming it would be used solely for education-related services and then selling it to marketers was a violation of Section 5)
- National Research Center For College and University Admissions, 135 F.T.C. 13 (2003) (consent order) (alleging that companies' practices of collecting personal information from high school students claiming they would share it only with colleges and others providing education-related services and then selling it to marketers was a violation of Section 5)
- Microsoft Corp., 134 F.T.C. 709 (2002) (consent order) (challenging deceptive claims regarding the privacy and security of personal information collected from consumers through Microsoft's Passport web services)
- Eli Lilly and Co., 133 F.T.C. 763 (2002) (consent order) (challenging unauthorized disclosure of sensitive personal information collected from consumers through company's Prozac.com website)
- FTC v. Toysmart.com, No. 00-11341-RGS (D. Mass. July 21, 2000) (stipulated consent agreement) (settling request to enjoin bankrupt company from selling confidential information collected from customers after representing in its privacy policy that information would never be disclosed to third parties)
- FTC v. Rennert, No. CV-S-00-0861-JBR (D. Nev. July 6, 2000) (stipulated order) (requiring company operating an online pharmacy to post a privacy policy, including how consumers can access, review, modify, or delete their personal information, and prohibiting the defendants from selling, renting, or disclosing personal information collected from customers)

- Liberty Financial Companies, Inc., 128 F.T.C. 240 (1999) (challenging company's practice of collecting identifiable personal information about family finances from children at its "Young Investors" website despite representing that information would be compiled anonymously)
- GeoCities, 127 F.T.C. 94 (1999) (consent order) (alleging the company misrepresented purposes for which it collected personal identifying information from children and adults on its website)

M. Children's Privacy: Passed in 1998, the Children's Online Privacy Protection Act, 15 U.S.C. § 6501, requires websites to obtain verifiable parental consent before collecting, using, or disclosing personal information from children. The law directed the FTC to promulgate the Children's Online Privacy Protection Rule, including provisions for "safe harbor" programs – industry self-regulatory guidelines that, if adhered to, are deemed to comply with the Act. On February 27, 2007, the FTC issued *Implementing the Children's Online Privacy Protection Act: A Report to Congress*.

1. **Children's Online Privacy Protection Act Rule:** Pursuant to the Children's Online Privacy Protection Act, the FTC issued the COPPA Rule in 2000 and revised it in 2012, outlining procedures for websites to use in getting parental consent before collecting, using, or disclosing personal information from children. 16 C.F.R. § 312. Covered sites must provide parents notice of information practices, get verifiable parental consent before collecting a child's personal information, give parents a choice of whether information will be disclosed to third parties, allow parents the opportunity to review their children's personal information and have it deleted or prevent further use or collection of information, not require child to provide more information than is reasonably necessary to participate in an activity, and maintain confidentiality, security, and integrity of data collected from children.
2. **COPPA Safe Harbors:** On February 1, 2001, the FTC approved the Children's Advertising Review Unit of the Council of Better Business Bureaus as the first safe harbor program under the terms of COPPA. The FTC has approved additional safe harbors since then.
3. **Children and Mobile Apps:** On February 16, 2012, the FTC issued a report, *Mobile Apps for Kids: Current Privacy Disclosures Are Disappointing*, announcing the results of a survey indicating that neither app stores nor app developers provide parents with the information they need to determine what data is being collected from their children, how it is being shared, or who will have access to it. A December 2012 follow-up report, *Mobile Apps for Kids: Current Privacy Disclosures Are Disappointing*, observed little progress. Staff issued further data in 2015.
4. Representative cases:

- United States v. Unixiz, Inc., No. 5:19-CV-02222-NC (N.D. Cal. Apr. 24, 2019) (stipulated order) (\$35,000 civil penalty from owner of i-Dressup.com for violating parental notification and data security provisions of COPPA)
- United States v. Musical.ly, No. 2:19-CV-01439 (C.D. Cal. Feb 27, 2019) (stipulated order) (\$5.7 million civil penalty from video social networking app – now known as TikTok – for collecting personal information from children, in violation of COPPA)
- United States v. VTech Electronics Limited, No. 1:18-CV-00114 (N.D. Ill. Jan. 8, 2018) (stipulated order) (\$650,000 civil penalty for violating COPPA and FTC Act by collecting personal information from children without direct notice and parental consent, and by failing to take reasonable steps to secure data)
- United States v. InMobi Pte. Ltd., No. 3:16-CV-03474 (N.D. Cal. June 22, 2016) (stipulated order) (\$950,000 civil penalty for deceptively tracking locations of millions of consumers, including children, without consent, in violation of COPPA and FTC Act)
- United States v. LAI Systems, LLC, No. 2:15-CV-09691 (C.D. Cal. Dec. 17, 2015) (stipulated order) (\$60,000 civil penalty for COPPA violations arising from app developer allowing advertisers to use persistent identifiers to serve ads to children)
- United States v. Retro Dreamer, No. 5:15-CV-02569 (C.D. Cal. Dec. 17, 2015) (stipulated order) (\$300,000 civil penalty for COPPA violations arising from app developer allowing advertisers to use persistent identifiers to serve ads to children)
- United States v. Yelp Inc., No. 3:14-CV-04163 (N.D. Cal. Sept 17, 2014) (\$450,000 civil penalty for COPPA violations resulting when company’s mobile app allowed registration by users who indicated when registering that they were under 13)
- United States v. TinyCo, Inc., No. 3:14-CV-04164 (N.D. Cal. Sept 17, 2014) (\$300,000 civil penalty for COPPA violations)
- United States v. Path, Inc., No. C-13-0448 (N.D. Cal. Feb. 1, 2013) (\$800,000 civil penalty for COPPA violations)
- United States v. Artist Arena LLC, No. 1:12-CV-07386-JGK (S.D.N.Y. Oct. 4, 2012) (consent decree) (\$1 million for COPPA violations by official fan sites for Justin Bieber, Rihanna, Demi Lovato, and Selena Gomez)

