



December 20, 2023

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**Re: Proposed Regulations 940 C.M.R. 38.00: Unfair and Deceptive Fees**

Truth in Advertising, Inc. (“TINA.org”) welcomes the opportunity to submit the following comment in conjunction with the Office of the Attorney General’s November 30, 2023 request for comments regarding Proposed Regulations 940 C.M.R. 38.00: Unfair and Deceptive Fees. As explained in more detail below, TINA.org’s work exposing junk and hidden fees makes clear that such misleading pricing tactics are a pervasive problem that rob consumers of billions of dollars each year.<sup>1</sup> Our work also highlights the fact that consumers are further exploited when they are unknowingly tricked by companies employing deceptive marketing tactics, including dark patterns, to enroll in negative option offers that are then difficult, if not impossible, to cancel. Because the proposed legislation will strengthen Massachusetts’ consumer protection laws and enable the Attorney General to better protect the Commonwealth’s citizens from these deceptive marketing tactics, TINA.org supports the proposed regulations.<sup>2</sup>

**INTEREST OF COMMENTER**

TINA.org is a nonpartisan, nonprofit consumer advocacy organization based in New England 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 our economy. At the center of TINA.org’s efforts is its website, [www.tina.org](http://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

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<sup>1</sup> *Biden-Harris Administration Announces Broad New Actions to Protect Consumers From Billions in Junk Fees*, The White House (Oct. 11, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/11/biden-harris-administration-announces-broad-new-actions-to-protect-consumers-from-billions-in-junk-fees/> (“Junk fees cost American families tens of billions of dollars each year”).

<sup>2</sup> The Attorney General’s ability to obtain restitution for Massachusetts consumers is all the more important after the Supreme Court decision in *AMG Capital Management v. FTC* left the Federal Trade Commission severely hampered in its ability to provide equitable relief to consumers on a national scale. (*AMG Capital Mgmt., LLC v. Fed. Trade Comm’n*, 141 S. Ct. 1341 (2021) [holding that the FTC does not have authority to obtain restitution for consumers under Section 13(b) of the FTC Act].)

manufactured abroad;<sup>3</sup> pillows and essential oils falsely marketed as being able to treat chronic diseases;<sup>4</sup> and a delivery meal kit service that falsely advertises free meals.<sup>5</sup> The website is also a repository of information relating to consumer protection lawsuits and regulatory actions, and functions as a clearinghouse, receiving consumer complaints about suspicious practices, which TINA.org investigates and, when appropriate, takes up with businesses and regulatory authorities.

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. TINA.org has testified before Congress on issues related to consumer protection, deceptive marketing and economic justice.<sup>6</sup> TINA.org also regularly advocates for consumer interests before the FTC and other governmental bodies and appears as amicus curiae in cases raising important questions of consumer protection law.<sup>7</sup> 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. 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.

Junk and hidden fees have been an area of interest for TINA.org, as well as the subject of many consumer complaints. With respect to negative option marketing, TINA.org has investigated and reported on dozens of companies using deceptive negative option offers,<sup>8</sup> and filed complaints with state and federal regulators regarding five brands.<sup>9</sup> TINA.org is also tracking more than 150

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<sup>3</sup> TINA.org’s Mercedes-Benz Investigation, <https://truthinadvertising.org/brands/mercedes-benz/>.

<sup>4</sup> 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/>.

<sup>5</sup> TINA.org’s HelloFresh Investigation, <https://truthinadvertising.org/brands/hellofresh/>.

<sup>6</sup> 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 Congress (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 Congress (Apr. 27, 2021), (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising),

<https://truthinadvertising.org/action/senate-testimony-2021-summary-action/>.

<sup>7</sup> For example, TINA.org participated as amicus curiae in *AMG Capital Mgmt., LLC v. Fed. Trade Comm’n*, 141 S. Ct. 1341 (2021). (Brief of Amicus Curiae Truth In Advertising, Inc. In Support of Respondent, *AMG Capital Mgmt., LLC v. Fed. Trade Comm’n*, No. 19-508 (U.S. Dec. 7, 2020), available at [https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389\\_19-508%20brief.pdf](https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389_19-508%20brief.pdf).) TINA.org also filed an amicus 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. 2019) (No. 17-3745),

[https://truthinadvertising.org/wp-content/uploads/2018/03/Prevagen\\_Amici-Curiae-brief.pdf](https://truthinadvertising.org/wp-content/uploads/2018/03/Prevagen_Amici-Curiae-brief.pdf).)

<sup>8</sup> TINA.org’s Ad Alerts: Results Using the “Subscriptions” Filter, <https://truthinadvertising.org/search/?f-order=newest&tab=ad-alert&f-tactic%5B%5D=4700&f-order=newest>.

<sup>9</sup> TINA.org’s O2PUR Investigation, <https://truthinadvertising.org/brands/o2pur/>;

class-action lawsuits challenging alleged misleading negative option marketing used by a multitude of companies, including Amazon, Walmart, Apple, Google, YouTube, NFL, MLB and The New York Times.<sup>10</sup>

## I. JUNK FEES AND DECEPTIVE AUTOMATIC RENEWAL SUBSCRIPTIONS ARE PERVASIVE AND HARM CONSUMERS IN MASSACHUSETTS.

TINA.org has investigated and tracked several companies that have negatively impacted Massachusetts consumers by charging hidden fees, as well as using deceptive automatic renewal subscription schemes. The following are some examples:

- **HelloFresh:** TINA.org filed a complaint with this office,<sup>11</sup> as well as the FTC<sup>12</sup> and Connecticut state regulators,<sup>13</sup> regarding the meal kit company HelloFresh after finding that the company deceptively advertised “free” meals to lure consumers to enter their credit card information on its website through a process that employed dark patterns designed to pressure consumers to speed through their transactions and avoid reading the material terms of its subscription autorenewal program, which was not clearly and conspicuously disclosed.<sup>14</sup> At the time, more than a dozen complaints had been filed about the company with the Massachusetts Attorney General’s Consumer Advocacy and Response Division.<sup>15</sup>
- **Adore Me:** TINA.org investigated the marketing of Adore Me, a web-based lingerie company, and found, among other things, that it enrolled consumers in a negative option offer without obtaining consumers’ express consent or disclosing all material terms, and then made it unnecessarily difficult to cancel, prompting TINA.org to file complaints with several regulators. Subsequently, the Massachusetts Attorney General joined a number of other state attorneys general in pursuing a lawsuit against the company.<sup>16</sup>

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TINA.org’s Adore Me Investigation, <https://truthinadvertising.org/brands/adore-me/>;

TINA.org’s FabKids Investigation, <https://truthinadvertising.org/brands/fabkids/>;

TINA.org’s Savage X Fenty Investigation, <https://truthinadvertising.org/brands/savage-x-fenty/>;

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

<sup>10</sup> TINA.org’s Class-Action Tracker: Results Using the “Subscriptions” Filter,

<https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=&f-tactic%5B%5D=4700>.

<sup>11</sup> TINA.org’s Letter to Massachusetts Attorney General, Re: HelloFresh’s Deceptive Advertising and Illegal Business Practices, (July 10, 2023), [https://truthinadvertising.org/wp-content/uploads/2022/06/7\\_10\\_23-TINA-ltr-to-Mass-AG-re-HelloFresh.pdf](https://truthinadvertising.org/wp-content/uploads/2022/06/7_10_23-TINA-ltr-to-Mass-AG-re-HelloFresh.pdf).

