



August 14, 2023

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex R)
Washington, DC 20580

Re: FTC Collaboration Act of 2021 Study (Project No. P238400)

Truth in Advertising, Inc. (“TINA.org”) welcomes the opportunity to submit the following in conjunction with the Federal Trade Commission’s (“Commission,” “Agency” or “FTC”) June 13, 2023 request for comments relevant to the production of a study concerning certain specified topics related to “efforts with State Attorneys General to prevent, publicize, and penalize frauds and scams being perpetrated on individuals in the United States.”¹

TINA.org supports the FTC’s efforts to improve collaboration with state attorneys general (and other state agencies) to prevent, publicize, and penalize fraudulent business practices. TINA.org’s position reflects its reality-based, “what works” approach to the false advertising problem— and commitment to regulatory and remedial measures that recognize the problem’s complexity, the challenges of effectively policing for and preventing dishonest practices, and the massive damage these practices inflict unless effectively checked. In TINA.org’s experience, state regulators play an essential role in protecting U.S. consumers from false and deceptive marketing, both when they work independently as well as when they work with or alongside the FTC. That said, given the current challenges and obstacles faced by both state and federal regulators in policing the marketplace for false and deceptive marketing, it is imperative that the FTC and state consumer protection agencies establish a coherent and comprehensive working relationship in order to maximize the ability of regulatory agencies to effectively and efficiently protect consumers and honest businesses from fraud and deception, and ensure that victims of false advertising are appropriately compensated.

INTEREST OF COMMENTER

TINA.org is a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud; promote understanding of the serious harms commercial dishonesty inflicts; and work with consumers, businesses, independent experts, synergy organizations, self-regulatory bodies and government agencies to advance countermeasures that effectively prevent and stop deception in the economy. At the center of TINA.org’s efforts is its website, www.tina.org, which

provides information about common deceptive advertising techniques, consumer protection laws, and alerts about specific deceptive marketing campaigns—such as nationally advertised “Built in the USA” vans manufactured abroad;² pillows and essential oils falsely marketed as being able to treat chronic diseases;³ and a delivery meal kit service that falsely advertises free meals.⁴ The website functions as a clearinghouse, receiving consumer complaints about suspicious practices, which TINA.org investigates and, when appropriate, takes up with businesses and regulatory authorities. The website is also a repository of information relating to consumer protection lawsuits and regulatory actions.

Through its collaborative approach and attention to emerging issues and complexities, TINA.org has become a trusted source of expertise on matters relating to consumer fraud, and has testified before Congress on issues related to consumer protection, deceptive marketing and economic justice.⁵ TINA.org regularly draws on its expertise to advocate for consumer interests before the FTC and other governmental bodies and appears as *amicus curiae* in cases raising important questions of consumer protection law.⁶

Since its inception, TINA.org has filed legal actions against hundreds of companies and entities, published more than 1,400 ad alerts, written over 1,000 news articles, and tracked more than 4,000 federal class actions alleging deceptive marketing. It has also filed 13 complaints jointly with state and federal regulators (several of which resulted in state and federal enforcement actions, but none of which resulted in any coordinated efforts)⁷; 1 FTC complaint that resulted in a joint state/FTC lawsuit⁸; 1 complaint with the FTC and FDA that resulted in a state action (and no federal action)⁹; and 8 complaints exclusively with state consumer protection agencies.¹⁰ Notably, since 2015, state and federal agencies have obtained more than \$250 million from wrongdoers based on TINA.org legal actions and evidence, and returned millions in ill-gotten gains to consumers.

TINA.ORG’S EXPERIENCE WITH STATE AND FEDERAL CONSUMER PROTECTION AGENCIES

The determination as to which regulatory entity TINA.org files a deceptive marketing complaint is based on a variety of factors, including perceived interest in addressing the unlawful conduct at issue(s), reach of the deceptive and/or false marketing, speed of action, expertise in the subject matter, scope of harm and available remedies, among other things. To date, TINA.org has filed more than a dozen cases concurrently with state consumer protection agencies and the FTC, with mixed results.¹¹ Those cases include the following, among others:

- **NourishLife:** A TINA.org investigation found that NourishLife (which later changed its name to Lifetrients) was deceptively advertising a potentially harmful supplement called Speak by, among other things, claiming it was a treatment for childhood speech delays without having proper substantiation, falsely claiming it was a patented formula, and using deceptive testimonials in marketing materials. As such, in 2013 TINA.org filed a complaint with the FTC, FDA and Illinois

Attorney General. In 2015, the FTC reached a \$3.68 million settlement agreement with NourishLife requiring the company to stop making deceptive marketing claims about Speak, among other things. Neither the FDA nor the Illinois Attorney General has taken any public action against the company.¹²

- **Vapex:** TINA.org investigated Vapex, a Utah-based company that sold e-cigarettes, and found that it falsely claimed consumers could receive a “Free Trial” offer, used fake testimonials, falsely claimed it won a taste test contest that didn’t exist, and made price comparisons that showed e-cigarettes were cheaper than tobacco cigarettes without any reliable data to support the claim. Based on these findings, TINA.org filed a complaint with the FTC and the Attorney General of Utah in July 2014. A little over a month later, the Utah Department of Commerce announced that it was citing Vapex, as well as related companies, \$1.1 million for multiple violations of the Utah Consumer Sales Practices Act and the Utah Telephone Fraud Prevention Act, finding, among other things, that the companies engaged in deceptive advertising. In February 2015, the FTC indicated that it would not be recommending enforcement as the company was no longer in business.¹³
- **Adore Me:** TINA.org investigated the marketing of Adore Me, a web-based lingerie company, and found that it used deceptive marketing tactics, including ads that deceptively promoted product prices that were only available to VIP Members; enrolling consumers in a negative option offer without obtaining consumers’ express consent or disclosing all material terms; falsely telling consumers that monthly charges could be used as store credit when, in reality, the company kept consumers’ store credit if their memberships were canceled; and making it unnecessarily difficult to cancel VIP Memberships. In May 2016, TINA.org sent complaint letters to the FTC, the New York Attorney General, and the California District Attorney for Santa Clara County, urging each of the agencies to take action. In November 2017, the FTC settled with the company for nearly \$1.4 million. The next year, in March 2018, the New York Attorney General reached a settlement with Adore Me that required, among other things, that the retailer pay \$300,000 in penalties, fees, and costs, as well as up to \$63,000 in consumer restitution. Five months later, in August 2018, the Santa Clara County District Attorney and Adore Me entered into a Stipulated Final Judgment requiring Adore Me to pay \$600,000 in civil penalties, a minimum of \$200,000 in restitution and \$250,000 worth of merchandise to homeless and women’s organizations in California. Five years later, in June 2023, the North Carolina Attorney General, joined by the Attorneys General of Alabama, Arkansas, Connecticut, DC, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, and Wisconsin, reached a settlement with Adore Me that required, among other things, that the retailer pay \$2.35 million and notify all customers with active VIP Memberships that they can obtain a refund of any unused store credits.¹⁴

