

June 22, 2022

VIA EMAIL

Samuel A.A. Levine, Director, Bureau of Consumer Protection Serena Viswanathan, Associate Director, Division of Advertising Practices Federal Trade Commission 600 Pennsylvania Ave. N.W. Washington, D.C. 20580 slevine1@ftc.gov sviswanathan@ftc.gov

Re: HelloFresh's Deceptive Advertising and Illegal Business Practices

Dear Mr. Levine and Ms. Viswanathan:

A recent Truth in Advertising, Inc. ("TINA.org") investigation into HelloFresh SE, a publicly traded meal-kit company based in Germany and the largest meal-kit provider in the United States,¹ revealed that the company is engaged in deceptive and illegal business practices, in violation of the Restore Online Shoppers Confidence Act (ROSCA)² and FTC law.

Specifically, TINA.org's investigation revealed that HelloFresh deceptively advertises "free" meals to lure consumers to enter their credit card information on its website through a process that employs dark patterns designed to pressure consumers to speed through their transactions and avoid reading the material terms of its subscription autorenewal program, which are not clearly and conspicuously disclosed. This results in consumers being repeatedly charged without providing their express informed consent. And to make matters worse, the company employs dissuasion and diversion tactics so that consumers encounter unnecessary difficulty when trying to cancel their HelloFresh subscriptions. In addition, the company also uses deceptive social media influencer advertisements that fail to adequately disclose the influencers' material connections to the company despite the fact that HelloFresh is well aware of its legal obligations in this regard as the FTC has directly corresponded with the company concerning this exact issue.³

Each of these deceptive acts and practices are explained more fully below.⁴

Deceptive "Free" Promotions to Lure Consumers into Negative Option Offers

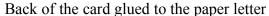
In promotional mailers sent to consumers' homes, HelloFresh advertises "17 FREE MEALS."



In fact, HelloFresh makes repeated use of the word "Free" in marketing materials – in promotional fliers (as shown above) and in letters addressed to consumers (as shown below), as well as on envelopes that consumers receive.⁵



However, there are no free meals. The offer's terms and conditions, which can only be viewed by peeling off one of the two green promotional cards glued to the paper letter (an action that is not necessary to make use of the offer) indicates that nothing is being given away for free.





Offer only valid for new customers with an auto-renewal subscription purchase. "17 free meals" is based on a total discount that shall apply over a six week period of a minimum order of 3 meals for 4 people per week. Save 50% off your 1st box plus free shipping, 35% off your 2nd box, 20% off your 3rd box, 14% off your 4th and 5th boxes, and 5% off your 6th box. Discount varies by meal plan size. A shipping fee of \$9.99 shall apply on all deliveries after the first week...

According to the terms, and contrary to HelloFresh's marketing of free food, the company is merely providing consumers with a discount on a set number of meals. Moreover, the discount is only available to consumers who (1) have never ordered with HelloFresh before, (2) set-up an autorenewal subscription with HelloFresh, and (3) order at least three HelloFresh meals for four people each week for six consecutive weeks. Given that the regular box price for an order containing three meals for four people (for a total of 12 meals) is \$101.88 (without shipping) on the HelloFresh website, 6 consumers who follow the terms and conditions of the offer must spend more than \$500 to get the equivalent of 17 regularly priced "free" meals.

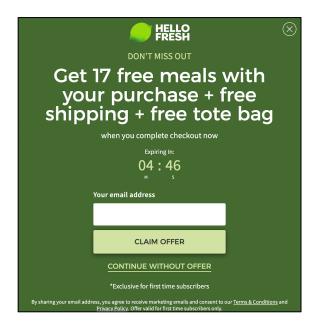
These material facts are not clearly or conspicuously disclosed in any of HelloFresh's marketing materials and run counter to the "free meal" marketing message that the company regularly disseminates.⁸

According to the FTC's Guide Concerning Use of the Word "Free" and Similar Representations, when making "free" offers, all the terms, conditions and obligations of the offer "should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood." Relegating the material terms to fine print on the back of a card that is glued down does not meet this requirement. As such, HelloFresh's marketing violates both FTC law and ROSCA.