<sup>12</sup> TINA.org’s Letter to FTC regarding HelloFresh’s Deceptive Advertising and Illegal Business Practices (July 22, 2022), [https://truthinadvertising.org/wp-content/uploads/2022/06/6\\_22\\_22-TINA-complaint-to-FTC-re-HelloFresh.pdf](https://truthinadvertising.org/wp-content/uploads/2022/06/6_22_22-TINA-complaint-to-FTC-re-HelloFresh.pdf).

<sup>13</sup> TINA.org’s Letter to Connecticut Dept. of Consumer Protection regarding HelloFresh’s Deceptive Advertising and Illegal Business Practices (June 22, 2022), [https://truthinadvertising.org/wp-content/uploads/2022/06/6\\_22\\_22-TINA-complaint-to-CT-DCP-re-HelloFresh.pdf](https://truthinadvertising.org/wp-content/uploads/2022/06/6_22_22-TINA-complaint-to-CT-DCP-re-HelloFresh.pdf).

<sup>14</sup> TINA.org’s HelloFresh Investigation, <https://truthinadvertising.org/brands/hellofresh/>.

<sup>15</sup> List of complaints received by the Attorney General’s Consumer Advocacy and Response Division, <https://www.mass.gov/info-details/list-of-complaints-received-by-the-attorney-generals-consumer-advocacy-and-response-division>.

<sup>16</sup> TINA.org’s Adore Me Investigation, <https://truthinadvertising.org/brands/adore-me/>.

- **Bob’s Discount Furniture:** After receiving numerous consumer complaints, TINA.org investigated the marketing used by Bob’s Discount Furniture, which has multiple stores in Massachusetts,<sup>17</sup> and found that the store deceptively advertised its “interest free” financing by failing to make clear that after one year interest on unpaid balances would be exorbitant and back-charged from the date of purchase, and that consumers must pay more than the amount shown in their monthly bills to avoid hidden interest charges.<sup>18</sup>
- **FYE Stores:** TINA.org tracked – and published information on its website about – a class-action lawsuit filed in Massachusetts state court against Trans World Entertainment Corp. for allegedly offering customers at FYE stores a free membership rewards card and free magazines without adequately disclosing that customers who signed up for the free trials would be automatically enrolled in monthly subscriptions resulting in customers being charged without their consent.<sup>19</sup>
- **Direct Energy Services:** TINA.org also tracked – and published information on its website about – a class-action lawsuit that was filed against Direct Energy Services on behalf of, among others, Massachusetts residents for allegedly offering low initial rates and a month-to-month variable rate plan that was tied to the market rate when, according to plaintiffs, the company routinely charged consumers as much as four times the market rate after the initial rate expired.<sup>20</sup>

While these examples are specifically related to the state of Massachusetts, the issue is national in scope. As such, Massachusetts’ efforts to curb these harmful practices may benefit consumers nationwide.

## II. JUNK AND HIDDEN FEES ARE A WIDESPREAD ISSUE THAT FINANCIALLY HARM CONSUMERS.

An overwhelming majority of U.S. consumers are victimized by junk and hidden fees.<sup>21</sup> In fact, many consumers are paying hundreds of dollars per year in such deceptive fees,<sup>22</sup> a dollar figure

<sup>17</sup> Bob’s Discount Furniture, Stores, <https://www.mybobs.com/stores/> (last visited Dec. 18, 2023).

<sup>18</sup> After filing a complaint with Connecticut’s Department of Consumer Protection, the Department requested that Bob’s make revisions to its “interest free” marketing message, and the company subsequently reimbursed consumers who complained about hidden interest fees. (TINA.org’s Bob’s Discount Furniture Investigation, <https://truthinadvertising.org/brands/bobs-discount-furniture/>.)

<sup>19</sup> TINA.org’s Class-Action Tracker: FYE Stores, <https://truthinadvertising.org/class-action/free-offers-at-fye-stores/>.

<sup>20</sup> TINA.org Class-Action Tracker, Direct Energy Services, <https://truthinadvertising.org/class-action/direct-energy-services-rates/>.

<sup>21</sup> See *WTFee Survey: 2018 Nationally Representative Multi-Mode Survey*, Consumer Reports (Jan. 3, 2019), at 7, <https://advocacy.consumerreports.org/research/wtfeesurvey/> (finding that more than 80 percent of consumers surveyed reported spending money on unexpected or hidden fees in the past 12 months); Penelope Wang, *Protect Yourself from Hidden Fees*, Consumer Reports (May 29, 2019), <https://www.consumerreports.org/fees-billing/protect-yourself-from-hidden-fees-a1096754265/> (citing a Consumer Reports survey finding that at least 85 percent of Americans had encountered an unexpected fee in the past two years).

<sup>22</sup> *WTFee Survey: 2018 Nationally Representative Multi-Mode Survey*, Consumer Reports (Jan. 3, 2019), at 7 (“A third of Americans say they’ve spent \$100 or more on unexpected or hidden fees in the past 12

that is continuously growing.<sup>23</sup> Moreover, because these fees are not properly disclosed, consumers are not able to meaningfully price shop for products and services, thereby “undermin[ing] competition” and causing “a serious ripple effect on people’s finances.”<sup>24</sup> And as these fees add up, many consumers experience greater difficulty meeting basic financial needs, such as rent, utilities and food.<sup>25</sup> According to consumer finance experts, hidden fees are “quietly draining the wallets of middle-class Americans.”<sup>26</sup> Yet efforts to date from federal<sup>27</sup> and state regulators to curb such charges have not been successfully.

As such, the pernicious effects of junk fees charged by companies must be further addressed – from auto sales<sup>28</sup> to financial services,<sup>29</sup> hidden and misleading fees can be found in every segment of the economy. As Consumer Reports’ WTFee Survey reported, 69 percent of Americans encountered junk fees from telecommunications providers, 41 percent from gas and electric utilities, 37 percent from personal banking, 44 percent from live event ticketing, 34 percent from hotels,<sup>30</sup> 36 percent from credit cards, 34 percent from auto loans, 31 percent from

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months for the bills they regularly pay and 17% say they are unsure.”). *See also The Hidden Costs of Bill Pay 2021: doxoINSIGHTS Report 2021*, doxo (Oct. 20, 2021), <https://www.doxo.com/insights/the-hidden-costs-of-bill-pay-report-2021/> (“The average household spent \$925 on the hidden costs of bill pay in 2021”).

<sup>23</sup> Penelope Wang, *Protect Yourself from Hidden Fees*, Consumer Reports (May 29, 2019), <https://www.consumerreports.org/fees-billing/protect-yourself-from-hidden-fees-a1096754265/> (“...two-thirds of [U.S. consumers] say they are paying more now in surprise charges than they did five years ago”).

<sup>24</sup> Consumer Financial Protection Bureau, *The Hidden Cost of Junk Fees*, YouTube (Feb. 2, 2022), <https://www.youtube.com/watch?v=RdKClDbaa5w&t=10s>.

<sup>25</sup> *Id.*

<sup>26</sup> ‘*Land of the Fee*’: *How Hidden Costs Hurt Consumers*, Knowledge at Wharton (Aug. 23, 2018), <https://knowledge.wharton.upenn.edu/article/hidden-costs-hurting-middle-class/>.

<sup>27</sup> Tony Romm, *From Airlines to Ticket Sellers, Companies Fight U.S. to Keep Junk Fees*, The Washington Post (Nov. 19, 2023), <https://www.washingtonpost.com/business/2023/11/19/companies-lobbyists-fight-junk-fees/>.