- **Neora:** TINA.org investigated Neora, formerly known as Nerium International, a Texas-based multilevel marketing company that sells a line of skin care products, as well as supplements, and found that the company and its distributors used unsubstantiated disease-treatment claims to market products and atypical income claims to recruit distributors. In July 2016, TINA.org filed complaint letters with the FTC and Texas Attorney General urging them to investigate the company and take appropriate enforcement action. The FTC sued Neora and its CEO in June 2019 alleging that the company operates as a pyramid scheme, among other things. That case is still pending. Texas has taken no public action against the company.¹⁵
- **DealDash:** TINA.org investigated DealDash, one of the world’s largest penny auction websites, and determined that the company operated a form of illegal gambling and used deceptive marketing tactics to lure consumers to its website, including advertising large savings on auctioned items won without disclosing true out-of-pocket costs; using consumer testimonials touting atypical savings without disclosing that customers typically lost money; promoting a perpetual sale on the purchase of bids; failing to disclose material connections to certain products auctioned on the site; and promoting a 100% money-back refund policy without adequately disclosing the restrictions of the policy. TINA.org sent complaint letters in June 2017 to the FTC and the Attorneys General of Minnesota, New York, Connecticut, Pennsylvania, Massachusetts, and the District of Columbia urging each agency to take action. To date, there has been no public action taken by any consumer protection regulatory agency. TINA.org continues to receive complaints detailing how consumers are still losing money as a result of the company’s deceptive marketing practices.¹⁶
- **Savage X Fenty:** TINA.org investigated the web-based lingerie company Savage X Fenty and found, among other things, that it deceptively enrolled consumers in a negative option offer without clearly and conspicuously disclosing all the material terms in violation of a 2014 California Stipulated Judgment, as well as the Restore Online Shoppers’ Confidence Act (ROSCA). In February 2020, TINA.org sent complaint letters to the FTC and the Santa Cruz District Attorney’s Office in California urging them to take action. In August 2022, the California regulators filed a complaint in state court resulting in a \$1.2 million settlement with Savage X Fenty a few months later to resolve the deceptive marketing allegations. To date, the FTC has taken no public action against the company.¹⁷
- **FabKids:** TINA.org investigated the children’s clothing brand FabKids and found, among other things, that it deceptively enrolled consumers in a negative option offer without clearly and conspicuously disclosing all the material terms in violation of a 2014 California Stipulated Judgment, as well as the Restore Online Shoppers’ Confidence Act (ROSCA). In August 2021, TINA.org sent complaint letters to a California District Attorney’s Office, as well as the FTC urging them to stop FabKids’ deceptive marketing and illegal business practices. To date, no

public action has been taken by either agency. TINA.org continues to receive consumer complaints about the company.¹⁸

- **HelloFresh:** TINA.org investigated the meal kit company HelloFresh and found that it 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, in violation of the Restore Online Shoppers’ Confidence Act (ROSCA) and FTC law. TINA.org sent complaint letters to the FTC and Connecticut state regulators in June 2022 urging them to stop HelloFresh’s deceptive marketing and illegal business practices. Subsequently, TINA.org also sent its complaint to the Massachusetts Attorney General’s Office in July 2023. To date, no public action has been taken, yet HelloFresh continues to deceptively market its service to consumers nationwide.¹⁹

In addition, in 2015, TINA.org filed a complaint with the FTC regarding the marketing of Prevacen, a supplement aimed at people suffering from memory loss, after finding that Quincy Bioscience — the marketer and manufacturer of Prevacen — deceptively claimed the product could improve memory without having competent or reliable scientific evidence to support such a claim. Subsequently, in 2017, the FTC, together with the New York Attorney General, filed a lawsuit against Quincy for its deceptive advertising of Prevacen as able to improve memory. The case is still pending, and because the state of New York is involved, it is possible that consumers may still be able to obtain restitution if plaintiffs prevail despite the *AMG Capital Management, LLC v. Federal Trade Commission* decision.²⁰ Of note, this is the only TINA.org complaint that has resulted in a joint FTC/state action.

Obviously TINA.org is not privy to the inner workings of the Commission or any state regulatory agency, but as an outsider looking in, it appears there is generally very little coordination between the FTC and state consumer protection agencies in cases that TINA.org has brought to the attention of the different regulatory entities. As a result, regulatory options have been lost and numerous disadvantages realized, including:

- heightened negative impacts of the *AMG* decision – for example, if Texas state regulators had simultaneously brought a case against Neora, equitable relief and penalties might have remained a possibility²¹;
- massive inefficiencies – for example, had the FTC participated in the state of California’s action against Savage X Fenty, which was (and is) violating ROSCA in ways the FTC pursues on a regular basis, it is possible consumers nationwide, not just those in California, may have been able to receive compensation²²;
- inequitable distributions of monetary relief to consumers – for example, Adore Me has settled four separate and wholly independent lawsuits over a five-year period resulting in different amounts of restitution and other monetary relief that

have affect harmed consumers differently depending on the timing of the specific settlement and consumers' geographic location²³; and

- lost opportunities – for example, the FTC missed its shot at censoring Vapex after Utah took independent action because the company went out of business.

Based on TINA.org's experiences, it appears that the Commission and state consumer protection agencies need to do a better job communicating and working together to more effectively police the economy and protect consumers and honest businesses from false and deceptive marketing. To that end, TINA.org would urge the FTC to work with state consumer protection agencies to bring enforcement actions against HelloFresh, DealDash and FabKids.