In addition, such deceptive offers of "free" food are particularly egregious during a time when food insecurity continues¹² and the cost of food is increasing,¹³ making offers of free meals especially appealing to many susceptible consumers.

Use of Dark Patterns and Failure to Adequately Disclose Terms of Subscription

Consumers who visit HelloFresh's website and plug in the promo provided in the "17 FREE MEALS" promotion are led to believe that they only have five minutes to take advantage of the offer before it expires. (In reality, the offer does not expire when the countdown clock runs out.)¹⁴



This deceptive marketing tactic – a type of dark pattern¹⁵ – induces consumers to speed through the shopping and checkout process, a process that is already marred by inadequate disclosures of material information about the offer.

Specifically, as consumers hurry through the process of attempting to order "17 free meals," it is likely that they will not know that they are being automatically enrolled in the company's subscription autorenewal program that (1) continues indefinitely until terminated, ¹⁶ and (2) requires them to take affirmative action every month in order to avoid recurring monthly charges. ¹⁷ Consumers will not be aware of these material terms because HelloFresh fails to clearly and conspicuously disclose this information in its checkout process.

In fact, nowhere in the company's marketing or during the checkout process does HelloFresh disclose that consumers' purchases automatically enroll them in a monthly plan that continues in perpetuity. And the only places during the shopping and checkout process that HelloFresh references a need to take affirmative action in order to avoid recurring monthly charges are: (a) at the bottom of webpages, below prompts to continue to the next page (and thus easily missed), 18 and (b) in an abbreviated summary of the

terms of the autorenewal plan in fine print – with a hyperlink to the company's dense 13,000+ word Terms and Conditions – after HelloFresh has collected consumers' credit card information, ¹⁹ which violates ROSCA's requirement that all material terms of the transaction be clearly and conspicuously disclosed before obtaining the consumer's billing information. ²⁰

HelloFresh's material terms are so unclear and inconspicuous that a plethora of consumers have complained about unwittingly being signed-up for the company's autorenewal plan. By way of example, the complaints below were posted to the Better Business Bureau's page for HelloFresh:²¹

I received a gift code and, upon entering the gift code I was prompted to enter my credit card info to pay for shipping. ... Upon further inspection they had taken my card information that I used for shipping and entered it into recurring payment without my knowledge. This happened to my grandmother as well. ... she entered her card information to pay for shipping, Hello Fresh ripped that information and put it into a recurring payment without her knowing. Thankfully I was there to straighten the issue out, but had I not been there for her I do not know what she would have done. I can only imagine how many people have gotten stuck with this issue and are still unable to resolve it. This really seems to be up there with telemarketing scams targeting the elderly, and is absolutely unacceptable. ²²

I got a letter in the mail that they were giving away 17 free meals, this is a lie!!! There are no free meals!!! I opened the app to investigate. The app said it needed my card to use the app and as soon as I gave them my card I got locked into a meal package I did not purchase!...²³

... This is a complete scam. I created an account that required a form of payment to look at the meals offered as I had received a coupon for 16 free meals. Upon looking through I decided that id wait and look into it more later. Next day I was reviewing my bank statement and discovered they had charged me almost 90 dollars and was sending me food. Upon calling the company to demand a refund I was informed that if I returned to the website my account would reactivate and I would be charged again. You cant remove your credit information nor log in to make sure it was actually a closed account. DO NOT USE HELLO FRESH AT ALL. Its fraudulent all over.²⁴

...I recently received and ad on Instagram offering a discounted price for Hello Fresh. I clicked the ad to see what the deal was and if its something hat was be suitable financially. After deciding it wasn't, I clicked out of the ad. That Sunday a box full of food showed up at my door and I was confused so I called Hello Fresh and asked them what happened and why this happened. I was told I activated my account- which I never knowingly did so. All I did was click an ad and I guess it gathered my information from last time and began charging me and shipping food. I never gave them consent to charge my card and I never even

received a notification letting me know it was active and that I had an order being shipped or that I was charged...²⁵

In short, it is clear that HelloFresh pushes consumers into subscription autorenewal plans without clearly and conspicuously disclosing all material terms and conditions and without obtaining consumers' affirmative consents, in violation of ROSCA, as well as the FTC's general disclosure requirements for online marketing.

