



Tiffany M. Woo

Attorney, Federal Trade Commission

Tiffany Woo is a staff attorney in the Federal Trade Commission's Division of Advertising Practices, where she works on a variety of consumer protection matters. Before joining the FTC, Ms. Woo was an associate at a large law firm in New York City. Ms. Woo holds a Bachelor of Arts from Yale University and a Juris Doctor from Columbia Law School.



**FEDERAL TRADE
COMMISSION**

FTC Update

New York Intellectual Property Law Association
“Hot Topics in Trademark & Copyright Law”

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Staff Attorney

Division of Advertising Practices

Federal Trade Commission

Disclosure

The views I share today are my own and do not necessarily reflect the position of the Federal Trade Commission, any individual Commissioner, or any other component of the agency.

Background

The FTC Act

“Unfair or deceptive acts or practices in or affecting commerce[] are hereby declared unlawful.” 15 U.S.C. § 45(a)(1).

...and more than 80 other laws, trade regulation rules, and rules promulgated under specific grants of authority from Congress

Background

- Section 5 of the FTC Act prohibits unfair or deceptive acts or practices
- An act or practice is ***unfair*** if:
 - it causes substantial consumer injury – physical, economic, or otherwise
 - not reasonably avoidable by consumers
 - and not outweighed by countervailing benefits to consumers or to competition
- An act or practice is ***deceptive*** if:
 - it's likely to mislead consumers acting reasonably under the circumstances
 - and it would be material to their decision to buy the product or service

Background

- Under the law, claims in advertisements must be ***truthful, cannot be deceptive or unfair***, and must be ***evidence-based***.
- An advertiser is responsible for all objective claims – ***express and implied*** – that are conveyed to reasonable consumers.
- All objective claims must be ***substantiated at the time they are made***.
- Fine print or buried “disclosures” won’t cure an otherwise deceptive ad.

Trade Regulation Rule on Impersonation of Government and Business (16 CFR Part 461)

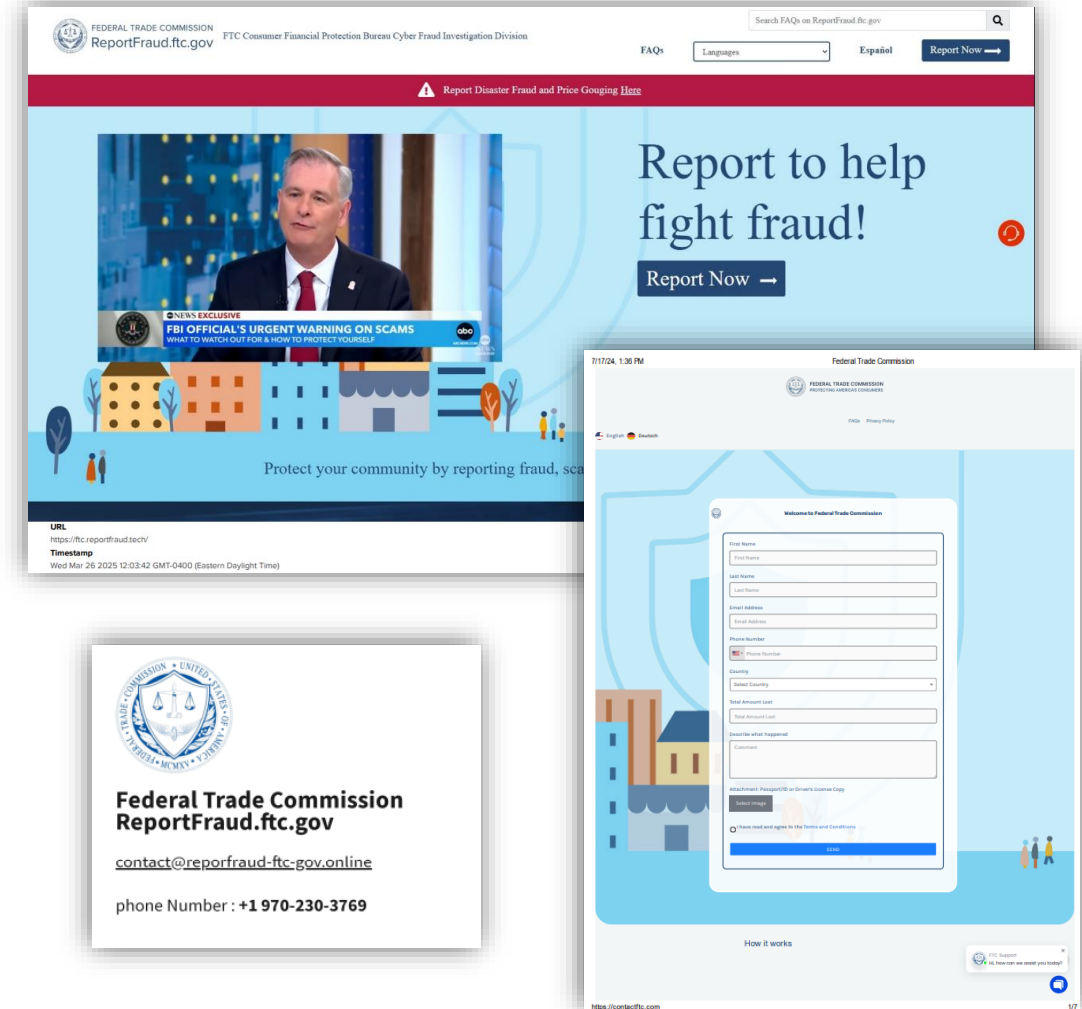
- Known as the “Impersonation Rule”
- Effective April 1, 2024
- Section 461.2 prohibits materially and falsely posing as a **government entity or officer**, or materially misrepresenting affiliation with a government entity, in or affecting commerce
- Section 461.3 prohibits materially and falsely posing as, directly or by implication, a **business or officer thereof**, or materially misrepresenting, directly or by implication, affiliation with, including endorsement or sponsorship by, a business or officer thereof, in or affecting commerce
- Violators may be subject to civil penalties of up to \$53,088 per violation

