



February 6, 2024

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

Re: Unfair or Deceptive Fees NPRM, R207011

Truth in Advertising, Inc. (“TINA.org”) welcomes the opportunity to submit the following comment in conjunction with the Federal Trade Commission’s (“Commission,” “Agency” or “FTC”) November 9, 2023 request for comments regarding its proposed Trade Regulation Rule on Unfair or Deceptive Fees.¹ We thank the Commission for the opportunity to participate in this rulemaking procedure. As explained in more detail below, our work tracking and exposing junk fees makes clear that this form of deceptive advertising is a pervasive problem that robs consumers of billions of dollars each year.² As such, TINA.org strongly supports this proposed rule to ban hidden and misleading fees.

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 our 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;³ pillows and essential oils falsely marketed as being able to treat chronic diseases;⁴ and a delivery meal kit service that falsely advertises free meals.⁵ The website is also a repository of

¹ Proposed Rule, Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77420 (proposed Nov. 9, 2023), available at

<https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees>. TINA.org incorporates by reference its prior comment on the ANPRM on this issue: Comment Filed by TINA.org, Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011 (Feb. 8, 2023), <https://www.regulations.gov/comment/FTC-2022-0069-6042>.

² *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”).

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

⁴ 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/>.

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

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.⁶ 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.⁷ 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.

TINA.org has dedicated significant resources trying to protect consumers from unfair and misleading junk fees. From ad alerts published on its website educating consumers about various marketing campaigns that omit fees from advertised prices to complaints filed with regulators regarding companies that use deceptive pricing tactics, hidden and misleading fees have been a frequent target of TINA.org's education and advocacy work. Specifically, TINA.org's February 2023 comment on the FTC's Advance Notice of Proposed Rulemaking highlighted, among other things, four TINA.org legal actions that pertained to deceptive pricing tactics, 12 ad alerts published on our website regarding hidden and misleading fees, and more than 60 class-action lawsuits that TINA.org has tracked alleging marketers deceptively hide fees and charges from advertised prices.⁸ Since then, the use of such deceptive pricing tactics has continued to proliferate. In fact, in the last 12 months, TINA.org has published several new ad alerts and tracked numerous additional class actions regarding this exact issue. TINA.org also continues to receive complaints from consumers on a regular basis regarding deceptive pricing tactics and has so for years. Given the serious impact these fees have on consumers, TINA.org strongly supports the proposed rulemaking.

⁶ 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/>.

⁷ 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.) 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), available at https://truthinadvertising.org/wp-content/uploads/2018/03/Prevagen_Amici-Curiae-brief.pdf.)

⁸ Comment Filed by TINA.org, Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011 (Feb. 8, 2023), <https://www.regulations.gov/comment/FTC-2022-0069-6042>.

I. HIDDEN AND MISLEADING FEES ARE PERVASIVE

As enumerated above, TINA.org’s website is replete with examples of hidden and misleading fees being charged to consumers in various segments of the economy, including, but not limited to, internet apps, automobile rentals, communication services, event ticket sales, carpet cleaning, auto/truck sales, dietary supplement orders, the food service industry, airlines, moving services, credit unions and banks, payday lending services, gym memberships, hotel and travel companies, short-term lodging, outlet stores, sports betting and online auctions.⁹ Yet as the examples below illustrate, efforts to date from the White House, the FTC, the CFPB, the FCC, the DOT,¹⁰ the Senate¹¹ and states,¹² have not been successful at curbing such charges.

A. Ad Alerts Warning of Junk and Hidden Fees

TINA.org has published the following ad alerts regarding junk fees in the last year:

- Public Storage: In April 2023, TINA.org educated consumers about this storage facility that was misleadingly advertising its pricing by omitting a “one-time administrative fee” that in some cases increased the price by 66 percent;¹³
- StubHub: In May 2023, TINA.org issued an ad alert about StubHub’s advertising of initial ticket prices that failed to account for service fees, which were a whopping 23 percent of the total ticket cost and were only disclosed after consumers provided a trove of personal information;¹⁴
- Frontier Airlines: In June 2023, Frontier was accused of misleading consumers into believing they were purchasing a low fare when the airline “makes up whatever discount it purports to give consumers in fraudulent and unwarranted charges,” according to a lawsuit that was the basis of a TINA.org ad alert;¹⁵
- Astound Broadband: In July 2023, TINA.org wrote about this internet provider that advertised internet plans with “all-in” pricing and “no hidden monthly fees”

⁹ Comment Filed by TINA.org, Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011 (Feb. 8, 2023), <https://www.regulations.gov/comment/FTC-2022-0069-6042>.

¹⁰ Press Release, *The President’s Initiative on Junk Fees and Related Pricing Practices*, The White House (Oct. 26, 2022), <https://www.whitehouse.gov/briefing-room/blog/2022/10/26/the-presidents-initiative-on-junk-fees-and-related-pricing-practices/>.

¹¹ Fans First Act, S. 3457, 118th Cong. (2023), available at <https://www.congress.gov/bill/118th-congress/senate-bill/3457>.

¹² See, e.g., Cal. Senate Bill 478 (2023), available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB478; Proposed Regulations 940 Code Mass. Reg. 38.00: Unfair and Deceptive Fees (Nov. 30, 2023), available at <https://www.mass.gov/doc/proposed-regulations-940-cmr-3800-unfair-and-deceptive-fees/download>.