<sup>28</sup> *See FTC Announces CARS Rule to Fight Scams in Vehicle Shopping*, Federal Trade Commission (Dec. 12, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-announces-cars-rule-fight-scams-vehicle-shopping> (“The Federal Trade Commission has finalized a new rule to fight two common types of illegal tactics consumers face when buying a car: bait-and-switch tactics and hidden junk fees.”).

<sup>29</sup> Office of Research Publication, *Overdraft and Nonsufficient Fund Fees: Insights from the Making Ends Meet Survey and Consumer Credit Panel*, CFPB (Dec. 19, 2023), <https://www.consumerfinance.gov/data-research/research-reports/overdraft-and-nonsufficient-fund-fees-insights-from-the-making-ends-meet-survey-and-consumer-credit-panel/>.

<sup>30</sup> Beyond drip pricing, misleading fees also contribute to market inefficiencies by failing to provide consumers with accurate information about what they are paying for. For example, resort fees do not provide a standardized bundle of services that consumers can then compare among hotels. Instead, consumers are forced to pay for services they do not know about and may not want or intend to use – but increase the price of the hotel regardless. *See How Junk Fees Distort Competition*, White House Blog (Mar. 21, 2023), <https://www.whitehouse.gov/cea/written-materials/2023/03/21/how-junk-fees-distort-competition/>.



rental cars and 31 percent from air travel.<sup>31</sup> Such tactics no doubt increase seller profits at the expense of consumer welfare.<sup>32</sup>

Consumers need accurate data to make rational economic decisions that benefit not just themselves but also lead to a balanced market economy.<sup>33</sup> When sellers use deceptive advertising in their pricing, the lack of clear and accurate information can lead to market inefficiencies.<sup>34</sup> Sellers charging junk fees, for instance, mask the true price of their goods and/or services to the detriment of honest competitors.<sup>35</sup> Further, hidden and misleading fees disproportionately harm communities of color and low-income households. Not only are consumers in these segments of the population more likely to be charged certain junk and hidden fees,<sup>36</sup> but they are also more greatly impacted by this deceptive marketing tactic as hidden and misleading fees drain money from those already struggling financially, which can lead to debt, housing instability and high-cost fringe financial services.<sup>37</sup>

Some companies that employ deceptive fee tactics specifically target low-income consumers. For example, an FTC complaint against the financial services company NetSpend alleged that the company marketed “reloadable prepaid payment cards to ‘unbanked’ or ‘underbanked’ consumers” and deceived consumers “about access to funds they loaded onto the cards.”<sup>38</sup> After loading large amounts of money onto the cards, consumers found that “they were unable to activate the cards, and their balances were then depleted by NetSpend-imposed ‘inactivity’ fees.”<sup>39</sup> Payday lenders – which specifically target Black and Hispanic communities<sup>40</sup> – also

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<sup>31</sup> *WTFee Survey: 2018 Nationally Representative Multi-Mode Survey*, Consumer Reports (Jan. 3, 2019) at 4, <https://advocacy.consumerreports.org/research/wtfeesurvey/>.

<sup>32</sup> Rasch, Thone & Wenzel, *Drip Pricing and Its Regulation: Experimental Evidence*, 176 J. Econ. Behavior & Organization 353-70 (Aug. 2020), <https://www.sciencedirect.com/science/article/abs/pii/S0167268120301189>.

<sup>33</sup> *Id.* (“Under drip pricing, consumers may therefore underestimate the total price, and search too little to find the best deal.”).

<sup>34</sup> Former FTC Commissioner Mary L. Azcuenaga, Public Statement, *The Role of Advertising and Advertising Regulation in the Free Market*, The Turkish Association of Advertising Agencies, Conference on Advertising for Economy and Democracy (April 8, 1997), <https://www.ftc.gov/news-events/news/speeches/role-advertising-advertising-regulation-free-market/>.

<sup>35</sup> Rasch, Thone & Wenzel, *supra* note 32.

<sup>36</sup> *Serving Communities of Color*, Federal Trade Commission, 12 (Oct. 2021), [https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report\\_oct\\_2021-508-v2.pdf](https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf).

<sup>37</sup> Odette Williamson, *No Rolling Back the Clock: Roadmap for an Equitable Economic Recovery in 2023*, National Consumer Law Center (Mar. 15, 2023), <https://www.nclc.org/resources/unfinished-business-roadmap-for-an-equitable-economic-recovery-in-2023/> (Many people of color “live in underserved communities ringed by high-cost, fringe creditors that market heavily to consumers in financial distress. . . . These practices strip wealth from communities and further deplete the resources families need for economic stability.”).

<sup>38</sup> *Serving Communities of Color*, Federal Trade Commission, 12 (Oct. 2021), [https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report\\_oct\\_2021-508-v2.pdf](https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf).

<sup>39</sup> *Id.*

<sup>40</sup> *Payday and Vehicle Title Lending Disproportionately Harm Communities of Color, Exploiting and*

deceive consumers with junk fees. For instance, in November 2019, a class-action lawsuit was filed against EarnIn (an app that allows users to borrow from their wages before they are paid) for allegedly misleadingly representing that the app provides a payday advance with “no fees, interest, or hidden cost” when, according to the complaint, the app actually charges a fee for using the service but it disguises the fee as a “tip.”<sup>41</sup>

### III. JUNK FEES PERVADE A WIDE RANGE OF INDUSTRIES.

TINA.org’s work over the past ten years to hold marketers accountable for imposing junk and hidden fees highlights the significant need for Massachusetts’ proposed regulations. These fees are a serious, widespread and insidious problem throughout the marketplace. By way of example, TINA.org has published dozens of consumer alerts and tracked class actions regarding junk and hidden fees that have affected consumers throughout the United States.

#### A. Ad Alerts

TINA.org has warned consumers about deceptive hidden and junk fees occurring in a wide range of industries, including the following:

- Gas savings app GasBuddy charging consumers fees without providing adequate disclosures;<sup>42</sup>
- U-Haul charging junk and hidden fees on truck rentals;<sup>43</sup>
- Groupon charging junk fees on purchases;<sup>44</sup>
- AT&T imposing hidden fees for its television service;<sup>45</sup>
- Online ticket reseller Vivid Seats charging consumers undisclosed fees;<sup>46</sup>

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*Perpetuating the Racial Wealth Gap*, Center for Responsible Lending (Nov. 2020), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-payday-cartitle-comm-of-color-nov2020.pdf> (“a disproportionate share of payday borrowers come from communities of color, even after controlling for income”).

<sup>41</sup> TINA.org’s Class-Action Tracker, EarnIn, <https://truthinadvertising.org/class-action/earnin/>.

<sup>42</sup> *GasBuddy Ad Alert*, Truth In Advertising (Mar. 31, 2022), <https://truthinadvertising.org/articles/gasbuddy/>.

<sup>43</sup> *U-Haul’s Hidden Fees Ad Alert*, Truth In Advertising (May 26, 2021), <https://truthinadvertising.org/articles/u-hauls-hidden-fees/>; *How Far Will U-Haul’s Base Rate Really Get You?*, Truth In Advertising (Mar. 31, 2015, updated July 7, 2016), <https://truthinadvertising.org/articles/u-haul/>.

<sup>44</sup> *South Coast Aeronautics Groupon Takes Consumer for a Ride*, Truth In Advertising (Aug. 2, 2018), <https://truthinadvertising.org/articles/groupon-south-coast-aeronautics-take-consumer-for-a-ride/>.

<sup>45</sup> *AT&T TV Ad Alert*, Truth In Advertising (Mar. 6, 2020), <https://truthinadvertising.org/articles/att-tv/>.

<sup>46</sup> *Vivid Seats Ad Alert*, Truth In Advertising (Oct. 6, 2017), <https://truthinadvertising.org/articles/vivid-seats/>.