Recent Enforcement Actions

- **Global Circulation** – alleged phantom debt collection scheme involving false claims of affiliation with specific lenders (order includes debt collection industry ban, \$9.7 monetary judgment)
- **Click Profit** – alleged business opportunity scheme for opening Amazon/Walmart/TikTok stores using cutting-edge AI technology and exclusive brand partnerships (enjoined with litigation ongoing)
- **Superior Servicing** – alleged student loan debt relief scheme that pretended to be affiliated with U.S. Dept. of Education (enjoined with litigation ongoing)
- **Panda Benefit** – alleged student loan debt relief scheme that pretended to be affiliated with U.S. Dept. of Education (orders include debt relief industry ban, \$16.8 million monetary judgment (partially suspended due to inability to pay))
- **Blackstone Legal** – alleged phantom debt collection scheme by pretend lawyers / law firms (enjoined with litigation ongoing)

Online Impersonators – FTC

- Worked with domain registrars to take down 13 websites impersonating the FTC, including:
federaltradecommision.org; ftc-gov.us; ftcgrant.com; contactftc.com; ftc.reportfraud.tech; myftc.info/reportfraud; reporfraud-ftc-gov.online; ftc.reportfraud.work; ftc.reportfraud.site; FTCEUrecovery.com; ftcfr.org



Online Impersonators – IRS

- Warning letters to websites selling EIN filing and delivery services for up to \$300 per EIN even though consumers can obtain EINs for free directly from the IRS's website – including use of IRS acronym and imagery



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

A substantial number of consumers have complained of potential deception by EIN filing and delivery services, including the following acts and practices (in isolation or combination) that may create a false impression:

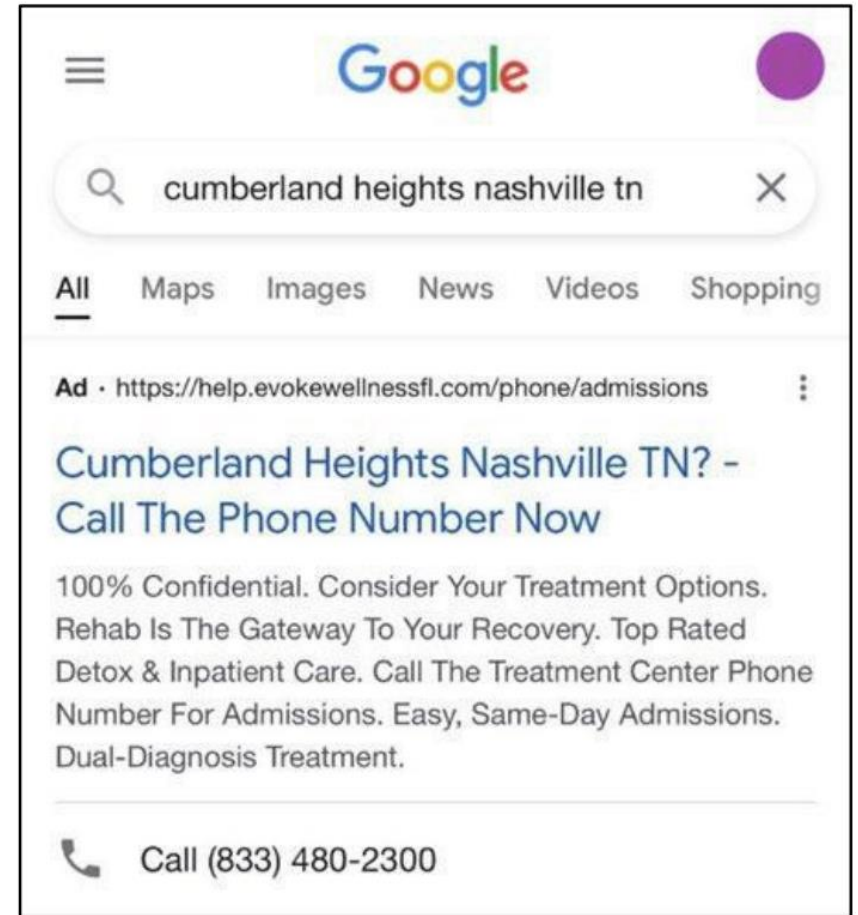
- impersonating the IRS's website or misrepresenting that consumers are on a government website, including by using similar or nearly identical seals, logos, imagery, layouts, formatting, colors, fonts, etc. on EIN filing and delivery service websites ("EIN websites") or in ads that lead to EIN websites;
- the use of the government acronym "IRS" in domain names for EIN websites;
- prominently displaying "IRS" or "EIN Assistant" (the name the IRS uses for its free public EIN application tool) on EIN websites;
- promoting EIN filing and delivery services through backlinks from other websites that purport to lead to the IRS's website but instead lead consumers to an EIN filing or delivery service;
- failing to disclose clearly and conspicuously that the EIN filing and delivery service website is not the IRS's website nor a government website; and
- failing to disclose clearly and conspicuously that consumers may obtain an EIN for free directly from the IRS.

Violations of the FTC Act and the Impersonation Rule may be subject to legal action and Federal District Court injunctions. In addition, companies or individuals that violate the Impersonation Rule may be subject to civil penalties of up to \$53,088 per violation pursuant to Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), and may be required to pay refunds to consumers or provide other relief pursuant to Section 19(b), 15 U.S.C. § 57b(b).

¹ An act or practice is deceptive if there is a material representation, omission, or practice that is likely to mislead consumers acting reasonably under the circumstances. See, e.g., *FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001).

Evoked Wellness – Google Search Advertising

- Substance use disorder (SUD) treatment center allegedly placed Google search ads using Dynamic Keyword Insertion, which would insert the names of competing clinics into search ads delivered to consumers
- Deception allegedly continued by agents answering incoming phone calls
- Proposed stipulated order includes ban on impersonating other companies (including other SUD treatment clinics) and on other deceptive advertising, plus \$7 million civil penalty (partially suspended due to inability to pay)



Recent AI Cases – Workado / Content at Scale AI

- “AI Content Detector” – allegedly claimed to be 98% accurate in detecting whether text was written by generative AI technology or a human being
- But independent testing allegedly showed accuracy rate around ~53%
- Proposed administrative order contains prohibitions on misleading or unsubstantiated representations, records preservation requirements, consumer notice requirements, and compliance reporting requirements

The AI Detector, boasting a 98% accuracy rate, discerns whether your text is human or AI-generated, including from sources like ChatGPT, GPT4, Claude, and Bard. Our AI Checker is one of the most trusted in the industry. Be aware: AI-detected writing can influence search engine rankings, academic grading, and reader perceptions. The AI Detector, now with a pro version, can transform AI text into undetectable AI content!

How Does Our AI Detector Work?

Our AI Detector can predict with 98.3% accuracy whether your content is human or AI-generated. It checks for traces of AI in written text from sources like ChatGPT, Claude, Bard, GPT-4, and more.