Consumers' Difficulty Cancelling Subscriptions

In addition, HelloFresh makes it difficult for consumers to cancel their subscriptions. A review of consumer complaints submitted to the Better Business Bureau regarding HelloFresh reveals that numerous consumers have experienced cancelation issues, ranging from continuous HelloFresh charges even after cancelation to poor customer service making it difficult to cancel. The following are some examples:²⁶

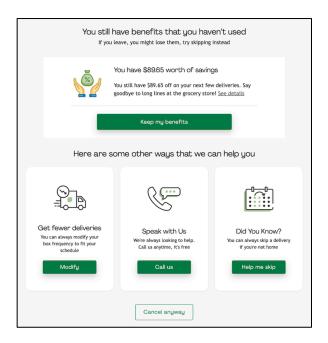
I had cancelled my subscription to HelloFresh in August of 2021. Since then HelloFresh not only keeps charging me for deliveries but sending them as well. Since I know i had already cancelled this service, I am unaware they were sending a box of food to my house to sit there for days. After all, I had CANCELLED this subscription service. ...²⁷

I was charged \$85.91 a week after I closed my account. They took funds without authorization for purchase and would not refund the money. They then started offering me credits for boxes. I explained that as far as I am concerned, that I wanted nothing further to do with this business.²⁸

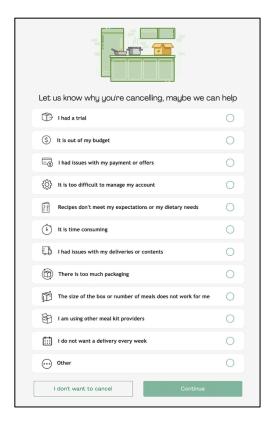
- ... They messed up my first order and continued sending boxes while charging me, even after I had canceled the service! I am fighting with them right now to get a package they delivered without my consent. I literally canceled it twice, but yet they keep contacting me and mailing me boxes. Oh yeah I canceled it again today, so that makes three times I tried to get rid of this service. This company is incompetent! They are a 0 Star rated company, but bbb will not let me post the review without giving a star.²⁹
- ... I tried to call and cancel, they told me it was canceled, but it was not. I received packages from them filled with sauce onions pork and hot peppers, all things I don't eat. I called the bank to file a dispute and set up a stop payment, but that didn't stop, they just kept changing the amount they were charging, so the stop payment didn't do anything. Now left with no options, I have to close out my card!³⁰
- ... I asked them to cancel any future deliveries and to provide a refund, as I never wanted or ordered the food. for the past 5 weeks, I have continued to be charged and received boxes at my door from Hello Fresh, and every week I have to call and cancel and request a refund. I have been going through this cycle for 5 or 6

weeks now, I cant keep count. I am satisfied that they continue to send me free food essentially but it is frustrating to call every single week and request to cancel again, and request a refund- again. One time it caused my account to be over drawn and I had to pay the bank fee to my bank which ended up costing the same amount, if not more, than the refund. I even tried taking my card off that was on file but it doesn't allow you to do that...³¹

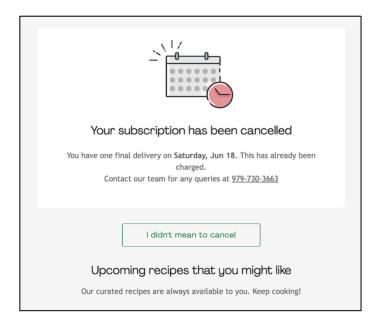
TINA.org's investigation also revealed that HelloFresh employs the dark patterns of confirmshaming i.e., guilting consumers into taking actions they had not intended,³² when consumers attempt to cancel their subscriptions online through their HelloFresh accounts. Specifically, after logging into one's account and clicking on the "Cancel plan" button at the bottom of the page,³³ consumers are led to a webpage that informs them of the "benefits" and "savings" that have not yet been used, requiring consumers to request cancelation of their subscription a second time, after scrolling past other, more prominent options, including "Keep my benefits."