- United States v. RockYou, Inc., No. CV-12-1487 (N.D. Cal. Mar. 27, 2012) (consent decree) (\$250,000 civil penalty for COPPA violations)
- United States v. Jones Godwin d/b/a skidekids.com, No.1:11-CV-03846-JOF (N.D. Ga. Nov. 8, 2011) (consent decree) (\$100,000 suspended civil penalty for COPPA violations by operator of social networking site for children)
- United States v. W3 Innovations d/b/a Broken Thumbs Apps, No. CV-11-03958-PSG (N.D. Cal. Aug. 15, 2011) (in FTC's first case involving mobile app, \$50,000 civil penalty for collecting and disclosing personal information from children under 13 without parents' prior consent, in violation of COPPA)
- United States v. Playdom, Inc., No. SACV11-00724 (C.D. Cal. May 12, 2011) (\$3 million civil penalty against operator of online virtual worlds for illegally collecting and disclosing personal information from hundreds of thousands of children under 13 without parents' prior consent, in violation of COPPA)
- FTC v. EchoMetrix, Inc., No.: CV10-5516 (E.D.N.Y. Nov. 30, 2010) (stipulated order) (alleging that seller of web monitoring software didn't adequately inform parents that data collected about their children would be disclosed to marketers)
- United States v. Iconix Brand Group, No. 09 Civ. 8864 (MGC) (S.D.N.Y. Oct. 20, 2009) (\$250,000 civil penalty from marketer of Candie's, Bongo, and Mudd apparel for violations of COPPA, including practices that allowed children to share personal data and photos online)
- United States v. Sony BMG Music, No. 08 CV 10730 (S.D.N.Y. Dec. 11, 2008) (\$1 million civil penalty for collecting personal data from 30,000 registrants under 13 and allowing them to create fan pages, post comments on message boards, and engage in private messaging)
- United States v. Industrious Kid, Inc., No. CV-08-0639 (N.D. Cal. Jan. 30, 2008) (consent decree) (\$130,000 civil penalty for COPPA violations by social networking website targeting kids and tweens)
- United States v. Xanga.com, Inc., No. 06-CIV-6853(SHS) (S.D.N.Y. Sept. 7, 2006) (\$1 million civil penalty for allowing visitors to create more than 1.7 million accounts on social networking site although they provided a birth date indicating they were under 13)

- United States v. UMG Recordings, Inc., No. CV-04-1050 JFW (Ex) (C.D. Cal. Feb. 17, 2004) (consent decree) (\$400,000 civil penalty for music company's knowing collection of personal information from children online without first obtaining parental consent and for engaging in the same activities on a website directed to children)
- United States v. Bonzi Software, No. CV-04-1048 RJK (Ex) (C.D. Cal. Feb. 17, 2004) (consent decree) (\$75,000 civil penalty for software marketer's collection of personal information from children online without first obtaining parental consent)
- United States v. Hershey Foods Corp., No. 4:CV03-350 (M.D. Pa. Feb. 26, 2003) (consent decree) (\$85,000 civil penalty for company's use of a method of obtaining parental consent that did not meet COPPA Rule standards)
- United States v. Mrs. Fields Famous Brands, Inc., No. 2:03CV205-JTG (D. Utah Feb. 26, 2003) (consent decree) (\$100,000 civil penalty for company's collection of personal information from more than 84,000 children, without first obtaining parental consent)
- United States v. The Ohio Art Co., (N.D. Ohio Apr. 22, 2002) (consent decree) (\$35,000 civil penalty for company's violation of COPPA by collecting personal information from children on its Etch-a-Sketch website without obtaining parental consent)
- United States v. American Pop Corn Co., No. C02-4008DEO (N.D. Iowa Feb. 14, 2002) (\$10,000 civil penalty for company's violation of COPPA by collecting personal information from children on its Jolly Time Popcorn website without obtaining parental consent)
- United States v. Lisa Frank, Inc., No. 01-1516-A (E.D. Va. Oct. 2, 2001) (consent decree) (\$30,000 civil penalty for violation of COPPA by collecting personally identifying information from children under 13 years without parental consent and requiring operators to delete personally identifying information collected from children online since the Rule's effective date)
- United States v. Monarch Services and Girls' Life, Inc. (D. Md. Apr. 19, 2001); United States v. BigMailbox.com, No. 01-605-1 (E.D. Va. Apr. 19, 2001); and United States v. Looksmart, No. 01-606-A (E.D. Va. Apr. 19, 2001) (consent decrees) (\$100,000 civil penalty for website operators' violations of COPPA by collecting information from children under 13 without parental consent)