How? By looking for patterns that are consistent with most bot-written text, including:

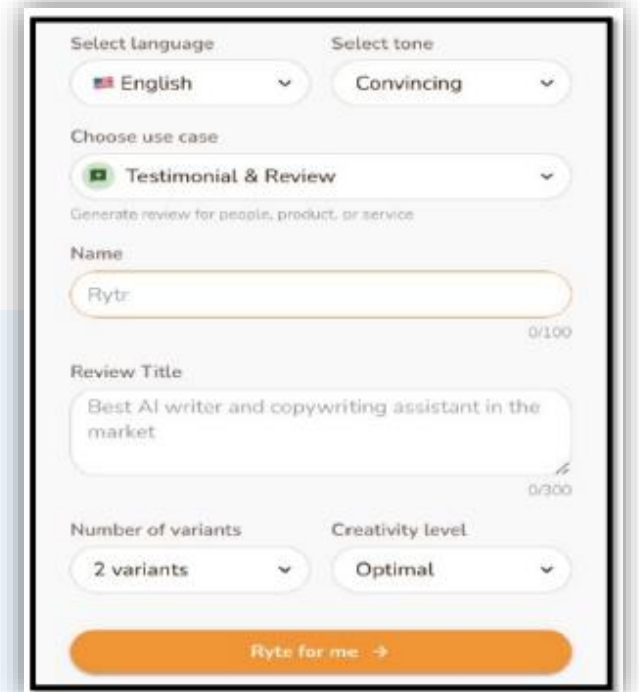
- Lack of natural flow
- Repetitive wording
- Generic tone
- Probability in word choices
- Sentence structure

How does it know the difference between human and AI writing patterns? Our detector was trained on a vast amount of material — blog posts, essays, Wikipedia entries, articles, and more content across multiple LLMs (large language models).

In fact, it's so good, it will even flag human-written text as AI if it sounds robotic. (Let's face it: not all of us are great writers. In this case, the AI Detector will help you write more naturally, with better readability!)

Recent AI Cases – Rytr

- AI “writing assistant” with “Testimonial and Review” generating function
- Generated reviews allegedly included specific and material details often unrelated to user input (e.g., fabricated details about price, promptness, user experience, etc.)
- Dissenting statements:
 - Chairman (then Commissioner) Ferguson noted that harm was speculative as complaint did not allege users actually posted reviews, and complaint failed to account for benefits from the technology as required in unfairness analysis
 - Commissioner Holyoak objected to treating service as categorically illegal just because someone might use it for fraud
- Order bans Rytr from advertising, marketing, promoting, offering for sale, or selling, any consumer review or testimonial generation service



The screenshot displays the Rytr AI interface for generating testimonials and reviews. At the top, there are dropdown menus for 'Select language' (set to English) and 'Select tone' (set to Convincing). Below these is a 'Choose use case' dropdown menu set to 'Testimonial & Review'. A subtext reads 'Generate review for people, product, or service'. The 'Name' field contains 'Rytr' with a character count of 0/100. The 'Review Title' field contains 'Best AI writer and copywriting assistant in the market' with a character count of 0/300. At the bottom, there are dropdowns for 'Number of variants' (set to 2 variants) and 'Creativity level' (set to Optimal). An orange button at the bottom right says 'Rytr for me →'.

Other Recent AI Cases

- **AccessiBe** – AI-powered tool to make websites compliant with Web Content Accessibility Guidelines for people with disabilities (admin consent order prohibits misleading claims, requires \$1 million payment)
- **DoNotPay** – “world’s first robot lawyer” (admin consent order prohibits misleading claims, requires consumers to be notified about the settlement, requires \$193k payment)



The World's First Robot Lawyer

The DoNotPay app is the home of the world's first robot lawyer. Fight corporations, beat bureaucracy and sue anyone at the press of a button.

Trade Regulation Rule on Unfair or Deceptive Fees (16 CFR Part 464) – Overview

- Effective May 12, 2025
- Applies to live-event ticketing and short-term lodging industries
 - Live-event tickets – concerts, sporting events, music, theater, and other live performances.
 - Short-term lodging – Includes temporary sleeping accommodations at a hotel, motel, inn, short-term rental, vacation rental, or other lodging.
- Businesses that offer, display, or advertise live-event tickets or short-term lodging (including third-party platforms, resellers, travel agents, B2B sellers) are subject to the rule
- Violators may be subject to civil penalties of up to \$53,088 per violation

Trade Regulation Rule on Unfair or Deceptive Fees (16 CFR Part 464) – Total Price Requirement