¹³ *Public Storage Ad Alert*, Truth in Advertising (Apr. 10, 2023), <https://truthinadvertising.org/articles/public-storage-2/>.

¹⁴ *StubHub Ad Alert*, Truth in Advertising (May 22, 2023), <https://truthinadvertising.org/articles/stubhubs-fee-disclosure-practices/>.

¹⁵ *Frontier Airlines Ad Alert*, Truth in Advertising (July 13, 2023), <https://truthinadvertising.org/articles/frontier-airlines-low-fares/>.

but then charged a hidden fee for broadband that increased consumers' monthly bills;¹⁶

- Cox Mobile: A November 2023 TINA.org ad alert informed consumers that Cox Mobile's advertised prices did not include numerous additional fees, including activation fees and nondescript "other fees and charges";¹⁷ and
- Crunch Fitness: In January 2024, TINA.org published an ad alert regarding numerous fees, including a "recurring monthly processing fee," an "enrollment fee" and an "annual fee," that were not properly disclosed in this gym's advertised monthly price.¹⁸

B. Class-Action Lawsuits Alleging Deceptively Hidden Fees

TINA.org is tracking the following class actions filed within the last year:

- Panera: In February 2023, Panera was accused of deceptively hiding delivery fees from consumers by secretly marking up the price of the food for delivery orders;¹⁹
- Optimum and SuddenLink: In March 2023, these companies were sued for allegedly adding undisclosed fees to monthly bills and charging consumers more than the advertised monthly rates;²⁰
- Adult Time: In August 2023, Adult Time was sued for allegedly failing to disclose that consumers who sign up for "trial" memberships are enrolled in additional memberships and charged monthly fees;²¹
- GameStop: In October 2023, GameStop was accused of falsely 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;²²

¹⁶ *Astound Broadband Ad Alert*, Truth in Advertising (July 17, 2023), <https://truthinadvertising.org/articles/astound-broadband-no-hidden-monthly-fees/>.

¹⁷ *Cox Mobile Ad Alert*, Truth in Advertising (Nov. 16, 2023), <https://truthinadvertising.org/articles/cox-mobile/>.

¹⁸ *Crunch Fitness Ad Alert*, Truth in Advertising (Jan. 12, 2024), <https://truthinadvertising.org/articles/crunch-fitness/>.

¹⁹ Class-Action Tracker: Panera, Truth in Advertising (Feb. 2023), <https://truthinadvertising.org/class-action/paneras-delivery-fee/>.

²⁰ Class-Action Tracker: Optimum and Suddenlink, Truth in Advertising (Mar. 2023), <https://truthinadvertising.org/class-action/optimum-and-suddenlink-communications/>.

²¹ Class-Action Tracker: Adult Time, Truth in Advertising (Aug. 2023), <https://truthinadvertising.org/class-action/subscriptions-to-adult-time/>.

²² Class-Action Tracker: GameStop, Truth in Advertising (Oct. 2023), <https://truthinadvertising.org/class-action/gamestops-free-shipping/>.

- Zoom: The same month, Zoom was sued for allegedly representing that subscribers can cancel paid subscriptions when the company routinely fails to honor cancellation requests and continues to charge monthly fees;²³
- Climate Pledge Arena: The owner of the Climate Pledge Arena, an entertainment venue, was also sued in October 2023 for allegedly displaying prices for concession items that do not include the 3 percent service fee added to purchases made at certain live events;²⁴
- Verizon Wireless: In November 2023, Verizon Wireless was sued for advertising monthly rates that do not include an “administrative charge”;²⁵
- Legoland New York: In December 2023, Legoland New York was sued for allegedly failing to include its “processing fees” in its advertised prices;²⁶
- Look Cinemas: Also in December 2023, this cinema operator was sued for allegedly failing to include the “convenience fee” in quoted prices;²⁷
- Fandango: Similarly, Fandango was sued in December 2023 for allegedly failing to disclose its “convenience fee” in advertised prices;²⁸
- Hilton: In December 2023, plaintiffs sued this hotel chain for allegedly failing to include the “destination fees,” “resort fees” and other similar charges in advertised room rates;²⁹
- Regal Cinemas: Regal Cinemas was also sued in December 2023 for allegedly failing to include its “booking fee” in advertised prices;³⁰

²³ Class-Action Tracker: Zoom, Truth in Advertising (Oct. 2023), <https://truthinadvertising.org/class-action/zooms-paid-subscriptions/>.

²⁴ Class-Action Tracker: Climate Pledge Arena, Truth in Advertising (Oct. 2023), <https://truthinadvertising.org/class-action/prices-of-concession-items-at-the-climate-pledge-arena/>.

²⁵ Class-Action Tracker: Verizon Monthly Rates, Truth in Advertising (Nov. 2023), <https://truthinadvertising.org/class-action/verizon-monthly-rates/>.

²⁶ Class-Action Tracker: Tickets to Legoland New York Resort, Truth in Advertising (Dec. 2023), <https://truthinadvertising.org/class-action/tickets-to-legoland-new-york-resort/>.

²⁷ Class-Action Tracker: Movie Tickets on LookCinemas.com, Truth in Advertising (Dec. 2023), <https://truthinadvertising.org/class-action/movie-tickets-on-lookcinemas-com/>.