THE NEED FOR MORE ROBUST CONSUMER PROTECTION ENFORCEMENT

The central premises of modern consumer protection laws are that marketplace dishonesty is not simply deplorable in some abstract sense, but injurious—causing harms against which individual consumers and businesses cannot practically protect themselves; and that, if uncorrected, such behavior seriously impairs the efficient allocation of resources in the Nation's market economy.²⁴

Deceptive marketing and similar forms of commercial dishonesty are a scourge of the American economy, inflicting billions of dollars in losses to cheated consumers, rewarding those who hone ingenious fraudulent schemes and punishing competitors focused on bringing superior products and services to market. Consumer fraud is a classic "market failure." And in many product markets, it is practically impossible for consumers to protect themselves against such deception. Moreover, harms to consumers can go beyond monetary injuries. As Judge Easterbrook's opinion in *FTC v. QT, Inc.*, explained, when useless products are marketed with false health claims, consumers can forego therapies that might actually help.²⁵ Further, some deceptions arguably are worse still, causing injury by concealing from consumers known dangers.²⁶ And consumers are not the only parties injured when false advertising goes unchecked. It costs more to produce organic goods or make products in America than it costs a dishonest competitor to affix a label saying that²⁷; it is obviously much more expensive to develop health products that are demonstrably effective in improving well-being than to lie about that.²⁸ Such practices inflict systemic damage on the American economy.

In significant ways, these threats have worsened. The internet has dramatically decreased the cost (to perpetrators) of dishonesty: emails and online videos are incredibly inexpensive, and it is cheaper to build websites that look like legitimate businesses than to fabricate brick-and-mortar operations. It has never been easier to gather data about and target vulnerable consumers.²⁹ By contrast, detecting and combatting fraud has become more complex and costly: online shoppers cannot directly inspect and compare goods before purchasing, nor complain in-person when they discover they were lied to; and it is much harder for them, and ultimately law enforcers, to unearth who perpetrated the fraud

and where they are (or *were*, before the scam was exposed).³⁰ Even internet-based counterstrategies can be outsmarted; on-line product reviews are not helpful if positive ones are faked by the seller or negative ones suppressed.³¹ Further, as the many recent large and sophisticated frauds show, established national and multinational corporations are not “too big (or reputable) to lie.”³² Dishonest practices may be simply too remunerative to resist, and behemoths that have resources to fight battles of attrition with enforcement authorities can adopt the “catch me if you can” attitude of fly-by-night grifters.

Given the reach and numerosity of these “market failures,” the central determinant of whether dishonest practices and fraudulent schemes will continue to thrive in our economy—and inflict greater damage—is the efficacy of law enforcement. And because of the current regulatory landscape, it is imperative that the FTC work in lockstep with state consumer protection agencies to better protect consumers.

THE NECESSITY OF COORDINATED ENFORCEMENT ACTIONS

It is imperative that consumer protection agencies not only stop deceptive marketing as quickly as possible but also expeditiously return ill-gotten gains to victims and honest businesses alike. To that end, in 1979, the FTC brought its first case for a 13(b) permanent injunction³³; thereafter 13(b) became a mainstay of the FTC’s enforcement program with dozens of cases brought under this section each year – among them, Volkswagen,³⁴ Herbalife,³⁵ DeVry University,³⁶ Office Depot³⁷ and Uber.³⁸ In fact, from 2016 to 2020, the FTC returned approximately \$1.1 billion to consumers using 13(b).³⁹ No more.

At present, the Commission lacks authority to make victims whole under 13(b). The adverse consequences of the *AMG* decision are real – making consumers and the economy more vulnerable to harm as the Supreme Court found that 13(b) permits wrongdoers an absolute right to retain funds they took from unwitting victims when the Commission seeks injunctive relief.⁴⁰ Further, there does not appear to be any appetite in Congress to solve this injustice at present.

As a result, the FTC is currently powerless to provide consumers and honest businesses with swift and equitable remedies and wrongdoers no doubt have been emboldened to exploit the *AMG* ruling for their own financial gains. Moreover, the Supreme Court decision in *AMG*’s favor has had dramatic and dire consequences for the dozens of Section 13(b) cases the FTC currently has (or had) pending.⁴¹ The FTC’s 13(b) docket at the time of the *AMG* decision included its antitrust complaint against Facebook,⁴² pyramid scheme cases against Neora⁴³ and Success By Health,⁴⁴ and its case against the makers of the deceptively marketed memory supplement Prevagen.⁴⁵ In all of these 13(b) cases, the FTC has been foreclosed from seeking monetary relief, even if/when it prevails.⁴⁶

In order to effectively police wrongdoers and protect consumers and honest businesses, consumer protection agencies must have the authority to obtain monetary remedies for

past acts, as well as present ones. The glaring reality is that until the Commission can obtain equitable monetary relief under 13(b), wrongdoers will be free to steal, lie and cheat their way to riches and they will have an absolute right to retain all funds they pocketed from their victims in 13(b) cases brought by the Commission. As such, every day that goes by without a 13(b) legislative fix negatively impacts our economy and has a devastating impact on U.S. consumers. And while state laws, many of which provide, unambiguously, for restitutionary remedies and other forms of relief that go further than does the FTC Act (especially now), it does not follow that state law can do the consumer protection work the FTC program has historically done.

Public enforcement under state law regimes is not a panacea. Even before the COVID-19 pandemic, state budgets were strained, and a vast array of different substantive responsibilities competed for the attention of the generalists who play a lead role in consumer protection efforts. And state-by-state enforcement does not solve the challenges of addressing misconduct that is multi-state, nationwide, or international in scope. Enforcement at the state level, particularly *effectual* enforcement, can generate difficult—and litigable—questions about legislative and judicial jurisdiction, state court remedial powers, and the preclusive effects of other proceedings—not to mention protests that state regulation unduly burdens interstate commerce or poses an obstacle to federal statutory objectives.

The FTC is not similarly challenged. It has nationwide jurisdiction and an unparalleled view of the landscape. It maintains data on millions of consumer complaints⁴⁷ and has unique statutory authority to operate across national borders. While resources for the FTC's consumer protection mission are finite, they are ample enough to do the investigations and factual development necessary to hold sophisticated corporate wrongdoers accountable for large illegalities.⁴⁸ The Commission's mission and career staff have much more subject-matter focus than officials with primary responsibility for enforcing similar laws at the state level. But this is where the agency's efficacy ends.