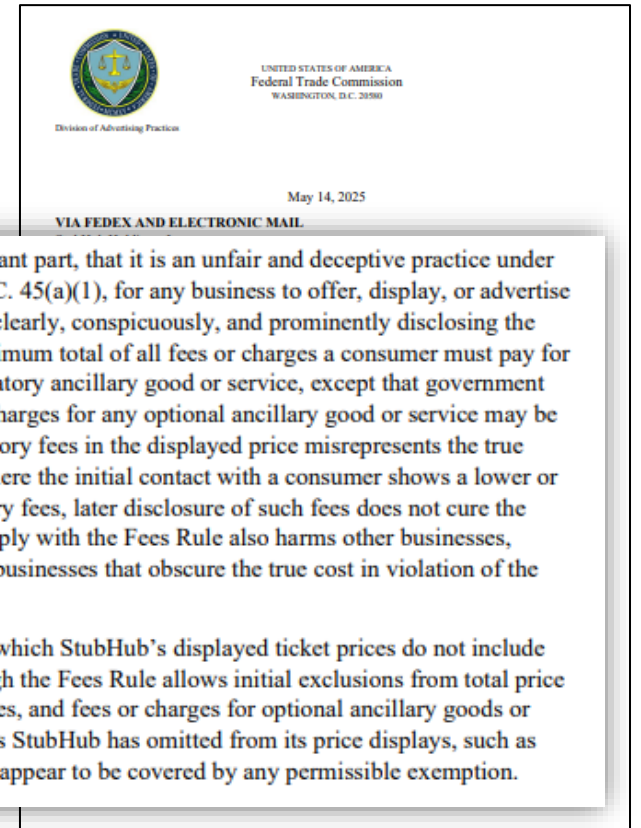
- Section 464.2(a): Disclose the **total price** whenever listing a price.
- Section 464.2(b): Total price must be more **prominent** than other pricing info.
- All mandatory fees must be included in the total price (e.g., cleaning fees, resort fees, credit card surcharges when there is no other viable payment method, fees automatically applied because of default billing, etc.).
- Itemization is permissible, but it must not be misleading, and the total price must be the most prominent figure.
- OK to initially exclude taxes or other government charges, shipping charges, or optional charges contingent on consumer choices, but any such charges must be included in final payment amount before asking for payment. Final amount of payment must be displayed as or more prominently than the total price.

Trade Regulation Rule on Unfair or Deceptive Fees (16 CFR Part 464) – No Misrepresentations

- Section 464.3: **No misrepresentations** about fees and charges.
- Businesses must be truthful about what they are charging and why.
- They must be truthful about any other fee-related information they choose to convey, like whether fee is refundable.
- They should avoid vague phrases like “convenience fees,” “service fees,” or “processing fees.”
- Examples of potential misrepresentations:
 - “environmental fee” not used to promote environmental sustainability or conservation;
 - government taxes & fees that aren’t required by the government;
 - speculatively advertising tickets for a certain price when the seller does not actually have the tickets when the offer is made


StubHub Warning Letter

- Sent May 14, 2025
 - 2 days after effective date of the Fees Rule
 - On the day the NFL's 2025 schedule was released
 - 5 months after final Fees Rule announced in December 2024
 - 4 months after final Fees Rule and its effective date were published in the Federal Register in January 2025
- Identified mandatory fees left out of displayed ticket prices



Invitation Homes – Hidden Fees

- Largest single-family home landlord in the country, with more than 80,000 homes
 - Prospective renters allegedly paid non-refundable application fees (\$55) and holding fees (\$500) based on deceptively advertised rates
 - Advertised monthly rental prices allegedly did not include mandatory fees like “utility management,” “air filter delivery,” “smart home technology,” and “internet package” fees that added \$60-\$145/month
- Stipulated order requires
 - display of total monthly lease price (including all mandatory fees) more prominently than any other pricing info;
 - clear disclosure of all fees and their purpose;
 - \$48 million in monetary relief



Basic Lease Information

Home is available for move-in starting on 4/10/2021

Move-In Date

Lease Term:

Rent: \$1,690.00

[START APPLICATION](#)

Lease your Invitation Home through InvitationHomes.com or with the help of a licensed leasing agent. All leasing information is believed to be accurate, but changes may have occurred since photographs were taken and square footage is estimated. Furthermore, prices and dates may change without notice. Invitation Homes does not lease homes through Craigslist or other classified advertising services. Please note this home may be governed by a HOA and could require additional applications and/or fees. An account set-up fee will be charged on all new leases. To better serve our residents, Invitation Homes is pet-friendly with some breed restrictions and allows up to three pets with a monthly fee. Lease Easy standard services are required in your lease and will be billed monthly as separate items on your account ledger with your rent - up to \$40 monthly for all three services: Smart Home in homes with Smart Home features, Air Filter Delivery in homes with an HVAC system, Utilities Management, where available, plus your monthly utility usage. If your home has a pool, there is a \$120 monthly pool fee. Broker participation welcome, so please refer to MLS. Please contact your leasing agent for more information.