²⁸ Class-Action Tracker: Fandango Movie Tickets, Truth in Advertising (Dec. 2023), <https://truthinadvertising.org/class-action/fandango-movie-tickets/>.

²⁹ Class-Action Tracker: Hilton Hotel Room Rates, Truth in Advertising (Dec. 2023), <https://truthinadvertising.org/class-action/hilton-hotel-room-rates/>.

³⁰ Class-Action Tracker: Regal Cinemas, Truth in Advertising (Dec. 2023), <https://truthinadvertising.org/class-action/regal-cinemas/>.

- Rockefeller Center: Another class action was filed in December 2023 for the alleged failure to adequately disclose a “processing fee” in advertised prices for tickets to Top of the Rock, the Rink and Rockefeller Center Tours;³¹
- AMC Theaters: In January 2024, AMC was sued for allegedly failing to include the “convenience fee” in advertised ticket prices;³²
- One World Observatory: Also in January 2024, One World Observatory was sued for allegedly failing to include its “processing fee” in advertised prices;³³
- Alamo Drafthouse Cinema: This movie theater chain was sued in January 2024 for allegedly failing to adequately disclose its “convenience fee” in advertised prices;³⁴
- Museum of Sex: This museum was also sued in January 2024 for allegedly failing to include its “service charge” in advertised ticket prices;³⁵
- Bronx Zoo: The Bronx Zoo was sued in January 2024 for allegedly failing to include a “processing fee” in advertised prices;³⁶
- Artehouse: This art and science experience was sued in January 2024 for allegedly failing to include a “service charge” in advertised prices;³⁷ and
- Empire State Building Observatory: Similarly, this New York building was sued in January 2024 for allegedly failing to include a “service fee” in advertised prices;³⁸ and
- Museum of Ice Cream: In January 2024, the Museum of Ice Cream NYC was sued for allegedly tacking on a mandatory “service fee” to the price of tickets.³⁹

³¹ Class-Action Tracker: Tickets to Rockefeller Center, Truth in Advertising (Dec. 2023), <https://truthinadvertising.org/class-action/tickets-to-rockefeller-center/>.

³² Class-Action Tracker: Movie Tickets on amctheatres.com, Truth in Advertising (Dec. 2023), <https://truthinadvertising.org/class-action/movie-tickets-on-amctheatres-com/>.

³³ Class-Action Tracker: Tickets to One World Observatory, Truth in Advertising (Jan. 2024), <https://truthinadvertising.org/class-action/tickets-to-one-world-observatory/>.

³⁴ Class-Action Tracker: Movie Tickets on drafthouse.com, Truth in Advertising (Jan. 2024), <https://truthinadvertising.org/class-action/movie-tickets-on-drafthouse-com/>.

³⁵ Class-Action Tracker: Tickets to The Museum of Sex, Truth in Advertising (Jan. 2024), <https://truthinadvertising.org/class-action/tickets-to-the-museum-of-sex/>.

³⁶ Class-Action Tracker: Tickets to the Bronx Zoo, Truth in Advertising (Jan. 2024), <https://truthinadvertising.org/class-action/tickets-to-the-bronx-zoo/>.

³⁷ Class-Action Tracker: Tickets to Artehouse, Truth in Advertising (Jan. 2024), <https://truthinadvertising.org/class-action/tickets-to-artehouse/>.

³⁸ Class-Action Tracker: Tickets for the Empire State Building Observatory, Truth in Advertising (Jan. 2024), <https://truthinadvertising.org/class-action/tickets-for-the-empire-state-building-observatory/>.

³⁹ Class-Action Tracker: Tickets to the Museum of Ice Cream, Truth in Advertising (Jan. 2024), <https://truthinadvertising.org/class-action/tickets-to-the-museum-of-ice-cream/>.

C. Consumer Complaints Regarding Junk and Hidden Fees

Below is a sampling of consumer complaints TINA.org has received over the years regarding a variety of deceptive pricing stratagems.

1. Surprise Added Fees and Costs

Numerous consumers have written to TINA.org about incurring unexpected added fees following purchases. For instance, one consumer wrote last 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 last 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.

A gym member reported "convenience fees" that added up:

This company, Crunch Fitness (fitness holdings northeast llc) charges a \$2 "convenience fee" on all of their gym memberships. Additionally, they claim that if you give them your banking information instead of your credit card that they well give you a "\$2 discount" on the membership. The membership is advertised as \$9.99/month, but is billed for

\$11.99/month regardless if you give them your banking information or not. They do this with all of their memberships at different price levels.

2. “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 disclosure 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 (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.

3. 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.

Another consumer noticed that delivery dramatically increased the price of the food:

El Pollo Loco has been running various commercials stating that they are offering free delivery on Postmates for their Familia Dinner which they say is being offered for \$20. ... I pointed out to them that all delivery platforms, Door Dash and Postmates, offer the same Familia Dinner for \$34.99. The only way one can receive the Familia Dinner for \$20 is to go to the restaurant.

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, and have verified that via chat, BBB support ticket, etc. I have full transcripts showing these details.

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 last 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.