After clicking on the least prominent button at the bottom of the screen for "Cancel anyway," consumers are led to yet another webpage, which requires that consumers indicate the reasons for their cancelation.



Only after completing the questionnaire are consumers finally informed that their account has been canceled but that their credit card for the initial order has already been charged (followed by an option labeled "I didn't mean to cancel"). This is true even when cancelation occurs within minutes of the initial order.³⁴



No doubt the tactics used by HelloFresh, including those reported by consumers, are employed to dissuade, or even prevent, subscribers from canceling so that HelloFresh may continue charging consumers on a monthly basis. These practices violate ROSCA.

Deceptive Social Media Influencer Ads

Finally, though the FTC has already put HelloFresh on notice regarding the need to properly disclose material connections in its influencer marketing campaigns,³⁵ HelloFresh influencers continue to market the service without clearly and conspicuously disclosing their material connections to the company. In fact, the very post that the FTC identified in its March 2017 letter to HelloFresh as being in violation of the Commission's Endorsement Guides remains unchanged.³⁶



Screenshot captured on June 13, 2022

As the FTC noted more than five years ago when it flagged this post,

[t]o be both "clear" and "conspicuous," the disclosure should use unambiguous language and stand out. Many consumers will not understand "#sp" to mean that the post is sponsored. In addition, consumers should be able to notice the disclosure easily, and not have to look for it. For example, consumers viewing posts in their Instagram streams on mobile devices typically see only the first three lines of a longer post unless they click "more," and many consumers may not click "more." Therefore, an endorser should disclose any material connection above the 'more' button....³⁷

TINA.org has identified a sampling of more than a dozen additional social media influencer posts that deceptively advertise HelloFresh products and services. A majority of these examples are posts that disclose that the influencer is a #hellofreshpartner below the fold, meaning that consumers will not see the disclosure without taking the action of clicking on "more" to read the full caption. Below are a few examples:



TINA.org's sampling of deceptive social media ads for HelloFresh is available at https://www.truthinadvertising.org/evidence/hellofresh-influencer-database/.

Conclusion

According to the U.S. Department of Agriculture, there are currently more than 38 million people living with food insecurity,⁴¹ a serious issue that will continue to increase with U.S. food inflation expected to reach a 40-year high by the end of this year.⁴² According to economic experts, "the world is on track for the worst food crisis in recent history."⁴³ HelloFresh, a multibillion dollar company operating in 17 different countries across four continents,⁴⁴ is exploiting these factors by deceptively promising "free" food to millions of susceptible consumers and inducing them to unwittingly purchase subscriptions that automatically – and indefinitely – renew and which are then difficult to cancel.

TINA.org urges the Commission to open an investigation into HelloFresh and take appropriate enforcement action.

Sincerely,

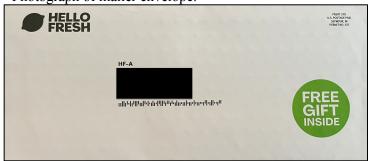
Laura Smith, Esq. Legal Director

Truth in Advertising, Inc.

Bonnie Patten, Esq. Executive Director Truth in Advertising, Inc.

Cc: Dominik Richter and Thomas Griesel, co-CEOs, HelloFresh

⁵ Photograph of mailer envelope:



These photographs were taken of a HelloFresh mailer received on June 7, 2022. Other similar mailers have also been used by the company. *See* Hello Fresh's '17 Free Meals,' Jan. 14, 2022, https://truthinadvertising.org/articles/hello-freshs-17-free-meals/.