The FTC's ability to hold offenders accountable for their transgressions is sorely lacking. The Agency faces challenges to its administrative structure,⁴⁹ must traverse an antiquated and cumbersome rulemaking process to establish rules,⁵⁰ and is not able to obtain equitable monetary relief in 13(b) cases. These obstacles hamstringing the FTC's ability to protect consumers, businesses and the economy at large from fraud and deception. But just as impactful as the Supreme Court's 13(b) ruling is the Commission's inability to fine wrongdoers generally. Time and again, the FTC is forced to bring a second action against a lawbreaker because the company found it economically advantageous to ignore the initial consent agreement⁵¹ or closing letter.⁵² Not only does this waste the FTC's limited resources but it ensures that illegal behavior continues to exploit consumers for longer than is necessary.⁵³ Until the FTC has broad, generic authority to turn on the penalty switch in appropriate cases, companies will find it highly profitable to flout FTC laws. Additionally, even where civil penalties are available for knowing violations of trade regulation rules, the Commission is restricted in its efforts to pursue wrongdoers.⁵⁴ The requirement that the FTC refer a complaint for penalties to the Attorney General only

leads to harmful delays and a misallocation of scarce resources. The current required outsourcing of authority is inefficient and cumbersome.

Given the corresponding strengths and weaknesses of state and federal consumer protection law enforcement at the present time, TINA.org believes that it is imperative that the FTC partner with state consumer protection agencies to amplify and augment its ability to hold wrongdoers accountable and make victims whole. Only through coordinated efforts will the interests in fair, rational, and coherent consumer protection be met.

CONCLUSION

TINA.org's experience investigating deceptive marketing campaigns that result in bifurcated federal and state enforcement actions highlights the serious drawbacks of the agencies working independently as opposed to synergistically. As such, TINA.org supports the Commission's efforts to improve collaboration with state regulators to better protect consumers, as well as prevent and penalize fraudulent business practices.

Sincerely,

A handwritten signature in blue ink, appearing to be 'B-Patten', written in a cursive style.

Bonnie Patten
Laura Smith
Truth in Advertising, Inc.

¹ FTC Collaboration Act of 2021 Study, 88 Fed. Reg. 38510 (Jun. 13, 2023), <https://www.federalregister.gov/documents/2023/06/13/2023-12507/ftc-collaboration-act-of-2021-study>.

² TINA.org's Mercedes-Benz Investigation, <https://truthinadvertising.org/brands/mercedes-benz>.

³ TINA.org's MyPillow Investigation, <https://truthinadvertising.org/brands/mypillow/>;
TINA.org's doTerra Investigation, <https://truthinadvertising.org/brands/doterra/>;
TINA.org's Young Living Investigation, <https://truthinadvertising.org/brands/young-living/>.

⁴ TINA.org's HelloFresh Investigation, <https://truthinadvertising.org/brands/hellofresh/>.

⁵ *Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic Before the Subcomm. on Consumer Prot. and Com. of the Comm. on Energy and Com.*, 117th Cong. (Feb. 4, 2021) (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/house-testimony-2021-summary-action/>; *Curbing COVID Cons: Warning Consumers about Pandemic Frauds, Scams, and Swindles Before the Subcomm. on Consumer Prot., Prod. Safety, and Data Sec. of the Comm. on Com., Sci., & Transp.*, 117th Cong. (Apr. 27, 2021), (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/senate-testimony-2021-summary-action/>.

⁶ For example, TINA.org participated as amicus curiae in *AMG Capital Management, LLC v. Federal Trade Commission*. Brief of Amicus Curiae Truth In Advertising, Inc. In Support of Respondent, *AMG Capital Mgmt., LLC v. Fed. Trade Comm'n*, 141 S. Ct. 1341 (U.S. 2021) (No. 19-508), https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389_19-508%20brief.pdf. TINA.org also filed an amici curiae brief in *Federal Trade Commission v. Quincy Bioscience Holding Co., Inc.*, which reinstated a Section 13(b) suit against a business falsely marketing a dietary supplement to the elderly as clinically proven to improve memory. Brief of Amici Curiae Truth In Advertising, Inc. et al. in Favor of Appellants and in Support of Reversal, *Fed. Trade Comm'n v. Quincy Bioscience Holding Co., Inc.*, 753 Fed. Appx. 87 (2d Cir. 2022) (No. 17-3745), https://truthinadvertising.org/wp-content/uploads/2018/03/Prevagen_Amici-Curiae-brief.pdf.

⁷ TINA.org's Adore Me Investigation, <https://truthinadvertising.org/brands/adore-me/> (complaint sent to FTC, as well as NY and CA regulators); TINA.org's DealDash Investigation, <https://truthinadvertising.org/brands/dealdash/> (complaint sent to FTC, as well as attorneys general in five states and D.C.); TINA.org's FabKids Investigation, <https://truthinadvertising.org/brands/fabkids/> (complaint sent to FTC and CA district attorneys); TINA.org's HelloFresh Investigation, <https://truthinadvertising.org/brands/hellofresh/> (complaint sent to FTC, as well as CT and MA state regulators); TINA.org's Jeunesse Investigation, <https://truthinadvertising.org/brands/jeunesse/> (complaint sent to FTC and FL state regulators); TINA.org's Kyäni Investigation, <https://truthinadvertising.org/brands/kyani/> (complaint sent to FTC and ID state regulators); TINA.org's Nerium/Neora Investigation, <https://truthinadvertising.org/brands/neora-nerium/> (complaint sent to FTC and TX state regulators); TINA.org's NourishLife Investigation, <https://truthinadvertising.org/brands/nourishlife-speak-lifetrients/> (complaint sent to FTC, FDA, and IL state regulators); TINA.org's Resorts360 Investigation, <https://truthinadvertising.org/brands/resorts360/> (complaint sent to FTC and WA state regulators); TINA.org's Savage X Fenty Investigation, <https://truthinadvertising.org/brands/savage-x-fenty/> (complaint sent to FTC and CA regulators); TINA.org's Stream Energy/Ignite Investigation,

<https://truthinadvertising.org/brands/stream-energy/> (complaint sent to FTC and TX state regulators); TINA.org's Team National Investigation, <https://truthinadvertising.org/brands/team-national/> (complaint sent to FTC and FL state regulators); TINA.org's Vapex Investigation, <https://truthinadvertising.org/brands/vapex/> (complaint sent to FTC and UT state regulators).