- E-cigarette company Vapex charging consumers large restocking fees and other hidden costs;<sup>47</sup>
- Sears imposing improperly disclosed charges and fees on carpet cleaning services;<sup>48</sup>
- Comcast advertising free installation and then charging consumers hidden fees;<sup>49</sup>
- Car-shopping website TrueCar charging consumers more than the advertised price for vehicles despite “no surprises” marketing claim;<sup>50</sup>
- Question-and-answer app JustAnswer charging consumers recurring monthly fees without clearly and conspicuously informing them of the charges;<sup>51</sup>
- Supplement companies billing consumers on a monthly basis without first obtaining consumers’ express, informed consent;<sup>52</sup>
- Internet provider Astound Broadband advertising internet plans with “all-in” pricing and “no hidden monthly fees,” but then charging a hidden fee for broadband that increases monthly bills;<sup>53</sup>
- The so-called “budget” airline Frontier allegedly misleading consumers into believing they are purchasing a low fare when the airline “makes up whatever discount it purports to give consumers in fraudulent and unwarranted charges”;<sup>54</sup>
- More than five years after having its fee-disclosure practices referred to a federal regulator, ticket seller StubHub continuing to mislead consumers on its advertised ticket prices;<sup>55</sup>

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<sup>47</sup> *Vapex E-Cigarette Freestarter Kit Ad Alert*, Truth In Advertising (Nov. 4, 2013, updated Feb. 12, 2016), <https://truthinadvertising.org/articles/vapex-e-cigarette-freestarter-kit/>.

<sup>48</sup> *Carpet Cleaning by Sears Ad Alert*, Truth In Advertising (May 9, 2016), <https://truthinadvertising.org/articles/carpet-cleaning-sears/>.

<sup>49</sup> *Xfinity Extreme Premier Triple Play Ad Alert*, Truth In Advertising (July 6, 2015), <https://truthinadvertising.org/articles/xfinity-extreme-premier-triple-play/>.

<sup>50</sup> *TRUECar Ad Alert*, Truth In Advertising (Mar. 26, 2015), <https://truthinadvertising.org/articles/truocar/>.

<sup>51</sup> *JustAnswer Ad Alert*, Truth In Advertising (Oct. 26, 2022), <https://truthinadvertising.org/articles/justanswer/>.

<sup>52</sup> *Fungus Eliminator Ad Alert*, Truth In Advertising (June 29, 2022), <https://truthinadvertising.org/articles/fungus-eliminator/>.

<sup>53</sup> *Astound Broadband Ad Alert*, Truth in Advertising (July 17, 2023), <https://truthinadvertising.org/articles/astound-broadband-no-hidden-monthly-fees/>.

<sup>54</sup> *Frontier Airlines Ad Alert*, Truth in Advertising (July 13, 2023), <https://truthinadvertising.org/articles/frontier-airlines-low-fares/>.

<sup>55</sup> *StubHub Ad Alert*, Truth in Advertising (May 22, 2023), <https://truthinadvertising.org/articles/stubhubs-fee-disclosure-practices/>.



- Public Storage charging misleading drip pricing fees that only pop up after consumers click to hold the space, which can raise the price 66 percent in some cases;<sup>56</sup> and
- Cox Mobile failing to include a multitude of additional fees in advertised prices for its phone service, including activation fees and nondescript “other fees and charges.”<sup>57</sup>

## B. Class-Action Tracker

TINA.org also has tracked and published information about hundreds of class-action lawsuits filed against companies in various industries alleging they charged – and hid – junk fees, including:

- Restaurants adding junk fees to advertised food prices,<sup>58</sup> as well as imposing additional “service fees” on delivery orders, charging more for menu items when they’re delivered, or both, despite advertising free or low-cost delivery;<sup>59</sup>
- Airlines imposing fees despite advertising a “no fees” policy for ticket changes and cancellations;<sup>60</sup> imposing additional charges in the form of “Passenger Usage Fees”;<sup>61</sup> falsely telling consumers the airline will refund security fees to passengers who do not use their tickets;<sup>62</sup> falsely representing that certain passengers do not have to pay for checked bags;<sup>63</sup> and misrepresenting that consumers who do not purchase travel insurance are required to pay cancellation and change fees without disclosing that such fees were waived during the COVID-19 pandemic;<sup>64</sup>

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<sup>56</sup> *Public Storage Ad Alert*, Truth in Advertising (Apr. 10, 2023), <https://truthinadvertising.org/articles/public-storage-2/>.

<sup>57</sup> *Cox Mobile Ad Alert*, Truth in Advertising (Nov. 16, 2023), <https://truthinadvertising.org/articles/cox-mobile/>.

<sup>58</sup> TINA.org’s Class-Action Tracker: Com Dev Fund Fees at Missouri Restaurant, <https://truthinadvertising.org/class-action/com-dev-fund-fees-at-missouri-restaurants/>.

<sup>59</sup> *CATrends: Hidden Food Delivery Fees*, Truth In Advertising (Dec. 15, 2021), <https://truthinadvertising.org/articles/catrends-hidden-food-delivery-fees/>.

<sup>60</sup> TINA.org’s Class-Action Tracker: Southwest’s “No Fees” Policy for Ticket Changes and Cancellations, <https://truthinadvertising.org/class-action/southwests-no-fees-policy-for-ticket-changes-and-cancellations>.

<sup>61</sup> TINA.org’s Class-Action Tracker: Spirit Airlines, <https://truthinadvertising.org/class-action/spirit-airlines/>.

<sup>62</sup> TINA.org’s Class-Action Tracker: Southwest Airline’s Refunds of Security Fees, <https://truthinadvertising.org/class-action/southwest-airlines-refunds-of-security-fees/>.

<sup>63</sup> TINA.org’s Class-Action Tracker: American Airlines Baggage Fees, <https://truthinadvertising.org/class-action/american-airlines-baggage-fees/>.

<sup>64</sup> TINA.org’s Class-Action Tracker: Travel Guard Insurance for United Airlines Flights, <https://truthinadvertising.org/class-action/travel-guard-insurance-for-united-airlines-flights/>.

- Rental car companies not disclosing additional fees<sup>65</sup> or misrepresenting the purpose of added fees;<sup>66</sup>
- Moving companies misrepresenting and deceptively adding environmental charges to truck rentals;<sup>67</sup>
- Mobile phone service companies advertising “no contract” plans and then charging consumers fees when they switch carriers;<sup>68</sup> failing to adequately inform customers traveling abroad that they will be charged international roaming charges for international calls they do not accept, voicemails they do not check and calls they do not place while abroad;<sup>69</sup> and charging other hidden fees;<sup>70</sup>
- Credit unions and banks representing to consumers they will not charge overdraft fees when they do;<sup>71</sup> representing that they will provide account holders with refunds of various bank fees (including overdraft fees and monthly maintenance fees) during the COVID-19 pandemic and then refusing to provide such refunds;<sup>72</sup> and failing to disclose all of the fees charged to consumers;<sup>73</sup>
- Buy Now, Pay Later companies marketing their services as “free” and then charging overdraft and/or non-sufficient fund fees;<sup>74</sup>

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<sup>65</sup> TINA.org’s Class-Action Tracker: ACE Rental Car Insurance Hidden Charges, <https://truthinadvertising.org/class-action/ace-rental-car-insurance-hidden-charges/>;

TINA.org’s Class-Action Tracker: Hotwire.com Car Rentals, <https://truthinadvertising.org/class-action/hotwire-com-car-rentals/>.