According to the terms and conditions on the back of the card, consumers save 50 percent off their first box plus free shipping, 35 percent off their second box, 20 percent off their third box, 14 percent off their fourth and fifth boxes, and 5 percent off their sixth box. This means that:

- the first week discount is \$50.94 plus \$9.99 in shipping for a total of \$60.93 (and consumers pay \$50.94);
- the second week discount is \$35.66 (and consumers pay \$66.22 plus shipping);
- the third week discount is \$20.38 (and consumers pay \$81.50 plus shipping);
- the fourth and fifth week discounts are \$14.26 each (and consumers pay \$87.62 plus shipping each of those weeks); and
- the sixth week discount is \$5.10 (and consumers pay \$96.78 plus shipping).

Thus, the grand total of discounts provided with this promotion is \$150.59 *if, and only if,* consumers pay \$470.68 plus shipping, which is listed as \$9.99 per order, of their own money.

¹ HelloFresh also owns meal kit delivery service brands Green Chef, Every Plate, Chef's Plate, Factor, and Youfoodz. *See* HelloFresh Group, About Us, https://www.hellofreshgroup.com/en/.

² 15 U.S.C. §§ 8401-8405.

³ See Mar. 20, 2017 letter from M. Engle to D. Richter; https://www.ftc.gov/system/files/documents/foia_requests/1b-2017-00799 instagram influencers 327 pgs.pdf.

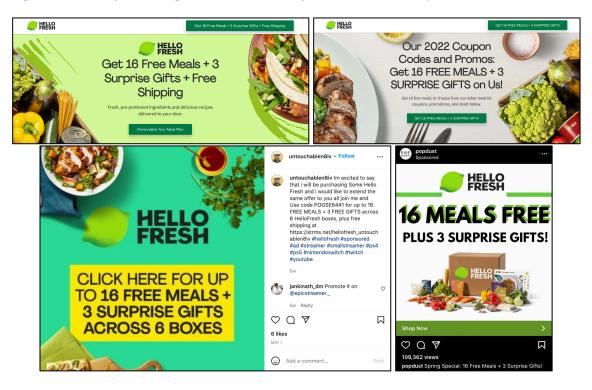
⁴ TINA.org has also notified the State of Connecticut Department of Consumer Protection regarding HelloFresh's deceptive advertising and illegal business practices.

⁶ See HelloFresh Personalize your plan page, https://www.hellofresh.com/plans?utm_campaign=act&utm_medium=flat&utm_source=gcfly&featured=family&mealsize=3-4.

⁷ The regular box price for an order containing three meals for four people for a total of 12 meals is listed at \$101.88. This amounts to each of the 12 meals costing \$8.49, meaning that 17 "free" meals would be a value of \$144.33 (without factoring in shipping).

Further, upon information and belief, these discounts cease if a consumer pauses their subscription pursuant to Section 10.4 of the company's Terms and Conditions anytime during the first six weeks. *See* HelloFresh's Terms and Conditions, https://www.hellofresh.com/about/termsandconditions.

⁸ Note that HelloFresh advertises similar "free" promotions on its website, in national television commercials, and on its social media platforms, among other places, though the number of advertised free meals fluctuates. *See e.g.*, www.hellofresh.com/pages/coupon-codes-and-promotions; https://www.instagram.com/p/CdCY0E2O8GF/?igshid=MDJmNzVkMjY%3D.



TINA.org's full sampling of HelloFresh marketing materials that advertise "free" meals that are not actually free is available at https://www.truthinadvertising.org/evidence/hellofresh-free-ads-database/.

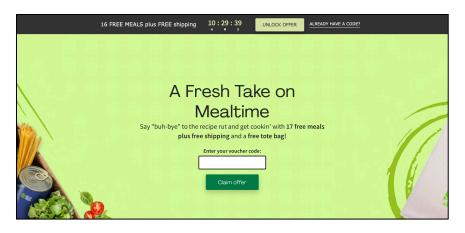
⁹ FTC's Guide Concerning Use of the Word "Free" and Similar Representations, https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-251, §251.1(c).

¹⁰ "Disclosure of the terms of the offer set forth in a footnote of an advertisement to which reference is made by an asterisk or other symbol placed next to the offer, is not regarded as making disclosure at the outset." *Id.*

¹¹ See In the Matter of MoviePass, Inc., Docket No. C-4751, Oct. 1, 2021 Complaint, https://www.ftc.gov/system/files/documents/cases/1923000 - moviepass complaint final.pdf.