II. HIDDEN AND MISLEADING FEES ARE DISTINCTLY PROBLEMATIC IN CERTAIN INDUSTRIES

In response to the FTC’s request for evidence about practices in live event ticket sales, short-term lodging and restaurants,⁴⁰ TINA.org provides the following information it has gathered over the years in these particular industries from its own investigative work, as well as from its review of class-action lawsuits filed across the country.⁴¹

A. Live event ticket sales

- Vivid Seats: TINA.org found that this online ticket reseller was misleadingly advertising ticket prices without disclosing that additional service and delivery fees will be added at checkout, as well as misleadingly advertising discounts on tickets;⁴²
- Ticketmaster: Ticketmaster was sued for describing processing fees and UPS expedited delivery prices as necessary to cover costs of processing orders when, according to a lawsuit, these fees were actually a way for the company to make a profit;⁴³
- StubHub: A class-action lawsuit alleged that StubHub misleadingly advertised low ticket prices without properly disclosing and including its “service and delivery fees”;⁴⁴
- Live Nation: A class-action lawsuit was filed against Live Nation for allegedly failing to include additional charges of at least \$6 when advertising the prices of tickets;⁴⁵ and

⁴⁰ Proposed Rule, Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77420, Section E. Industry-Specific Practices (Nov. 9, 2023), available at <https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees#p-704>.

⁴¹ Class-Action Tracker, Truth in Advertising, <https://truthinadvertising.org/legal-action/class-action-tracker/>.

⁴² *Vivid Seats Ad Alert*, Truth In Advertising (Oct. 6, 2017), <https://truthinadvertising.org/articles/vivid-seats/>; Class-Action Tracker: Ticket Prices on Vivid Seats, Truth in Advertising (Apr. 2022), <https://truthinadvertising.org/class-action/ticket-prices-on-vivid-seats/>.

⁴³ Class-Action Tracker: Ticketmaster Processing and UPS Delivery Fees, Truth in Advertising (Apr. 2014), <https://truthinadvertising.org/class-action/ticketmaster-processing-ups-delivery-fees/>.

⁴⁴ Class-Action Tracker: StubHub’s Advertised Prices, Truth in Advertising (Feb. 2018), <https://truthinadvertising.org/class-action/stubhubs-advertised-prices/>.

⁴⁵ Class-Action Tracker: Live Nation’s Advertised Prices, Truth in Advertising (Sept. 2016), <https://truthinadvertising.org/class-action/live-nations-advertised-prices/>.

- Climate Pledge Arena: The owner of the Climate Pledge Arena, an entertainment venue, was sued for allegedly displaying prices for concession items that do not include the 3 percent service fee added to purchases made at certain live events.⁴⁶

B. Short-term lodging

- Omni Hotels: This hotel chain allegedly advertised a low base rate for rooms and then charged customers more than the advertised rate by imposing additional fees;⁴⁷
- Expedia: The travel company allegedly advertised “Free Cancellation” on hotel search result pages when those individual hotels actually charged such fees;⁴⁸ additionally, two class-action lawsuits⁴⁹ were filed against Expedia for allegedly misleadingly representing that taxes and fees charged to consumers who reserve hotel rooms from Reservations.com are paid to the government;
- Hilton: A class-action lawsuit was filed in 2019 against Hilton for allegedly advertising low prices for its hotel rooms during the booking process but then increasing the room rate charged when guests check out of the hotel;⁵⁰ in 2023, another lawsuit was filed against the hotel chain for allegedly failing to include “destination fees,” “resort fees” and other similar fees in its advertised room rates;⁵¹
- Getaroom.com: This company allegedly charged consumers more than the quoted price for hotel rooms due to the addition of undisclosed booking fees;⁵²
- Marriott: A class-action lawsuit was filed against Marriott for allegedly deceptively advertising the daily room rates of hotel rooms by not including mandatory resort fees in the advertised price;⁵³

⁴⁶ Class-Action Tracker: Climate Pledge Arena, Truth in Advertising (Oct. 2023), <https://truthinadvertising.org/class-action/prices-of-concession-items-at-the-climate-pledge-arena/>.

⁴⁷ Class-Action Tracker: Room Rates at Omni Hotels, Truth in Advertising (July 2020), <https://truthinadvertising.org/class-action/room-rates-at-omni-hotels-2/>.

⁴⁸ *Expedia Ad Alert*, Truth In Advertising (Aug. 16, 2016), <https://truthinadvertising.org/articles/expedias-free-cancellation/>.

⁴⁹ Class-Action Tracker: Expedia and Reservation.com’s Taxes and Fees, Truth in Advertising (Dec. 2018), <https://truthinadvertising.org/class-action/expedia-and-reservation-coms-taxes-and-fees/>.

⁵⁰ Class-Action Tracker: The Room Rates at Hilton Hotels, Truth in Advertising (July 2019), <https://truthinadvertising.org/class-action/the-room-rates-at-hilton-hotels/>.

⁵¹ Class-Action Tracker: Hilton Hotel Room Rates, Truth in Advertising (Dec. 2023), <https://truthinadvertising.org/class-action/hilton-hotel-room-rates/>.

⁵² Class-Action Tracker: Getaroom.com, Truth in Advertising (Feb. 2020), <https://truthinadvertising.org/class-action/getaroom-com/>.

⁵³ Class-Action Tracker: Marriott, Truth in Advertising (Sept. 2019), <https://truthinadvertising.org/class-action/prices-of-rooms-at-marriott-hotels/>.