XV. SELF-REGULATORY INITIATIVES

- A. Self-Regulatory Initiatives: The FTC has expressed long-standing support for industry efforts to encourage effective self-regulation and has acknowledged referrals from groups like the National Advertising Division, the Children's Advertising Review Unit, and the Electronic Retailing Self-Regulation Program of the Council of Better Business Bureaus. See, e.g., FTC v. COORGA Nutraceuticals Corp., No. 15-CV-72-S (D. Wyo. Sept. 23, 2016) (order granting motion for summary judgment); FTC v. Solace International, Inc., No. 3:14-CV-00638-MMD-WGC (D. Nev. Dec. 23, 2014) (stipulated permanent injunction); FTC and Florida AG v. Alcoholism Cure Corp., No. 3:10-CV-266-F-34TEM (M.D. Fla. July 19, 2012) (judgment); Oreck Corp., 151 F.T.C. 289 (2011) (consent order); FTC v. Chinery, No. 05-3460 (GEB) (D.N.J. Jan. 4, 2007) (stipulated order); FTC v. Great American Products, Inc., No. 3:05-CV-00170-RV-MD (N.D. Fla. May 20, 2005), *aff'd*, 200 Fed. Appx. 897 (4th Cir. 2006); United States v. Lisa Frank, Inc., No. 01-1516-A (E.D. Va. Oct. 2, 2001) (consent decree).
- B. Advertising Clearance: FTC staff has encouraged media to adopt effective in-house procedures for screening out facially deceptive ads before they run. In 1995, the FTC co-sponsored a national conference, *Preventing Fraudulent Advertising: A Shared Responsibility*, to encourage effective self-regulation by print and broadcast media. In addition, the Commission issued *Screening Advertisements: A Guide for Media*, a brochure on developing effective in-house ad clearance procedures, published with the United States Postal Inspection Service and the Direct Marketing Association.
- C. Marketing Practices of the Weight Loss Industry: The FTC sponsored a workshop in November 2002 to consider initiatives to combat deception in weight loss advertising, including effective screening by broadcasters and publishers. In December 2003, the FTC issued *Red Flags: A Reference Guide for Media on Bogus Weight Loss Claim Detection*, a brochure to assist publishers and broadcasters screen out patently false ads before they are disseminated. According to *Weight-Loss Advertising Survey: A Report From the Staff of the Federal Trade Commission*, the percentage of ads for weight loss products that contain representations the FTC considers to be patently false – “red flag” claims – dropped from almost 50% in 2001 to 15% in 2004. In January 2014, the FTC updated its advice and released *Gut Check: A Reference Guide for Media on Spotting False Weight Loss Claims*.
- D. Marketing Practices of the Entertainment Industry: In June 1999, the President and members of Congress asked the FTC to conduct a study to determine whether members of the entertainment industry market violent adult-rated material to children. On September 11, 2000, the FTC issued *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* and convened a national workshop. Between 2001 and 2009, the FTC issued six follow-up reports. The FTC also has conducted periodic mystery shopper studies to evaluate self-regulatory efforts in the marketplace. According to the first survey, conducted in 2003, 69% of the teenage shoppers were able to buy

M-rated games; 83% were able to buy explicit-labeled recordings; 81% were successful in purchasing R-rated movies on DVD; and 36% were successful in purchasing tickets for admission to an R-rated film at movie theaters. The 2008 survey reported that 20% of underage teenage shoppers were able to buy M-rated videogames and 50% were able to buy R-rated and unrated DVDs and music CDs with parental advisory labels. The 2013 survey showed improvement in some sectors in limiting the sale of entertainment products labeled under industry self-regulatory programs as inappropriate for children. Representative cases:

- Take-Two Interactive Software, Inc. and Rockstar Games, Inc., 142 F.T.C. 1 (2006) (consent orders) (alleging that marketers of *Grand Theft Auto: San Andreas* failed to disclose that game contained potentially viewable material that was sexually explicit, resulting in its subsequent re-rating by the Entertainment Software Ratings Board from “Mature” to “Adults Only”)

E. Marketing Practices of the Alcohol Industry. See Section XI *infra*.