¹² Brief: Food Security Update, June 7, 2022, https://www.worldbank.org/en/topic/agriculture/brief/food-security-update.

¹⁴ Another variety of the "Free" meal offer appears on the website, which similarly presents consumers with a false countdown timer.

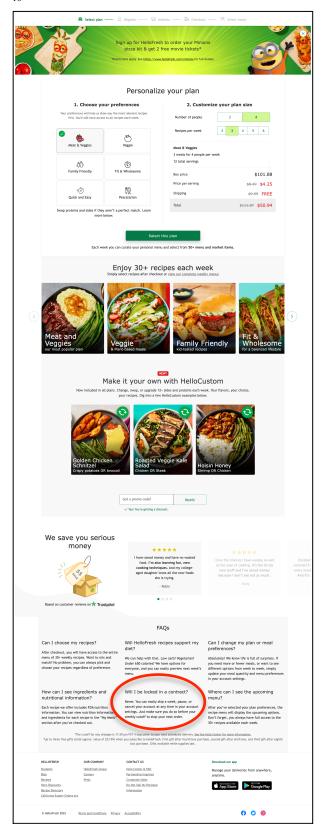


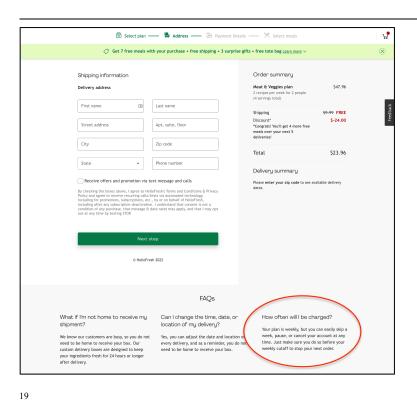
¹⁵ Making Light Out of Dark Patterns, Apr. 4, 2016, https://medium.com/@doublethought/making-light-out-of-dark-patterns-a2bf5080b7a8; Deceptive Design, https://www.deceptive.design/types; FTC to Ramp up Enforcement against Illegal Dark Patterns that Trick or Trap Consumers into Subscriptions, Oct. 28, 2021, https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-ramp-enforcement-against-illegal-dark-patterns-trick-or-trap-consumers-subscriptions.

¹³ U.S.D.A. Economic Research Service, Summary Findings, Food Price Outlook, 2022, https://www.ers.usda.gov/data-products/food-price-outlook/summary-findings/#:~:text=Food%20price%20increases%20are%20expected,between%206.0%20and%207.0%20percent.

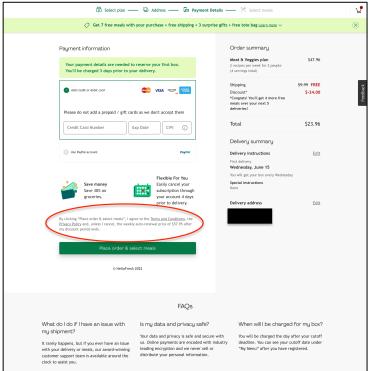
¹⁶ HelloFresh Terms and Conditions, https://www.hellofresh.com/about/termsandconditions?returnUrl=%2Fcheckout-form, Section 5.2.

¹⁷ HelloFresh Terms and Conditions, Sections 10.3 and 10.4.





19



²⁰ 15 U.S.C. § 8402(a)(1).

²¹ All typographical errors in the consumer complaints are in the original versions.

²² https://www.bbb.org/us/ny/new-york/profile/food-delivery/hellofresh-0121-142623/complaints.