LendingClub – Hidden Fees

- FTC alleged that loan applicants would receive a specific loan amount with “no hidden fees”
- But actually, hundreds or even thousands of dollars in hidden up-front fees were deducted from the loans
- Loans were also promised to applicants when the company knew they would not get a loan
- Stipulated order prohibits misrepresentations to loan applicants and requires clear and conspicuous disclosure of the amount of any prepaid, up-front, or origination fee and the total amount of funds to be received; includes \$18 million monetary judgment



Trade Regulation Rule Concerning Recurring Subscriptions and Other Negative Option Programs (16 CFR 425)

- Known as the “Negative Option Rule”
- Effective January 14, 2025
- Compliance deadline for §§ 425.4-6 is **July 14, 2025** (announced May 9, 2025)
 - Legal challenge pending in the 8th Circuit
 - Chairman (then Commissioner) Ferguson and Commissioner Holyoak voted against issuing the final rule
 - Commissioner Holyoak’s dissenting statement raised concerns with the rule’s breadth and a failure to demonstrate that unfair or deceptive acts or practices relating to negative options are “prevalent”
- **Section 425.3** prohibits misrepresenting any material fact when marketing negative option features (including misleading claims about consumer consent, trial periods, cancellation terms, subscription details, cost, etc.)
- **Section 425.4** requires clear and conspicuous disclosure of all material terms, including frequency of recurring payment, amount to be charged, cancellation information, before obtaining billing information and immediately before the request for affirmative consumer consent
- **Section 425.5** requires sellers to obtain specific, express informed consent for negative option programs and their material terms
- **Section 425.6** requires that cancelling a subscription must be as simple as signing up
- Violators may be subject to civil penalties of up to \$53,088 per violation

Restore Online Shoppers' Confidence Act (2010)

- Known as ROSCA
- 15 U.S.C. §§ 8401-8405
- **Section 8402** prohibits any post-transaction third party seller (a seller who markets goods or services online through an initial merchant after a consumer has initiated a transaction with that merchant) from charging any financial account in an Internet transaction unless it has clearly disclosed all material terms of the transaction and obtained the consumer's express informed consent to the charge. The seller must obtain the number of the account to be charged directly from the consumer.
- **Section 8403** prohibits charging or attempting to charge consumers for goods or services sold in an Internet transaction **through a negative option feature** without clearly disclosing all material terms of the transaction before obtaining the consumer's billing information, obtaining express informed consent before charging, and providing simple mechanisms to stop recurring charges
- Violators may be subject to civil penalties of up to \$53,088 per violation

Cerebral – Subscription Cancellation

- Online mental health service provider allegedly disclosed sensitive personal health information and other sensitive data to third parties for advertising purposes, and billed consumers despite requests to cancel subscriptions
- Stipulated order restricted how the company could use or disclose sensitive consumer data and required it to provide consumers with a simple way to cancel services; also included \$7 million in monetary relief
- More than 40,000 refund recipients (who submitted a request to cancel their subscription on or before May 2022 but who Cerebral continued to charge) are to receive payments



Some Other Subscription Cancellation Cases

- Litigation ongoing:
 - Uber One
 - Adobe “Annual, Paid Monthly” plan (DOJ referral)
 - Amazon Prime
- **Care.com** – alleged deceptive earnings claims, for which auto-renewing subscription was needed to access, by child and older adult care gig work platform (stipulated order prohibits misleading and unsubstantiated claims, requires disclosure of all material terms and a simple cancellation mechanism for the negative option feature; \$8.5 million for consumer redress)
- **Legion Media** – alleged enrollment in continuity plans for CBD and keto-related products that consumers did not agree to buy (stipulated orders include industry bans and forfeiture of ~\$40 million in assets)



Thank you!



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twoo@ftc.gov