- Hyatt: Similarly, Hyatt was sued for allegedly misleadingly advertising room prices that did not include the resort fees charged;⁵⁴
- Wyndham: A class-action lawsuit was also filed against Wyndham for, among other things, allegedly misleadingly advertising room rates for hotels and resorts by not including a daily resort fee in the advertised price;⁵⁵
- Reservations.com: A class-action lawsuit was filed against Reservations.com for, among other things, allegedly failing to disclose in its marketing materials a hidden booking fee;⁵⁶ and
- Booking.com: TINA.org found that this website used tactics to rush consumers through the checkout process and obscured the existence of a \$119 cleaning fee (described on the website as a “property service charge”) that was added to hotel bookings.⁵⁷

C. Restaurants

A number of restaurants add hidden fees to advertised food prices,⁵⁸ as well as impose additional “service fees” on delivery orders, charging more for menu items when they’re delivered, or both, despite advertising free or low-cost delivery:

- Buffalo Wild Wings: A lawsuit filed against Buffalo Wild Wings alleged that the restaurant charged an additional “service fee” on top of a \$1.99 delivery fee;⁵⁹
- Panda Express: A complaint filed against Panda Express alleged that the restaurant hid its “service fee” for delivery orders under “taxes and fees;”⁶⁰
- Chipotle Mexican Grill: A lawsuit filed against Chipotle accused the burrito chain of not only charging a “service fee” for deliveries but also “secretly mark[ing] up food prices” by 12 to 15 percent when consumers opt for delivery;⁶¹

⁵⁴ Class-Action Tracker: Prices of Rooms at Hyatt Hotels, Truth in Advertising (Sept. 2019),

<https://truthinadvertising.org/class-action/prices-of-rooms-at-hyatt-hotels/>.

⁵⁵ Class-Action Tracker: Room Rates on Wyndham’s Websites, Truth in Advertising (July 2016),

<https://truthinadvertising.org/class-action/room-rates-wyndhams-websites/>.

⁵⁶ Class-Action Tracker: Reservations.com, Truth in Advertising (Oct. 2017), <https://truthinadvertising.org/class-action/reservations-com/>.

⁵⁷ *Booking.com Ad Alert*, Truth In Advertising (July 19, 2019), <https://truthinadvertising.org/articles/booking-com/>.

⁵⁸ *CATrends: Hidden Food Delivery Fees*, Truth in Advertising (Dec. 15, 2021),

<https://truthinadvertising.org/articles/catrends-hidden-food-delivery-fees/>.

⁵⁹ Class-Action Tracker: Buffalo Wild Wings, Truth in Advertising (Nov. 2021), <https://truthinadvertising.org/class-action/buffalo-wild-wings-food-delivery/>.

⁶⁰ Class-Action Tracker: Panda Express Food Delivery, Truth in Advertising (July 2021),

<https://truthinadvertising.org/class-action/panda-express-food-delivery/>.

⁶¹ Class-Action Tracker: Chipotle’s Food Delivery Services, Truth in Advertising (Mar. 2021),

<https://truthinadvertising.org/class-action/chipotles-food-delivery-services/>.

- Chick-fil-A: Plaintiffs in several states filed suits against the fast food chain for allegedly deceptively hiding delivery fees from customers;⁶²
- Panera: A complaint filed against Panera alleged the restaurant deceptively advertised a flat-rate charge for delivery but then secretly marked up its food prices for delivery;⁶³
- Grubhub: This food delivery service was sued in two different courts for allegedly imposing hidden delivery fees on consumers by charging a service fee and by secretly marking up the prices of the food;⁶⁴
- Fogle Enterprises: A class-action lawsuit was filed alleging that restaurants operated by Fogle Enterprises – including Great American Steak and Chicken House, Whipper Snapper and The Burger Shack – failed to disclose that a fee called the “Com Dev Fund” was automatically added to the advertised prices for food and service;⁶⁵
- Restaurants at Ritz-Carlton: A class-action lawsuit was filed against The Ritz-Carlton alleging that the restaurant menus in its hotels failed to adequately disclose that the restaurants added an automatic gratuity or service charge to customers’ checks;⁶⁶ and
- Noble House Hotels & Resort: A class-action lawsuit was filed alleging that Noble House Hotels & Resort restaurants misled customers by failing to adequately disclose that the restaurants added a surcharge to the advertised menu prices of food and drinks resulting in consumers being charged more than the price listed on the menu.⁶⁷

These examples concerning live event ticket sales, as well as hotel and restaurant bookings and purchases, highlight just how insidious such deceptive tactics can be.

⁶² Class-Action Tracker: Chick-Fil-A’s Delivery Fees, Truth in Advertising (Sept. 2021), <https://truthinadvertising.org/class-action/chick-fil-as-delivery-fees/>; Class-Action Tracker: Chick-Fil-A Deliveries, Truth in Advertising (May 2022), <https://truthinadvertising.org/class-action/chick-fil-a-deliveries/>.

⁶³ Class-Action Tracker: Panera’s Food Delivery, Truth in Advertising (Feb. 2021), <https://truthinadvertising.org/class-action/paneras-food-delivery/>.

⁶⁴ Class-Action Tracker: Grubhub’s Food Delivery, Truth in Advertising (Feb. 2021), <https://truthinadvertising.org/class-action/grubhubs-food-delivery/>; see also Class-Action Tracker: Grubhub’s Food Delivery Fees, Truth in Advertising (June 2021), <https://truthinadvertising.org/class-action/grubhubs-food-delivery-fees/>.