⁸ TINA.org's Prevagen Investigation, <https://truthinadvertising.org/brands/prevagen/> (complaint sent to FTC, which resulted in an enforcement action by the FTC and NY state regulators).

⁹ TINA.org's Balance of Nature Investigation, <https://truthinadvertising.org/brands/balance-of-nature/> (complaint to FTC and FDA, and later action by CA regulators).

Of note, the California regulators who took action against Balance of Nature are a group of district attorneys working together as the California Food, Drug, and Medical Device Task Force, the same proactive task force that took action against MyPillow (following the receipt of evidence from TINA.org) and Goop (following a complaint by TINA.org). *See infra* note 10. In addition, the District Attorney's Office in Santa Clara County in California independently took action against Adore Me and Savage X Fenty (following TINA.org complaints). *See supra* note 7.

¹⁰ TINA.org's Bob's Discount Furniture Investigation, <https://truthinadvertising.org/brands/bobs-discount-furniture/> (complaint sent to CT regulators); TINA.org's Goop Investigation, <https://truthinadvertising.org/brands/goop/> (complaint sent to CA regulators); TINA.org's LuLaRoe Investigation, <https://truthinadvertising.org/brands/lularoe/> (complaint sent to WA regulators); TINA.org's MyPillow Investigation, <https://truthinadvertising.org/brands/mypillow/> (evidence provided to CA regulators); TINA.org's O2Pur Investigation, <https://truthinadvertising.org/brands/o2pur/> (complaint sent to Utah regulators); TINA.org's Outlet Store Investigations, <https://truthinadvertising.org/brands/j-crew/>, <https://truthinadvertising.org/brands/skechers/>, <https://truthinadvertising.org/brands/hanna-andersson/>, <https://truthinadvertising.org/brands/coach/> (complaint sent to CT regulators); TINA.org's TEFL Institute Investigation, <https://truthinadvertising.org/brands/tefl-institute/> (complaint sent to IL regulators); TINA.org's Wine Store Investigation, <https://truthinadvertising.org/brands/ct-wine-stores/> (complaint sent to CT regulators).

¹¹ Among those 13 cases are 6 regarding multilevel marketing companies that TINA.org brought to the attention of the FTC and various state entities between 2013 and 2018. *See* TINA.org's Jeunesse Investigation, <https://truthinadvertising.org/brands/jeunesse/> (complaint sent to FTC and FL state regulators); TINA.org's Kyani Investigation, <https://truthinadvertising.org/brands/kyani/> (complaint sent to FTC and ID state regulators); TINA.org's Nerium/Neora Investigation, <https://truthinadvertising.org/brands/neora-nerium/> (complaint sent to FTC and TX state regulators); TINA.org's Resorts360 Investigation, <https://truthinadvertising.org/brands/resorts360/> (complaint sent to FTC and WA state regulators); TINA.org's Stream Energy/Ignite Investigation, <https://truthinadvertising.org/brands/stream-energy/> (complaint sent to FTC and TX state regulators); TINA.org's Team National Investigation, <https://truthinadvertising.org/brands/team-national/> (complaint sent to FTC and FL state regulators). To date, no action by any regulatory agency has been taken on any of the above MLM companies.

¹² TINA.org's NourishLife Investigation, <https://truthinadvertising.org/brands/nourishlife-speak-lifetrients/>.

¹³ TINA.org's Vapex Investigation, <https://truthinadvertising.org/brands/vapex/>.

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- ¹⁴ TINA.org’s Adore Me Investigation, <https://truthinadvertising.org/brands/adore-me/>.
- ¹⁵ TINA.org’s Nerium/Neora Investigation, <https://truthinadvertising.org/brands/neora-nerium/>.
- ¹⁶ TINA.org’s DealDash Investigation, <https://truthinadvertising.org/brands/dealdash/>.
- ¹⁷ TINA.org’s Savage X Fenty Investigation, <https://truthinadvertising.org/brands/savage-x-fenty/>.
- ¹⁸ TINA.org’s FabKids Investigation, <https://truthinadvertising.org/brands/fabkids/>.
- ¹⁹ TINA.org’s HelloFresh Investigation, <https://truthinadvertising.org/brands/hellofresh/>.
- ²⁰ TINA.org’s Prevagen Investigation, <https://truthinadvertising.org/brands/prevagen/>; *AMG Capital Mgmt., LLC v. Fed. Trade Comm’n*, 141 S. Ct. 1341 (2021).
- ²¹ *AMG Capital Mgmt., LLC v. Fed. Trade Comm’n*, 141 S. Ct. 1341 (2021); *Fed. Trade Comm’n v. Neora, LLC*, Case No. 19-cv-19699 (D. NJ), Complaint for Permanent Injunction.
- ²² TINA.org’s Savage X Fenty Investigation, <https://truthinadvertising.org/brands/savage-x-fenty/>.
- ²³ TINA.org’s Adore Me Investigation, <https://truthinadvertising.org/brands/adore-me/>.
- ²⁴ See R. Pitofsky, *Beyond Nader: Consumer Protection and the Regulation of Advertising*, 90 Harv. L. Rev. 661 (1977).
- ²⁵ *Fed. Trade Comm’n v. QT, Inc.*, 512 F.3d 858, 863 (7th Cir. 2008).
- ²⁶ The Volkswagen scandal exemplifies this. Automobiles marketed to environmentally conscious consumers as win-win purchases polluted in quantities that caused thousands of additional emergency room visits. See Diane Alexander & Hannes Schwandt, *The Impact of Car Pollution on Infant and Child Health: Evidence from Emissions Cheating*, 89 Rev. Econ. Stud. 2872 (2022).
- ²⁷ See, e.g., Press Release, Fed. Trade Comm’n, FTC Approves Final Consents Settling Charges that Hockey Puck Seller, Company Selling Recreational and Outdoor Equipment Made False ‘Made in USA’ Claims (Apr. 17, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/04/ftc-approves-final-consents-settling-charges-hockey-puck-seller-companies-selling-recreational>; Press Release, Fed. Trade Comm’n, Nectar Brand LLC Agrees to Settle FTC Charges that Company’s Claims about Chinese-Made Mattresses Being ‘Assembled in USA’ Are False (Mar. 13, 2018), <https://www.ftc.gov/news-events/news/press-releases/2018/03/nectar-brand-llc-agrees-settle-ftc-charges-companys-claims-about-chinese-made-mattresses-being>; Press Release, Fed. Trade Comm’n, Truly Organic? The FTC Says No, Alleges Retailer Misled Consumers about its Products (Sept. 19, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/09/truly-organic-ftc-says-no-alleges-retailer-misled-consumers-about-its-products>.
- ²⁸ See, e.g., TINA.org’s Modere Investigation, <https://truthinadvertising.org/brands/modere/>; TINA.org’s Prevagen Investigation, <https://truthinadvertising.org/brands/prevagen/>.