<sup>66</sup> TINA.org’s Class-Action Tracker: Dollar Rent A Car Fees, <https://truthinadvertising.org/class-action/dollar-rent-a-car-fees/>; TINA.org’s Class-Action Tracker: Dollar Rent A Car’s “Administrative Fees”, <https://truthinadvertising.org/class-action/dollar-rent-a-cars-administrative-fees/>.

<sup>67</sup> TINA.org’s Class-Action Tracker: U-Haul Co. of West Virginia’s Environmental Fees, <https://truthinadvertising.org/class-action/u-haul-co-of-west-virginias-environmental-fees/>; TINA.org’s Class-Action Tracker: U-Haul’s Fees, <https://truthinadvertising.org/class-action/u-hauls-fees/>.

<sup>68</sup> TINA.org’s Class-Action Tracker: T-Mobile’s “No Contract” Cellphone Plans, <https://truthinadvertising.org/class-action/t-mobiles-no-contract-cell-phone-plans/>.

<sup>69</sup> TINA.org’s Class-Action Tracker: AT&T’s International Roaming Fees, <https://truthinadvertising.org/class-action/atts-international-roaming-fees/>.

<sup>70</sup> TINA.org’s Class-Action Tracker: T-Mobile’s Prices and Fees, <https://truthinadvertising.org/class-action/t-mobiles-prices-and-fees/>.

<sup>71</sup> *CATrends: Improper Overdraft Fees*, Truth in Advertising (Mar. 6, 2023), <https://truthinadvertising.org/articles/catrends-improper-overdraft-fees/> (tracking more than 150 class-action lawsuits have been filed against regional and national banks).

<sup>72</sup> See e.g., TINA.org’s Class-Action Tracker: Refunds of Bank of America’s Fees, <https://truthinadvertising.org/class-action/refunds-of-bank-of-americas-fees/>.

<sup>73</sup> TINA.org’s Class-Action Tracker: Undisclosed Fees on SmartLeases, <https://truthinadvertising.org/class-action/undisclosed-fees-on-smartleases/>.

<sup>74</sup> *CATrends: Buy Now, Pay Later Services Send Users Further Into Debt*, Truth In Advertising (June 9, 2022), <https://truthinadvertising.org/articles/catrends-buy-now-pay-later-services-send-users-further-into-debt/>; TINA.org’s Class-Action Tracker: EarnIn App, <https://truthinadvertising.org/class-action/earnin-app/>.

- Payday loan providers advertising a payday advance with no fees or hidden costs and then charging a junk fee disguised as a “tip”;<sup>75</sup>
- Gyms and fitness centers increasing membership renewal fees without properly informing consumers;<sup>76</sup>
- Credit and debit card processing service providers advertising transparent billing practices and then charging fees that are buried in a list of other charges;<sup>77</sup>
- Event ticket sellers charging – and misrepresenting the purpose of – junk fees;<sup>78</sup>
- Travel companies overcharging consumers taxes and fees purportedly imposed by the government and then keeping the difference as profit;<sup>79</sup>
- Communication companies misleadingly advertising and charging fees for television, internet and phone services;<sup>80</sup>
- Outlet stores charging customers undisclosed fees;<sup>81</sup>
- Hotels advertising a low base rate for rooms and then charging customers more than the advertised rate by imposing additional fees;<sup>82</sup>
- Sports betting websites falsely advertising their bet matching policy and then requiring consumers to pay additional entry fees to obtain the advertised promise;<sup>83</sup>

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<sup>75</sup> TINA.org’s Class-Action Tracker: EarnIn, <https://truthinadvertising.org/class-action/earnin/>.

<sup>76</sup> TINA.org’s Class-Action Tracker: Lifetime Membership to 24 Hour Fitness, <https://truthinadvertising.org/class-action/lifetime-memberships-24-hour-fitness/>.

<sup>77</sup> TINA.org’s Class-Action Tracker: Heartland Payment Systems, <https://truthinadvertising.org/class-action/heartland-payment-systems/>. See also TINA.org’s Class-Action Tracker: Point & Pay’s Fees, <https://truthinadvertising.org/class-action/point-pays-fees/>.

<sup>78</sup> TINA.org’s Class-Action Tracker: Ticketmaster Processing and UPS Delivery Fees, <https://truthinadvertising.org/class-action/ticketmaster-processing-ups-delivery-fees/>; TINA.org’s Class-Action Tracker: StubHub’s Advertised Prices, <https://truthinadvertising.org/class-action/stubhubs-advertised-prices/>; TINA.org’s Class-Action Tracker: Ticket Prices on Vivid Seats, <https://truthinadvertising.org/class-action/ticket-prices-on-vivid-seats/>.

<sup>79</sup> TINA.org’s Class-Action Tracker: Expedia and Reservation.com’s Taxes and Fees, <https://truthinadvertising.org/class-action/expedia-and-reservation-coms-taxes-and-fees/>.

<sup>80</sup> TINA.org’s Class-Action Tracker: The Fees for “Advanced TV,” <https://truthinadvertising.org/class-action/the-fees-for-advanced-tv/>.

<sup>81</sup> TINA.org’s Class-Action Tracker: Undisclosed Fees at Tanger Outlet in Ohio, <https://truthinadvertising.org/class-action/undisclosed-fees-at-a-tanger-outlet-in-ohio/>.

<sup>82</sup> TINA.org’s Class-Action Tracker: Room Rates at Omni Hotels, <https://truthinadvertising.org/class-action/room-rates-at-omni-hotels-2/>.

<sup>83</sup> TINA.org’s Class-Action Tracker: DraftKings and FanDuel, <https://truthinadvertising.org/class-action/draftkings-and-fanduel/>.

- Online auction website eBay charging fees without adequately disclosing the amount and frequency of the charges;<sup>84</sup>
- Amazon charging consumers an additional “Amazon Prime” membership fee without adequately disclosing the charge;<sup>85</sup>
- Google charging Google Drive subscribers monthly fees without adequately informing them of the automatic renewal and recurring charges;<sup>86</sup>
- UPS charging customers more than the advertised rates by imposing a “Delivery Area Surcharge” fee;<sup>87</sup>
- GameStop marketing that consumers get “free shipping” if they spend a specified amount on GameStop’s website when consumers who spend enough to qualify for free shipping are still charged a “Shipping & Handling” fee;<sup>88</sup>
- RCN Internet Service charging an additional monthly fee (specifically, the Network Access and Maintenance Fee) on its service, which means consumers pay more than the advertised rate each month;<sup>89</sup>
- Zoom representing that subscribers can cancel paid subscriptions when the company routinely fails to honor cancellation requests and continues to charge monthly fees;<sup>90</sup>
- Optimum and SuddenLink adding undisclosed fees to monthly bills and charging consumers more than the advertised monthly rates;<sup>91</sup>
- Entertainment venue Climate Pledge Arena displaying prices for concession items that do not include the 3 percent service fee added to purchases made at certain live events;<sup>92</sup> and

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<sup>84</sup> TINA.org’s Class-Action Tracker: eBay’s “Good ‘Til Cancelled” Fees, <https://truthinadvertising.org/class-action/ebays-good-til-cancelled-fees/>.

<sup>85</sup> TINA.org’s Class-Action Tracker: Amazon Prime Membership Fees, <https://truthinadvertising.org/class-action/amazon-prime-membership-fees/>.

<sup>86</sup> TINA.org’s Class-Action Tracker: Google Drive Storage Fees, <https://truthinadvertising.org/class-action/google-drive-storage-fees/>.

<sup>87</sup> TINA.org’s Class-Action Tracker: UPS’s “Delivery Area Surcharge” Fees, <https://truthinadvertising.org/class-action/upss-delivery-area-surcharge-fees/>.