⁶⁵ Class-Action Tracker: Com Dev Fund Fees at Missouri Restaurants, Truth in Advertising (Feb. 2014), <https://truthinadvertising.org/class-action/com-dev-fund-fees-at-missouri-restaurants/>.

⁶⁶ Class-Action Tracker: Restaurants at The Ritz-Carlton Hotels, Truth in Advertising (Nov. 2017), <https://truthinadvertising.org/class-action/restaurants-ritz-carlton-hotels/>.

⁶⁷ Class-Action Tracker: Prices at Noble House Hotels & Resort Restaurants, Truth in Advertising (Nov. 2017), <https://truthinadvertising.org/class-action/prices-noble-house-hotels-resort-restaurants/>.

III. JUNK FEES CAUSE CONSUMER HARM AND MARKET INEFFICIENCIES

There is extensive evidence that junk fees are widespread and pernicious.⁶⁸ As Consumer Reports' WTFee Survey reported, 69 percent of Americans have encountered junk fees from telecommunications providers, 44 percent from live event ticketing, 41 percent from gas and electric utilities, 37 percent from personal banking, 36 percent from credit cards, 34 percent from hotels,⁶⁹ 34 percent from auto loans, 31 percent from rental cars, 31 percent from air travel, 28 percent from college tuition bills, 25 percent from home buying loans and 24 percent from investment services.⁷⁰

Given this breadth, it is not surprising that the overwhelming majority of U.S. consumers are victimized by junk and hidden fees.⁷¹ Many consumers are paying hundreds of dollars per year in such deceptive fees,⁷² a dollar figure that is ever growing.⁷³ Collectively, the White House

⁶⁸ See Andrea Miller, *How the U.S. Built a Junk Fee Economy*, CNBC (Apr. 25, 2023), <https://www.cnbc.com/2023/04/25/how-the-us-built-a-junk-fee-economy.html> (“Junk fees are making companies billions of dollars richer and the practice spans industries, including banking, telecom, entertainment and hospitality.”); The White House, *Guide for States: Cracking Down on Junk Fees to Lower Costs for Consumers* (Mar. 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/03/WH-Junk-Fees-Guide-for-States.pdf> (“The American economy has become overrun with ‘junk fees.’”); *WTFee Survey: 2018 Nationally Representative Multi-Mode Survey*, Consumer Reports (Jan. 3, 2019), at 2, <https://advocacy.consumerreports.org/research/wtfeesurvey/> (Americans estimate they are spending at least \$100 or more in junk fees a year); *The Hidden Cost of Junk Fees*, Consumer Financial Protection Bureau (Feb. 2, 2022), <https://www.consumerfinance.gov/about-us/blog/hidden-cost-junk-fees/> (“Junk fees drain tens of billions of dollars per year from Americans’ budgets, and when markets become dependent on these back-end fees, it makes it harder for families to realize the benefits of competition.”); *U.S. Households Pay \$1,268 a Year in Hidden Costs Associated With Paying Bills, Up 29% Year Over Year*, Business Wire (Dec. 7, 2023), <https://www.businesswire.com/news/home/20231207151643/en/U.S.-Households-Pay-1268-a-Year-in-Hidden-Costs-Associated-With-Paying-Bills-up-29-Year-over-Year> (“A new report released today by doxo found that hidden costs associated with paying bills amount to an additional \$167 billion annually, averaging \$1,268 per household.”).

⁶⁹ 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/>.

⁷⁰ *WTFee Survey: 2018 Nationally Representative Multi-Mode Survey*, Consumer Reports (Jan. 3, 2019) at 4, <https://advocacy.consumerreports.org/research/wtfeesurvey/>. Of note, this survey only examined 12 industries and did not examine the restaurant industry, among others.

⁷¹ See *id.* 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).

⁷² *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 months for the bills they regularly pay and 17% say they are unsure.”). See also *U.S. Households Pay \$1,268 a Year in Hidden Costs Associated With Paying Bills, Up 29% Year Over Year*, Business Wire (Dec. 7, 2023), <https://www.businesswire.com/news/home/20231207151643/en/U.S.-Households-Pay-1268-a-Year-in-Hidden-Costs-Associated-With-Paying-Bills-up-29-Year-over-Year>.

⁷³ Penelope Wang, *Protect Yourself from Hidden Fees*, Consumer Reports (May 29, 2019),

estimates that Americans are spending a whopping \$65 billion a year on junk fees.⁷⁴ 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.”⁷⁵ And as these fees add up, many consumers experience greater difficulty meeting basic financial needs, such as rent, utilities and food.⁷⁶

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,⁷⁷ 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.⁷⁸

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.”⁷⁹ 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.”⁸⁰ Payday lenders – which specifically target Black and Hispanic communities⁸¹ – also 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,

<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”).

⁷⁴ Brian Deese et al, *The President’s Initiative on Junk Fees and Related Pricing*, The White House (Oct. 26, 2022), <https://www.whitehouse.gov/briefing-room/blog/2022/10/26/the-presidents-initiative-on-junk-fees-and-related-pricing-practices/>.

⁷⁵ Consumer Financial Protection Bureau, *The Hidden Cost of Junk Fees*, YouTube (Feb. 2, 2022), <https://www.youtube.com/watch?v=RdKCIdbaa5w&t=10s>.