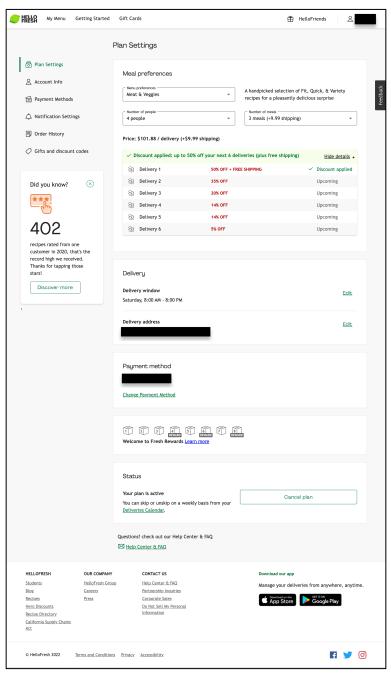
²³ https://www.bbb.org/us/ny/new-york/profile/food-delivery/hellofresh-0121-142623/customerreviews. ²⁴ *Id*. ²⁵ *Id*. ²⁶ All typographical errors in the consumer complaints are in the original versions. ²⁷ https://www.bbb.org/us/ny/new-york/profile/food-delivery/hellofresh-0121-142623/complaints. ²⁸ https://www.bbb.org/us/ny/new-york/profile/food-delivery/hellofresh-0121-142623/customerreviews. ²⁹ *Id*.

³⁰ *Id*.

³¹ *Id*.

³² https://www.deceptive.design/types/confirmshaming.





³⁴ After being notified that the initial order that was placed just minutes earlier could not be canceled, TINA.org emailed HelloFresh at hello@hellofresh.com to re-request full cancelation. The company responded to this email stating that it would not place a charge on the provided credit card. However, a little over three hours later, HelloFresh sent another email titled "Your first HelloFresh box is right around the corner!" TINA.org then emailed the company a second time to re-confirm cancelation (again) and was told (again) that the account had been canceled. TINA.org is continuing to track the status of the account and credit card charges.

Below is a screenshot of the post from the FTC's March 2017 letter:



³⁷ Mar. 20, 2017 letter from M. Engle to D. Richter, https://www.ftc.gov/system/files/documents/foia_requests/1b-2017-00799 instagram influencers 327 pgs.pdf.

³⁵ See Mar. 20, 2017 letter from M. Engle to D. Richter, https://www.ftc.gov/system/files/documents/foia_requests/1b-2017-00799 instagram influencers 327 pgs.pdf.

³⁶ Caroline Manzo Oct. 26, 2016 Instagram post, https://www.instagram.com/p/BMCoUnLjzPE/?taken%C2%AD%20by=carolinemanzo&hl%20=en.

³⁸ https://www.instagram.com/p/CeXOQ7YJ-Oe/.

³⁹ <u>https://www.instagram.com/p/CeTky9prAxG/</u>.

⁴⁰ https://www.instagram.com/p/Ccpv_7UObCf/.

⁴¹ USDA: Economic Research Service, Key Statistics & Graphics, https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/key-statistics-graphics/#insecure.

⁴² See e.g., Will Daniel, Apr. 21, 2022, Don't expect the huge rise in food prices to slow anytime soon, Bank of America says, https://fortune.com/2022/04/21/inflation-food-rise-2022-bank-of-america-says/; Dominic Rushe, June 10, 2022, US inflation hits 40-year high of 8.6% as food, gas and shelter costs rise, https://www.theguardian.com/business/2022/jun/10/us-inflation-rate-may-2022-four-decade-high.

⁴³ World Economic Forum, Centre for the New Economy and Society, Chief Economists Outlook, May 2022, https://www3.weforum.org/docs/WEF_Chief_Economists_Outlook_May_2022.pdf. As the White House has noted, "[p]andemics and other biological threats, cyber-attacks, climate shocks and extreme weather events, terrorist attacks, geopolitical and economic competition, and other conditions can reduce critical manufacturing capacity and the availability and integrity of

critical goods." Executive Order on America's Supply Chains, Feb. 24, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/executive-order-on-americas-supply-chains/.

⁴⁴ HelloFresh Group, https://www.hellofreshgroup.com/en/; HelloFresh Group Annual Report 2021,

 $[\]underline{https://ir.hellofreshgroup.com/download/companies/hellofresh/Annual\%20 Reports/DE000A1614}\\ \underline{08\text{-}JA-2021\text{-}PN-EQ-E-00.pdf}.$