<sup>88</sup> TINA.org’s Class-Action Tracker, Gamestop, <https://truthinadvertising.org/class-action/gamestops-free-shipping/>.

<sup>89</sup> TINA.org’s Class-Action Tracker, RCN Internet Services, <https://truthinadvertising.org/class-action/the-monthly-rate-of-rcn-internet-services/>

<sup>90</sup> TINA.org’s Class-Action Tracker, Zoom, <https://truthinadvertising.org/class-action/zooms-paid-subscriptions/>.

<sup>91</sup> TINA.org’s Class-Action Tracker, Optimum and Suddenlink, <https://truthinadvertising.org/class-action/optimum-and-suddenlink-communications/>.

<sup>92</sup> TINA.org’s Class-Action Tracker, Climate Pledge Arena, <https://truthinadvertising.org/class-action/prices-of-concession-items-at-the-climate-pledge-arena/>.

- Adult Time failing to disclose that consumers who sign up for “trial” memberships are charged for additional memberships without their knowledge or consent.<sup>93</sup>

As the examples above make clear, the use of junk and hidden fees has been and continues to be a serious and widespread issue – one that impacts numerous industries and millions of consumers.<sup>94</sup>

### **C. Complaints From Consumers Further Highlight the Negative Impacts of Junk and Hidden Fees.**

As further evidence that the harm imposed by such fees is widespread and injurious, numerous consumers have complained to TINA.org about losing significant amounts of money to companies that employ these tactics, including, for example, event ticket sellers, television/internet/phone providers and various retail stores.

#### **1. Hidden Interest Fees**

Using Bob’s Discount Furniture as an example, TINA.org received numerous complaints about the company’s hidden interest fees, including the following:

...I was charged with the interest fee of \$394.17... I was not provided with clear and complete information about their interest-free financing promotion and also this amount is way too high for me to pay. I am only paid minimum wage. The \$394.17 interest that is being charged to me could be used for my other utility bills and house expenses....

I have been paying my monthly installments on time for the pass [sic] year yet I am being told I have to pay 862.23 PLEASE PLEASE HELP ME.

I have been charge [sic] 600 in interest for 200 dollars on a remaining balance. And it was up 2 days before I received my bill. ... I work very hard for my money and I have just enough for my bills I can’t take this hit.

Last year I bought a couch and a coffee table at Bob’s furniture. I had some money to put down but not all of it. I was told that I could have interest free financing for 12 months. I got all excited. I knew my interest free would end this December. I never missed a payment but I did not finish paying it off by the time the interest free financing was over. I thought that when the time period ended, they would charge me interest on the remaining due. My whole amount was about 1300 and now it was 441. I get the bill in the mail and notice they charged me interest on my entire purchase of 265 dollars! No one in the store ever tells you that this is only interest free if you pay off the entire amount by

<sup>93</sup> TINA.org’s Class-Action Tracker, Adult Time, <https://truthinadvertising.org/class-action/subscriptions-to-adult-time/>.

<sup>94</sup> See *WTFee Survey: 2018 Nationally Representative Multi-Mode Survey*, Consumer Reports (Jan. 3, 2019), at 7, <https://advocacy.consumerreports.org/research/wtfeesurvey/>; Penelope Wang, *Protect Yourself from Hidden Fees*, Consumer Reports (May 29, 2019), <https://www.consumerreports.org/fees-billing/protect-yourself-from-hidden-fees-a1096754265/>.



the end of the 12 month period. This is very misleading and I'm very upset that this will put me back that amount of money.

... I was charged over \$500 because I did not have the entire purchased [sic] payed [sic] off. If I had been aware, I would have placed the remaining amount that I owed on a credit card with a lower rate.

I purchased furniture from bobs discount furniture a year ago when I bought the 5500 dollars worth of furniture all they kept saying was youll ove the no interest for a yr deal ... I made every payment on time and the full amount for a year and I just received a bill with 1500 dollars added to it due to the SCAM!!!...

Last year I had bought a bedroom set for my daughter from Bobs Discount Furniture. I was excited because they offered interest free payments if paid by the promotion date. I was making monthly payments of 98.44 and sometimes more when I had the money ... My mother had passed away and that caused such unexpected chaos in my life that I didn't open my bill until today. The promotional balance of \$959.99 was due on March 23. I called today on March 31 because when I opened the bill it said i wed \$1,532.63. ... It turns out that the 27.99% APR is accumulated over the 12 months you are paying. I think that the agreement is VERY MISLEADING...

I currently just received a bill with over 900.00 in interest fees on a 3,500 loan on furniture. I was completely blind sided by this interest and was not aware or told any of this when i purchased the furniture. Please help!

I ... ended up paying extra \$1,198.96 interest charge. For me when interest was charged on me I had few days old baby because of which I could not talk to them about it. And moreover I was on disability leave and was too hard for me to pay the interest amount they charged which was unknowingly high...

I was charged 800 in interest. I have tried to dispute this with them and have got no response. I'm hoping your [sic] can help me....

...I purchased a mattress from Bob's Furniture in the amount of approximately \$2,000. I was given an "interest free" offer, which I took. Since then I have made monthly payments of approx.. \$70 per month. Last Friday, my statement from Wells Fargo (with Bob's logo on the top) said there was a new interest charge of \$542.47. I thought his [sic] was a mistake... My balance went from \$1,281.05 to \$1,753.71 basically overnight, because of retroactive interest on the original purchase amount. As you know, this was a highly deceptive sales technique of which I was not fully informed at the time of purchase. Had I been informed properly, I would never have taken the so-called interest free loan option....

## **2. Misleading Pricing Schemes**

Consumers have also written to TINA.org about bait-and-switch pricing tactics. For instance, one consumer wrote this year about their experience with Public Storage:

I originally saw the advertisements when signing up for a storage unit. They were pulling the same deceptive tactics then, and still are now. Public Storage habitually lies in their ads about their non-sale prices for storage units. Currently they are listing \$98 as the non-sale price for storage units and then charging me \$120 for the exact size of unit that they list as being \$98 when not on special online deal. It's a pretty blatant bait and switch tactic. They lie about their non-special prices, then slowly escalate your prices until you're paying above what they list as the market rate.

A consumer found this year that when signing up for FuboTV, a television streaming service, an additional charge for regional sports coverage was unavoidable:

The \$74.99/mo plan shows that it comes with NESN and NESN+ for this area (a regional sports channel). Then when you go to start the free trial it shows and [sic] additional charge of \$13.99/mo for 'Regional Sports Fee' with an astrisk [sic] disclaimer that '\*Your plan includes exclusive local sports coverage.' There is no way to not have these channels and it is clearly advertised that the [sic] come with the plan at the \$74.99 price with no disclaimers. They wait until the checkout to add this charge.

Another consumer who wrote to TINA.org saw her price jump in the cart when she was buying custom products:

DiscountMugs is an online company that prints branded merchandise ... I was setting up to order custom branded water bottles for a company event and by the time I reached the checkout, my total had jumped \$50 with no explanation of what fee/charge was added! There was no way I could estimate which products I could afford with the budget I had. In addition, having to create an account in order to even see my final, final, final total is deceptive.

### **3. "Discount" Programs With Hidden Costs**

Consumers are reporting that hidden and misleading fees added to "discount" offers can end up costing them the full price of the advertised product or service – or sometimes even more.