⁷⁶ *Id.*

⁷⁷ *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.

⁷⁸ 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.”).

⁷⁹ *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.

⁸⁰ *Id.*

⁸¹ *Payday and Vehicle Title Lending Disproportionately Harm Communities of Color, Exploiting and 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”).

interest, or hidden cost” when, according to the complaint, the app actually charges a fee for using the service that it disguises as a “tip.”⁸²

Consumers need accurate data to make rational economic decisions that benefit not just themselves but also lead to a balanced market economy.⁸³ When sellers use deceptive advertising in their pricing, the lack of clear and accurate information can lead to market inefficiencies.⁸⁴ Sellers charging junk fees, for instance, mask the true price of their goods and/or services to the detriment not only of consumers but also honest competitors.⁸⁵

The Proposed Rule will help to protect consumers and honest companies and correct the market failure caused by junk fees. When sellers accurately price their goods and services, consumers will save billions of dollars they currently lose to misleading and hidden fees and help rebalance the market.⁸⁶

IV. THE PROPOSED RULE IS NECESSARY TO REIN IN JUNK FEES

Opponents of the Proposed Rule advocate for alternatives, such as greater enforcement and educational efforts.⁸⁷ However, given how widespread and harmful such tactics are, these alternatives are not enough – especially when one considers the mounting demands and limited resources of the FTC.

Given the pervasive nature of this deceptive marketing tactic, this Proposed Rule is needed to obtain critical civil penalties against those who charge junk fees (particularly in light of the *AMG Capital Management* decision⁸⁸). Civil penalties can play a vital role in augmenting the FTC’s deterrence-based enforcement as such penalties “are intended not only to punish the wrongdoer but also to deter others from engaging in similar misconduct.”⁸⁹ This is of critical importance as “the likelihood of being caught by a law enforcement agency is usually very low,” which means

⁸² Class-Action Tracker: EarnIn, Truth in Advertising (Nov. 2019), <https://truthinadvertising.org/class-action/earnin/>.

⁸³ 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> (“Under drip pricing, consumers may therefore underestimate the total price, and search too little to find the best deal.”).

⁸⁴ 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 (Apr. 8, 1997), <https://www.ftc.gov/news-events/news/speeches/role-advertising-advertising-regulation-free-market/>.

⁸⁵ 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>.

⁸⁶ Proposed Rule, Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77420 (Nov. 9, 2023), available at <https://www.federalregister.gov/d/2023-24234/p-376>.

⁸⁷ Comment Filed by Association of National Advertisers, Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011 (Feb. 16, 2023), p. 12, <https://www.regulations.gov/comment/FTC-2022-0069-6093>; Comment Filed by U.S. Chamber of Commerce, Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011 (Feb. 16, 2023), p. 5, <https://www.regulations.gov/comment/FTC-2022-0069-6047>.

⁸⁸ *AMG Capital Mgmt., LLC v. Fed. Trade Comm’n*, 141 S. Ct. 1341 (2021).

⁸⁹ Rohit Chopra & Samuel Levine, *The Case for Resurrecting the FTC Act’s Penalty Offense Authority*, 170 U. Pa. L. Rev. 71, 99 (2021).

that “basic deterrence theory indicates that penalties on those who are caught must be severe.”⁹⁰ As such, civil penalties may provide the enforcement authority necessary to exert sufficient external pressures to incentivize companies to stop using hidden and junk fees.⁹¹ Only when it is no longer economically advantageous for companies to charge such deceptive fees will there be progress toward greater truth in advertising.⁹² And this Proposed Rule may provide the monetary penalty that tips the scales in favor of compliance with the law.⁹³ As explained by former FTC Acting Chair Rebecca Kelly Slaughter, “[R]ules provide clarity about the boundaries of illegal behavior, and in exchange for that clarity companies can face penalties even for first-time rule violations. As a result, rules create strong incentives to comply with the law.”⁹⁴

In addition, this rulemaking falls squarely within the FTC’s jurisdiction and mission. The U.S. Chamber of Commerce argued that the Proposed Rule would invoke the Major Questions Doctrine and exceed the FTC’s authority⁹⁵ – but the Chamber’s concerns are misplaced. Section 18 of the FTC Act grants the Commission the authority to prescribe “rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce.”⁹⁶ For more than 50 years, the FTC has been pursuing marketers that impose deceptive hidden fees.⁹⁷ As such, promulgating a rule to prevent deceptive hidden fees is not an

⁹⁰ *Id.* at 99-100.

⁹¹ David C. Berry, *Untwisting New Jersey’s Cap on Punitive Damages*, 27 Seton Hall L. Rev. 167, 192 (1996); see also Cynthia R. Mabry, *Warning! The Manufacturer of This Product May Have Engaged in Cover-Ups, Lies, and Concealment: Making the Case for Limitless Punitive Awards in Product Liability Lawsuits*, 73 Ind. L.J. 187, 187-188 (1997) (“More important, punishing outrageous conduct promotes public safety by giving manufacturers the incentive to scrutinize their own plant operations more closely. To summarize, ‘[p]unitive damages . . . remain[] the most effective remedy for consumer protection against defectively designed mass-produced articles.’”).