²⁹ See e.g., Press Release, Fed. Trade Comm’n, Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars over FTC Allegations of Privacy Violations and Unwanted Charges (Dec. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>; Press Release, Fed. Trade Comm’n, Health Center, Inc. Settles FTC Allegations That It Targeted Older Consumers With Deceptive Claims for Health and Wellness Products (Mar. 19, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/03/health-center-inc-settles-ftc-allegations-it-targeted-older-consumers-deceptive-claims-health>; Press Release, Fed. Trade Comm’n, FTC Sues Publisher for Targeting Seniors With Phony Diabetes Cure and Money Making Schemes (Oct. 29, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/10/ftc-sues-publisher-targeting-seniors-phony-diabetes-cure-money-making-schemes>; Press Release, Fed. Trade Comm’n, Google and YouTube Will Pay Record \$170 Million for Alleged Violations of Children’s Privacy Law (Sept. 4, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations-childrens-privacy-law>; Press Release, Fed. Trade Comm’n, FTC Challenges Schemes That Target or Affect Senior Citizens (Feb. 22, 2018), <https://www.ftc.gov/news-events/news/press-releases/2018/02/ftc-challenges-schemes-target-or-affect-senior-citizens>; Press Release, Fed. Trade Comm’n, FTC, New York State Charge the Marketers of Prevacid With Making Deceptive Memory, Cognitive Improvement Claims (Jan. 9, 2017), <https://www.ftc.gov/news-events/news/press-releases/2017/01/ftc-new-york-state-charge-marketers-prevacid-making-deceptive-memory-cognitive-improvement-claims>.

³⁰ The recently passed INFORM Consumers Act may be helpful in this regard going forward but is limited in its reach as it only applies to “high-volume third party seller[s]” as defined by the statute. 15 U.S.C. § 45f.

³¹ The FTC initiated rulemaking on the use of consumer reviews and testimonials in 2023, but it could be years before a rule is finalized. Trade Regulation Rule on the Use of Consumer Reviews and Testimonials, 88 Fed. Reg. 49364 (proposed July 31, 2023) (to be codified at 16 C.F.R. pt. 465). That said, the FTC has taken action against fake reviews. See e.g., Press Release, Fed. Trade Comm’n, FTC Takes Action Against Makers of Sobrenix Supplement That Deceptively Claimed to Reduce Alcohol Cravings, Relied on Fake Endorsements (July 19, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-takes-action-against-makers-sobrenix-supplement-deceptively-claimed-reduce-alcohol-cravings>; Press Release, Fed. Trade Comm’n, FTC Approves Final Consent Agreement with Sunday Riley Modern Skincare, LLC (Nov. 6, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/11/ftc-approves-final-consent-agreement-sunday-riley-modern-skincare-llc>; Press Release, Fed. Trade Comm’n, Devumi, Owner and CEO Settle FTC Charges They Sold Fake Indicators of Social Media Influence; Cosmetics Firm Sunday Riley, CEO Settle FTC Charges That Employees Posted Fake Online Reviews at CEO’s Direction (Oct. 21, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/10/devumi-owner-ceo-settle-ftc-charges-they-sold-fake-indicators-social-media-influence-cosmetics-firm>; Press Release, Fed. Trade Comm’n, Health Center, Inc. Settles FTC Allegations That It Targeted Older Consumers With Deceptive Claims for Health and Wellness Products (Mar. 19, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/03/health-center-inc-settles-ftc-allegations-it-targeted-older-consumers-deceptive-claims-health>.

³² See e.g., Press Release, Fed. Trade Comm’n, FTC Charges Volkswagen Deceived Consumers with Its “Clean Diesel” Campaign (Mar. 29, 2016), <https://www.ftc.gov/news-events/news/press-releases/2016/03/ftc-charges-volkswagen-deceived-consumers-its-clean-diesel-campaign>; Press Release, Fed. Trade Comm’n, FTC Imposes \$5 Billion Penalty and Sweeping New Privacy

Restrictions on Facebook (July 24, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions-facebook>; Press Release, Fed. Trade Comm'n, FTC Uses Penalty Offense Authority to Seek Largest-Ever Civil Penalty for Bogus Bamboo Marketing from Kohl's and Walmart (Apr. 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-uses-penalty-offense-authority-seek-largest-ever-civil-penalty-bogus-bamboo-marketing-kohls>; Press Release, Fed. Trade Comm'n, FTC Sues Walmart for Facilitating Money Transfer Fraud That Fleeced Customers Out of Hundreds of Millions (June 28, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-walmart-facilitating-money-transfer-fraud-fleeced-customers-out-hundreds-millions>; Press Release, Fed. Trade Comm'n, FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests (May 31, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever>; Press Release, Fed. Trade Comm'n, FTC Takes Action Against Amazon for Enrolling Consumers in Amazon Prime Without Consent and Sabotaging Their Attempts to Cancel (June 21, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-amazon-enrolling-consumers-amazon-prime-without-consent-sabotaging-their>. See also Press Release, Sec. Exch. Comm'n, SEC Charges Samuel Bankman-Fried with Defrauding Investors in Crypto Asset Trading Platform FTX (Dec. 13, 2022), <https://www.sec.gov/news/press-release/2022-219> and Press Release, Consumer Fin. Prot. Bureau, CFPB Takes Action Against Bank of America for Illegally Charging Junk Fees, Withholding Credit Card Rewards, and Opening Fake Accounts (July 11, 2023), <https://www.consumerfinance.gov/about-us/newsroom/bank-of-america-for-illegally-charging-junk-fees-withholding-credit-card-rewards-opening-fake-accounts/>.