One consumer wrote to TINA.org about this tactic last year:

This listing was on the BuyBuyBaby mobile app (ios) on Nov 26th. It is advertised that if you sign up for the \$29/annually Welcome Rewards+ program, that the Uppababy Vista V2 stroller is discounted by 25%. When you actually sign up for the rewards program and pay the fee, the item is not discounted at all and is full price.

A consumer complaint to TINA.org in 2016 demonstrated the problem with a common rideshare app:

Uber advertises \$1 rides in DC for up to 20 rides in September. What they fail to say is the \$30 is an access fee, rather than a prepaid block of rides. Taking that into account the \$1 rides are actually much higher.

And a consumer looking for food deliveries reported similar fee issues:

I recently received several offers for Postmates from various sources .... The printed advertisement notes that Postmates has a '\$3.99 delivery fee for thousands of locations'. The Postmates.com website has special categories for 'Free Delivery' and '\$1.99 delivery', and indicates '\$3.99 delivery' for the other restaurants. The fact that there is also significant service fee [sic] (generally equal to or greater than the 'delivery fee') for each order is not disclosed anywhere, until you are already attempting to place an order.

#### 4. When "Free" Doesn't Mean Free

Further, consumers have written to TINA.org about ads for "free" products and services that turned out to be anything but free.

For example, a consumer in 2021 searching for a free background check stated:

After filling out my information to get my free report it asks for my credit card information to sign up for a monthly membership fee.

Another consumer responding to ads for free food delivery wrote during the height of the pandemic in 2020:

I saw an ad online to sign up for Caviar and get one month of no delivery fees on any and all orders. I saw this same ad on their website, and the same ad when I was completing the sign up process. However, this ad is entirely misleading, because you cannot get free delivery for a month on any order -- only a few select restaurants provide free delivery and there is no actual promotion included in my account for free delivery.

A GameStop shopper also complained about misleading "free shipping" claims:

Gamestop.com advertises free shipping on 'orders over \$35'; on their website, however, they do not provide it. They will only provide shipping on individual items over \$35 ....

A consumer complained in 2016 about having to pay a service fee even though the ad claimed it was free to join:

Getaround.com claims you can 'join for free', but every single person who wants to use the service must pay a \$10 fee to process their license when you make your first rental. This is the same thing as a \$10 fee to join.

In 2017, a consumer wrote that they believed they had purchased a bus ticket with free exchanges:

I purchased an Economy Extra ticket [from Greyhound, which advertised a free Same Day Exchange for Economy Extra]. ... I was informed by the ticket agent that that privilege was only available to 'Flexible' ticket holders, and that for 'Economy Extra' ticket holders, there was a \$20 fee. I called Greyhound Customer Service, and after about 45 minutes, I was informed that I would be able to get a free same-day exchange, but neither the customer service representative nor the ticket agent were able to perform that exchange. I was then connected to the Greyhound Refunds department so that I could get

a refund for my current ticket and purchase a new ticket for the desired time, since that would be equivalent in price to a free same-day exchange. Then, I was informed by the refunds agent that they could not refund my ticket. Since I needed to get home, I paid the \$20 fee.

And earlier this year, a consumer alerted TINA.org to a deceptive “free” offer for a cosmetic product:

Their site offers “free” ads intermittently. I also found pop up ads, including on Facebook. The ad I used was embedded in an article I was reading relative to face cream reviews. The problem is that after you receive the “free” sample they charge your credit card for a second sample you did not order. Then they bill you another \$129 without authorization. I did a bit of research and found others who reported the same scam. They have at least three sites and three alias sites, and the name Revolutionary Liquid Lift appeared on my Visa bill. I have filed reports with the MO Attorney General and the FTC.

This sampling of consumer complaints highlights the very real financial burdens and emotional harm that junk and hidden fees cause across a wide range of industries.

#### **IV. RECURRING FEES AND TRIAL OFFERS ALSO HARM CONSUMERS.**

Unfortunately, deceptive recurring fees and trial offers (types of deceptive negative option offers) have become a multibillion-dollar industry.<sup>95</sup> On a regular basis, consumers find that they have been charged for long-forgotten subscriptions, or that they are unable to cancel a trial before being charged.<sup>96</sup> Indeed, losses relating to such offers in just 15 cases the FTC has pursued over the past decade have totaled more than \$1 billion.<sup>97</sup>

In 2019, TINA.org provided data to the FTC that described the real and significant harm caused by deceptive negative option marketing.<sup>98</sup> Since then, the problems with this marketing tactic have only continued to grow despite numerous laws that attempt to address the problem. Last fall, for example, the Washington Attorney General’s office conducted a consumer survey that

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<sup>95</sup> See Better Business Bureau, *Subscription Traps and Deceptive Free Trials Scam Millions with Misleading Ads and Fake Celebrity Endorsements*, (Dec. 12, 2018), <https://www.bbb.org/article/investigations/18929-subscription-traps-and-deceptive-free-trials-scam-millions-with-misleading-ads-and-fake-celebrity-endorsements> (“Fraudsters have created a global multi-billion dollar industry.”).

<sup>96</sup> Jennifer Schlesinger, *Buyer Beware: Is That Free Trial Really Free?*, CNBC (Dec. 12, 2018), <https://www.cnbc.com/2018/12/12/buyer-beware-is-that-free-trial-really-free.html> (detailing various enforcement efforts regarding deceptive free trial offers).

<sup>97</sup> Better Business Bureau, *Subscription Traps and Deceptive Free Trials Scam Millions with Misleading Ads and Fake Celebrity Endorsements*, (Dec. 12, 2018), <https://www.bbb.org/article/investigations/18929-subscription-traps-and-deceptive-free-trials-scam-millions-with-misleading-ads-and-fake-celebrity-endorsements>.

<sup>98</sup> TINA.org’s Comment to the FTC Re: The FTC Should Update Its Negative Option Rule (Dec. 2, 2019), at 2, [https://truthinadvertising.org/wp-content/uploads/2019/12/12\\_2\\_19-comment-to-FTC-re-NOO-Rule.pdf](https://truthinadvertising.org/wp-content/uploads/2019/12/12_2_19-comment-to-FTC-re-NOO-Rule.pdf).

revealed that 59 percent of Washingtonians (3.5 million residents) may have been unintentionally enrolled in a subscription plan or service when they thought they were making a one-time purchase.<sup>99</sup> This is consistent with a 2022 Bankrate survey finding that more than half of U.S. adults end up with unwanted charges from a subscription or membership,<sup>100</sup> and a 2021 study by Chase Bank finding that nearly three-quarters of Americans waste more than \$50 a month on unwanted subscription fees.<sup>101</sup>

During this same time period, TINA.org collected a plethora of consumer complaints filed with various entities concerning deceptive negative option offers, and subsequently filed regulatory complaints against HelloFresh, as described above,<sup>102</sup> Rihanna's lingerie brand Savage X Fenty<sup>103</sup> and children's clothing brand FabKids.<sup>104</sup> Consumer complaints included the following:

### **Complaints Regarding HelloFresh**

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

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<sup>99</sup> Press Release, Wash. State Off. Att'y Gen., CONSUMER ALERT: Attorney General's Consumer Survey Reveals that Millions of Washingtonians May Have Been Unintentionally Enrolled in a Subscription Service (Oct. 10, 2022), <https://www.atg.wa.gov/news/news-releases/consumer-alert-attorney-general-s-consumer-survey-reveals-millions-washingtonians>; Wash. State Off. Att'y Gen., *Consumer Feedback Regarding Recurring Charges & Hidden Fees* (July 30, 2022), <https://agportal-s3bucket.s3.amazonaws.com/Hardwick%20Research%20Report%20Hidden%20Fees%207-30-22.pdf>.