⁹² David C. Berry, *Untwisting New Jersey’s Cap on Punitive Damages*, 27 Seton Hall L. Rev. 167, 192 (1996) (“Claims that punitive damage awards are out of control are a result of public relations efforts on behalf of big business interests.”).

⁹³ Prentiss Cox & Christopher L. Peterson, *Public Compensation for Public Enforcement*, 39 Yale J. Reg. 61, 65 (2022).

⁹⁴ Rebecca Kelly Slaughter, Acting Chairwoman, Fed. Trade Comm’n, Keynote Remarks of FTC Acting Chairwoman Rebecca Kelly Slaughter, at 2 (May 4, 2021), https://www.ftc.gov/system/files/documents/public_statements/1589607/keynote-remarks-acting-chairwoman-rebecca-kelly-slaughte-cfa-virtual-consumer-assembly.pdf.

⁹⁵ Comment Filed by U.S. Chamber of Commerce, Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011 (Feb. 16, 2023), <https://www.regulations.gov/comment/FTC-2022-0069-6047>.

⁹⁶ 15 U.S. Code § 57a.

⁹⁷ See, e.g., Synopsis of Federal Trade Commission Practices Decisions Which Are Relevant to Automobile Rental Practices, Federal Trade Commission (Mar. 13, 1978), available at https://www.ftc.gov/system/files/ftc_gov/pdf/NOPO%20Auto%20Rental%20Practices.pdf (summarizing actions the FTC took against car rental companies for unfair and deceptive practices that failed to inform consumers of the fees that they might pay); see also *In the Matter of The Raymond Lee Org.*, 1978 FTC LEXIS 124, *304 (Fed. Trade Comm’n Nov. 1, 1978) (ordering defendants to cease misrepresenting, among other things, the nature or magnitude of additional costs of defendant’s specious services); *FTC v. Amy Travel Serv.*, No. 87 C 6776, 1988 U.S. Dist. LEXIS 13371, at *1 (N.D. Ill. Feb. 10, 1988) (finding that defendants’ employees made representations and omissions to prospective consumers in a manner likely to mislead them about the cost of vacation packages); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1022 (7th Cir. 1988) (ordering defendants’ travel agency to cease misrepresenting the cost of vacation packages to Hawaii); Compl. at 3, *In re Value Rent-A-Car, Inc.*, FTC Dkt. No. C-3420 (Mar. 29, 1993) (alleging that defendants failed to inform rental car consumers of mandatory airport surcharges and age-based fees); Stipulated Judgment and Order, *FTC v. Mercury Mktg. of Del., Inc.*, No. 00-cv-3281, (E.D. Pa. Mar. 13, 2001) (ordering defendants to offer consumers refunds for telephone bill charges they did not authorize and cease misrepresentations in their telemarketing); Stipulated Final Judgment and Order at 14,

“unheralded power,” a “transformative expansion”⁹⁸ of authority or a “newfound power,”⁹⁹ but rather directly within the FTC’s mission and rulemaking authority.

CONCLUSION

In light of the overwhelming data that demonstrate the prevalence and detrimental impact of junk and hidden fees, there simply can be no dispute that this deceptive pricing tactic is a serious issue that permeates our entire economy. The Proposed Rule will help to reduce the burdens on American consumers, who pay billions in junk and hidden fees each year to pad the pockets of deceptive marketers. The FTC has the authority and the duty to take all steps available to curb these fees and establishing a Rule will empower the Commission to more effectively protect consumers and honest businesses from deceptive pricing and misleading fees. As such, TINA.org strongly supports the Proposed Rule.

Sincerely,



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

Stewart Fin. Co. Holdings, Inc. (Nov. 9, 2005) (permanently enjoining defendants from failing to disclose material terms and costs of comprehensive health insurance plans); Decision and Order at 3–4, *In re Budget Rent-A-Car Systems, Inc.*, FTC Dkt. No. C–4212 (Jan. 2, 2008) (ordering defendant to disclose all fuel-related charges and fees at the time of rental transactions and methods to avoid such charges); Stipulated Final Order at 10-11, *FTC v. Millennium Telecard, Inc.*, No. 2:11–cv–02479 (D.N.J. Jan. 26, 2012) (permanently enjoining defendants from failing to clearly and conspicuously disclose the existence and amount of all fees or charges of any type to consumers using the defendant’s prepaid calling cards); Stipulated Order at 2, *FTC v. Hold Billing Servs., Ltd.*, No. 98–cv–00629 (W.D. Tex. May 4, 2016) (ordering phone company to pay \$5.2 million for placing charges on consumers’ bills without authorization); Stipulated Order at 5–6, *FTC v. LendingClub Corp.*, No. 3:18–cv–02454 (N.D. Cal. July 14, 2021) (permanently enjoining defendant from misrepresenting “[t]he existence of amount of any fees or charges” and “the dollar amount of any prepaid, up-front, or origination fee”); Stipulated Order for Permanent Injunction at 9, *FTC v. N. Am. Auto. Servs., Inc.*, No. 1:22–cv–01690 (N.D. Ill. Mar. 31, 2022) (permanently restraining auto dealer from misrepresenting to consumers “whether charges, products, or services are optional or required”).

⁹⁸ *West Virginia v. EPA*, 142 S. Ct. 2587, 2610 (2022) (citing *Utility Air Regulatory Group v. EPA*, 573 U. S. 302, 324).

⁹⁹ *Id.* at 2610.