³³ *FTC v. Virginia Homes Manufacturing Corp.*, 509 F. Supp 51 (D. Md.), *aff'd mem.*, 661 F.2d 920 (4th Cir. 1981).

³⁴ Press Release, Fed. Trade Comm'n, Volkswagen to Spend up to \$14.7 Billion to Settle Allegations of Cheating Emissions Tests and Deceiving Customers on 2.0 Liter Diesel Vehicles (June 28, 2016), <https://www.ftc.gov/news-events/press-releases/2016/06/volkswagen-spend-147-billion-settle-allegations-cheating>.

³⁵ Press Release, Fed. Trade Comm'n, Herbalife Will Restructure Its Multi-level Marketing Operations and Pay \$200 Million For Consumer Redress to Settle FTC Charges (July 15, 2016), <https://www.ftc.gov/news-events/press-releases/2016/07/herbalife-will-restructure-its-multi-level-marketing-operations>.

³⁶ Lesley Fair, *FTC Case Against DeVry Yields \$100 Million Settlement*, Fed. Trade Comm'n, Dec. 15, 2016, <https://www.ftc.gov/news-events/blogs/business-blog/2016/12/ftc-case-against-devry-yields-100-million-settlement>.

³⁷ Press Release, Fed. Trade Comm'n, FTC Sending More Than \$34 Million in Refunds to Office Depot Customers (Feb. 20, 2020), <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-sending-more-34-million-refunds-office-depot-customers>.

³⁸ Press Release, Fed. Trade Comm'n, FTC to Send Refund Checks to Uber Drivers as Part of FTC Settlement (July 16, 2018), <https://www.ftc.gov/news-events/press-releases/2018/07/ftc-send-refund-checks-uber-drivers-part-ftc-settlement>.

³⁹ Recent FTC Cases Resulting in Refunds, <https://www.ftc.gov/enforcement/cases-proceedings/refunds> (last visited Aug. 7, 2023).

⁴⁰ Press Release, Fed. Trade Comm’n, FTC Issues Annual Report on Refunds to Consumers; Agency Returned \$392M in 2022 (June 6, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-issues-annual-report-refunds-consumers-agency-returned-392m-2022> (“More than 90% of the \$392 million that the FTC returned to consumers [in 2022] came from cases resolved before the Supreme Court’s 2021 ruling in *AMG Capital Management, LLC v. FTC*, which stripped the FTC of its ability to recover redress for consumers pursuant to Section 13(b) of the FTC Act. By comparison, in the four years preceding *AMG*, the FTC returned more than \$11 billion to consumers using its Section 13(b) authority.”)

⁴¹ As of mid-2020, the FTC was a party to 56 Section 13(b) cases pending in federal district court. See Brief for the Federal Trade Commission, *AMG Capital Mgmt. LLC, et al. v. Fed. Trade Comm’n*, 141 S. Ct. 1341 (U.S. Nov. 30, 2020) (No. 19-508), at 8 n.4, https://www.supremecourt.gov/DocketPDF/19/19-508/162011/20201130120930570_19-508bs.pdf.

⁴² *Fed. Trade Comm’n v. Facebook, Inc.*, No 191-0134 (D.D.C.), <https://www.ftc.gov/enforcement/cases-proceedings/191-0134/facebook-inc-ftc-v>.

⁴³ Press Release, Fed. Trade Comm’n, FTC Sues Multi-Level Marketer Neora, formerly known as Nerium, Alleging it Operates as an Illegal Pyramid Scheme (Nov. 1, 2019), <https://www.ftc.gov/news-events/press-releases/2019/11/ftc-sues-multi-level-marketer-neora-formerly-known-nerium>.

⁴⁴ Press Release, Fed. Trade Comm’n, FTC Acts to Shut Down ‘Success by Health’ Instant Coffee Pyramid Scheme (Jan. 16, 2020), <https://www.ftc.gov/news-events/press-releases/2020/01/ftc-acts-shut-down-success-health-instant-coffee-pyramid-scheme>.

⁴⁵ Press Release, Fed. Trade Comm’n, FTC, New York State Charge the Marketers of Prevagen With Making Deceptive Memory, Cognitive Improvement Claims (Jan. 9, 2017), <https://www.ftc.gov/news-events/press-releases/2017/01/ftc-new-york-state-charge-marketers-prevagen-making-deceptive>.

⁴⁶ And to make matters worse, in 2019, the Third Circuit Court of Appeals ruled in *FTC v. Shire ViroPharma, Inc.* that the FTC cannot seek equitable relief under Section 13(b) if the alleged violation occurred in the past and the defendant was not “violating” or “about to violate” the law. *Fed. Trade Comm’n v. Shire ViroPharma, Inc.*, 917 F.3d 147 (3rd Cir. 2019). As a result, wrongdoers that line their pockets with money they have illegally obtained can now sail off into the sunset with immunity just as long as they retire their scams before the FTC catches up with them.

⁴⁷ FTC Consumer Sentinel Network, <https://www.ftc.gov/enforcement/consumer-sentinel-network>. Unfortunately, consumer complaints sent to the FTC are not made public. Those who want to view them must file Freedom of Information Act requests in order to obtain them, and even then, the FTC may not provide them all. See, e.g., Apr. 18, 2022 Freedom of Information Act Appeal from TINA.org to FTC regarding Commission’s refusal to disclose all consumer complaints submitted to the agency regarding Roblox, https://truthinadvertising.org/wp-content/uploads/2022/01/4_18_22-TINA-FOIA-appeal-to-FTC-re-Roblox-complaints.pdf. The FTC should not hide consumer complaints but rather make them public, as does the Consumer

Financial Protection Bureau. *See* CFPB Consumer Complaint Database, <https://www.consumerfinance.gov/data-research/consumer-complaints/>.