<sup>100</sup> Veronika Bondarenko, *51% of Americans Say They Have Unwanted Subscriptions*, The Street (Feb. 8, 2022), <https://www.thestreet.com/investing/51-americans-say-they-have-unwanted-subscription-charges>; Allie Johnson, *Poll: Majority of Subscribers Experience Unwanted Charges*, BankRate, (Feb. 6, 2022), <https://www.bankrate.com/finance/credit-cards/subscription-service-charges-survey/>.

<sup>101</sup> *Survey from Chase Reveals That Two-Thirds of Consumers Have Forgotten About At Least One Recurring Payment in the Last Year*, Chase (Apr. 1, 2021), <https://media.chase.com/news/survey-from-chase-reveals>.

<sup>102</sup> Letter from TINA.org to FTC regarding HelloFresh's Deceptive Advertising and Illegal Business Practices (June 22, 2022), [https://truthinadvertising.org/wp-content/uploads/2022/06/6\\_22\\_22-TINA-complaint-to-FTC-re-HelloFresh.pdf](https://truthinadvertising.org/wp-content/uploads/2022/06/6_22_22-TINA-complaint-to-FTC-re-HelloFresh.pdf).

<sup>103</sup> Letter from TINA.org to FTC regarding Savage X Fenty's Deceptive Advertising and Illegal Business Practices (Feb. 10, 2020), [https://truthinadvertising.org/wp-content/uploads/2020/02/2\\_10\\_20-TINA-ltr-to-FTC-re-Savage-X-Fenty\\_Redacted.pdf](https://truthinadvertising.org/wp-content/uploads/2020/02/2_10_20-TINA-ltr-to-FTC-re-Savage-X-Fenty_Redacted.pdf). Several District Attorneys in California filed a lawsuit against Savage X Fenty over its deceptive marketing practices and entered into a \$1.2 million settlement with the company. (Complaint for Injunction, Civil Penalties, and Other Relief, *State of California v. Lavender Lingerie, LLC d/b/a Savage X Fenty*, No. 22C402737 (Cal. Super. Ct. Aug. 9, 2022), <https://truthinadvertising.org/wp-content/uploads/2021/12/CA-v-Savage-x-Fenty-complaint.pdf>; Final Judgment and Injunction Pursuant to Stipulation, *State of California v. Lavender Lingerie, LLC d/b/a Savage X Fenty*, No. 22CV402737 (Cal. Super. Ct. Nov. 23, 2022), <https://truthinadvertising.org/wp-content/uploads/2021/12/CA-v-Savage-x-Fenty-order.pdf>. See also Press Release, Cnty. of Santa Clara Off. of Dist. Att'y, *Lingerie Company Settles \$1.2 Million Consumer Protection Lawsuit* (Nov. 28, 2022), <https://countyda.sccgov.org/news/news-release/lingerie-company-settles-12-million-consumer-protection-lawsuit>.)

<sup>104</sup> Letter from TINA.org to FTC regarding FabKids' Deceptive Advertising and Illegal Business Practices (Aug. 30, 2021), [https://truthinadvertising.org/wp-content/uploads/2021/08/8\\_30\\_21-FabKids-complaint-to-FTC\\_Redacted.pdf](https://truthinadvertising.org/wp-content/uploads/2021/08/8_30_21-FabKids-complaint-to-FTC_Redacted.pdf).



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.<sup>105</sup>

... I recently received and [sic] ad on Instagram offering a discounted price for Hello Fresh. I clicked the ad to see what the deal was and if its [sic] something hat [sic] 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...<sup>106</sup>

... 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!<sup>107</sup>

### **Complaints Regarding FabKids**

I am absolutely beyond mad to find out that Fabkids has been charging me \$39.99 per month!! I bought my Daughter some shoes for X-Mas. THAT WAS 7 MONTHS AGO!!!! This company is a huge scam!!! I just lost out on almost \$300! This should be a crime and will be reporting this to my bank!<sup>108</sup>

I purchased a few months back not realizing that I would be signed up for vip charging me \*\*\*\*\* monthly. I just realized it today... I've been charged the last 3 months...<sup>109</sup>

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<sup>105</sup> Initial Complaint, Complaint on BBB's HelloFresh Complaints (Jan. 10, 2021), <https://www.bbb.org/us/ny/new-york/profile/food-delivery/hellofresh-0121-142623/complaints>.

<sup>106</sup> Paige H., Review on BBB's HelloFresh Customer Reviews (Oct. 29, 2021), <https://www.bbb.org/us/ny/new-york/profile/food-delivery/hellofresh-0121-142623/customer-reviews>.

<sup>107</sup> Judy W., Review on BBB's HelloFresh Customer Reviews (Apr. 24, 2022), <https://www.bbb.org/us/ny/new-york/profile/food-delivery/hellofresh-0121-142623/customer-reviews>.

<sup>108</sup> Joshua S, Review on BBB's Fabkids Customer Reviews (July 14, 2021), <https://www.bbb.org/us/ca/san-francisco/profile/childrens-and-infants-wear-retail/fabkids-1116-440970/customer-reviews>.

<sup>109</sup> Ashley C, Review on BBB's Fabkids Customer Reviews (July 13, 2021), <https://www.bbb.org/us/ca/san-francisco/profile/childrens-and-infants-wear-retail/fabkids-1116-440970/customer-reviews>.

I would give 0 stars if it was an option. This company is such a scam. I ordered one thing off their site and was charged \$39 a month going forward. I called in March 2021 to cancel the membership that I never signed up for, only to find out in July that they have still be [sic] charging me. This cannot be legal.<sup>110</sup>

### **Complaints Regarding Savage X Fenty**

I think their business model is extremely predatory. Why would I want \$50 charged to my account on a monthly basis for bras and panties that I have not even decided I want. They make it extremely difficult to cancel your account. Save yourself the trouble and do not purchase from Savage X Fenty. You will probably inadvertently sign up for this subscription where you are charged monthly.<sup>111</sup>

I have been trying to cancel my monthly subscription/membership for MONTHS. No response on live chats, no response through customer service. They keep charging me 50 dollars...<sup>112</sup>

In short, problems with negative option offers persist. If finalized, the proposed regulations will help protect Massachusetts consumers who are victimized by this type of deceptive marketing.

### **CONCLUSION**

The proposed regulations are necessary to empower the Attorney General to more effectively protect Massachusetts consumers from hidden and misleading fees, as well as deceptive negative option marketing. Further, the proposed regulations will help to reduce the burdens on consumers, who pay far too much in unwanted, hidden and junk fees each year to pad the pockets of deceptive marketers. For the foregoing reasons, TINA.org strongly supports the proposed legislation.

Sincerely,



Bonnie Patten  
Laura Smith  
Eliza Duggan  
Truth in Advertising, Inc.

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<sup>110</sup> Erin R, Review on BBB's Fabkids Customer Reviews (July 14, 2021), <https://www.bbb.org/us/ca/san-francisco/profile/childrens-and-infants-wear-retail/fabkids-1116-440970/customer-reviews>.

<sup>111</sup> Letter from TINA.org to FTC regarding Savage X Fenty's Deceptive Advertising and Illegal Business Practices (Feb. 10, 2020), at 9, [https://truthinadvertising.org/wp-content/uploads/2020/02/2\\_10\\_20-TINA-ltr-to-FTC-re-Savage-X-Fenty\\_Redacted.pdf](https://truthinadvertising.org/wp-content/uploads/2020/02/2_10_20-TINA-ltr-to-FTC-re-Savage-X-Fenty_Redacted.pdf).

<sup>112</sup> *Id.* at 10.