⁴⁸ *See e.g.*, Press Release, Fed. Trade Comm’n, FTC Takes Action Against Amazon for Enrolling Consumers in Amazon Prime Without Consent and Sabotaging Their Attempts to Cancel (June 21, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-amazon-enrolling-consumers-amazon-prime-without-consent-sabotaging-their>; Press Release, Fed. Trade Comm’n, FTC and DOJ Charge Amazon with Violating Children’s Privacy Law by Keeping Kids’ Alexa Voice Recordings Forever and Undermining Parents’ Deletion Requests (May 31, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever>; Press Release, Fed. Trade Comm’n, FTC Sues Walmart for Facilitating Money Transfer Fraud That Fleeced Customers Out of Hundreds of Millions (June 28, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-walmart-facilitating-money-transfer-fraud-fleeced-customers-out-hundreds-millions>; Press Release, Fed. Trade Comm’n, FTC Uses Penalty Offense Authority to Seek Largest-Ever Civil Penalty for Bogus Bamboo Marketing from Kohl’s and Walmart (Apr. 8, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-uses-penalty-offense-authority-seek-largest-ever-civil-penalty-bogus-bamboo-marketing-kohls>; Press Release, Fed. Trade Comm’n, In Final Court Summary, FTC Reports Volkswagen Repaid More Than \$9.5 Billion To Car Buyers Who Were Deceived by “Clean Diesel” Ad Campaign (July 27, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/07/final-court-summary-ftc-reports-volkswagen-repaid-more-95-billion-car-buyers-who-were-deceived-clean>; Press Release, Fed. Trade Comm’n, FTC Charges Volkswagen Deceived Consumers with Its “Clean Diesel” Campaign (Mar. 29, 2016), <https://www.ftc.gov/news-events/news/press-releases/2016/03/ftc-charges-volkswagen-deceived-consumers-its-clean-diesel-campaign>.

⁴⁹ *See, e.g., Axon Enter. V. Fed. Trade Comm’n*, 143 S. Ct. 890 (2023).

⁵⁰ *See, e.g., Magnuson Moss Warranty—Federal Trade Commission Improvements Act*, 15 U.S.C. §§2301-2312.

⁵¹ For example, Facebook entered into a consent agreement with the FTC in 2012 requiring the social media platform to stop its illegal practice of disclosing unauthorized private, identifying user information. *See* Decision and Order, *In the Matter of Facebook, Inc.*, No. C-4365 (F.T.C. July 27, 2012), <https://www.ftc.gov/sites/default/files/documents/cases/2012/08/120810facebookdo.pdf>. Unable to penalize Facebook for its transgressions, the FTC only obtained a promise that Facebook would abide by the law going forward. As this reprimand was effectively toothless, Facebook reverted to its deceptive privacy practices, requiring the FTC to file a complaint in federal court in 2019 to hold the platform accountable yet again for its failure to follow the law and protect consumers’ privacy. *See* Complaint for Civil Penalties, Injunction, and Other Relief, *U.S.A. v. Facebook, Inc.*, No. 19-cv-2184 (D.D.C. July 24, 2019), https://www.ftc.gov/system/files/documents/cases/182_3109_facebook_complaint_filed_7-24-19.pdf. Only at this point, was the FTC able to punish Facebook with a \$5 billion penalty. Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief, *U.S.A. v. Facebook, Inc.*, No. 19-cv-2184 (D.D.C. Apr. 23, 2020). Had the FTC been able to penalize Facebook initially, it is likely that consumer privacy rights would have been better protected years earlier and Facebook less likely to flout the law. *See also* Rohit Chopra, Comm’r, Fed. Trade Comm’n, Prepared Opening Statement Before the United States Senate Committee on Commerce, Science, and Transportation: Hearing on “Strengthening the Federal Trade Commission’s Authority to Protect Consumers (Apr. 20, 2021), https://www.ftc.gov/system/files/documents/public_statements/

[1589172/final_chopra_opening_statement_for_senate_commerce_committee_20210420.pdf](#) (“[Google]’s repeated law violations over the last decade were frequently met with favorable treatment from the FTC. ... While the FTC is quick to bring down the hammer on small businesses, companies like Google know that the FTC is simply not serious about holding them accountable. Congress and Commissioners must turn the page on the FTC’s perceived powerlessness.”)

⁵² For example, in June 2018, the FTC sent a closing letter to Williams-Sonoma following an investigation into the company’s marketing of certain Chinese-made products as “Crafted in America.” Fed. Trade Comm’n Closing Letter to Williams-Sonoma, Inc. (June 13, 2018), https://www.ftc.gov/system/files/documents/closing_letters/nid/musa_williams-sonoma_closing_letter.pdf. The FTC did not pursue its investigation due to the company’s corrective actions and assurances that it was an isolated error. This representation was false. Between April and May 2019, TINA.org collected more than 800 examples of products that were marketed as made in the USA but were either imported or made with imported materials. (Examples collected were drawn from seven of Williams-Sonoma’s sites — Williams-Sonoma, Williams-Sonoma Home, Rejuvenation, Pottery Barn, PBteen, Pottery Barn Kids and West Elm.) TINA.org’s Williams-Sonoma Investigation, <https://truthinadvertising.org/brands/williams-sonoma/>. Based on these findings, TINA.org sent a complaint letter to the FTC. *Id.* The FTC later filed an administrative action against Williams-Sonoma, which resulted in a \$1 million consent order. Decision and Order, *In the Matter of Williams-Sonoma, Inc.*, No. C-4724 (F.T.C. July 13, 2020), <https://www.ftc.gov/system/files/documents/cases/2023025c4724williamssonomaorder.pdf>. See also TINA.org’s Petition for Rulemaking to Promulgate Regulations for Made in the USA Claims, https://www.truthinadvertising.org/wp-content/uploads/2019/08/TINA_org-Petition-for-Rulemaking-to-Promulgate-Regulations-for-Made-in-the-USA-Claims.pdf.

⁵³ Following the *AMG* decision, the FTC has issued four rounds of Notices of Penalty Offenses as a means to obtain civil penalties from wrongdoers. FTC Notices of Penalty Offenses, <https://www.ftc.gov/enforcement/penalty-offenses>. However, the success of those efforts remains to be seen.

In addition, courts have recently been limiting the FTC’s reach under Section 19 of the FTC Act. See, e.g., *Fed. Trade Comm’n v. Zaappaaz, LLC*, Docket No. 20-cv-02717 (S.D. Tex.), Aug. 3, 2023.

⁵⁴ See 15 U.S.C. §45(m)(1)(A).