

PUBLIC SUBMISSION

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Docket: FTC-2023-0064
Trade Regulation Rule on Unfair or Deceptive Fees

Comment On: FTC-2023-0064-0001
Trade Regulation Rule on Unfair or Deceptive Fees

Document: FTC-2023-0064-3173
Comment from Center for Individual Freedom (CFIF)

Submitter Information

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General Comment

See attached file(s)

Attachments

CFIF Comment to FTC Re Unfair Or Deceptive Fees NPRM PDF -- 2-7-24



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February 7, 2024

United States Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610, Annex B
Washington, D.C. 20580

Re: "Unfair or Deceptive Fees NPRM, R207011"

Dear Commissioners:

On behalf of over 300,000 grassroots supporters and activists across the nation, and pursuant to our mission of advocating public policies that cultivate a more robust economy and consumer benefits, the Center for Individual Freedom ("CFIF") hereby submits this Comment in opposition to the proposed "Rule on Unfair or Deceptive Fees" by Federal Trade Commission ("FTC").¹

Despite the proposed rule's deceptively anodyne title addressing "Unfair or Deceptive Fees," in practice it would undermine consumer wellbeing and the American marketplace.

As an initial and overarching concern, the proposed rule would impose an overbroad one-size-fits-all mandate universally across diverse industries and business sectors. Indeed, the FTC's overreliance upon the lodging, ticketing and restaurant sectors fails to persuasively justify an economy-wide application of its proposal. As just one direct consequence, that overly broad extrapolation makes impossible a necessary and proper cost-benefit analysis of the FTC's proposed rule.

As another negative outcome of the proposed rule's overbreadth and arbitrariness, legitimate business practices may fall victim to its unintended consequences. For example, in some third-party marketplaces one independent seller of goods or services sets an underlying price, while a separate market fulfillment operator imposes distinct platform or service fees. The failure to distinguish between fixed up-front fees and separate marketplace fulfillment fees exposes the proposed rule's overly comprehensive nature and its disregard for the complexities of modern business practices.

Indeed, in many instances the FTC's proposal in its current iteration could often cause more consumer confusion rather than reduce it. The total price as contemplated by the proposal would crudely combine both the underlying cost of the good or service with platform fees, which consumers often prefer to distinguish in itemized format in order to compare prices across platforms and adjust their orders to fit their particular preferences.

The FTC itself concedes that potential unintended consequence of the proposed rule, acknowledging that, "there may be unintended consequences of the proposed rule on some industries,"

¹ https://www.ftc.gov/system/files/ftc_gov/pdf/r207011unfairjunkfeesnprmfinal.pdf

which may require “narrowing the proposed rule to specific sectors.”² That admission betrays the FTC’s own view that the rule may inadvertently cause confusion rather than clarity. Combining item costs and platform fees into an “all-in” price lacks transparency, as consumers may struggle to discern which entity charges what. That undermines the rule’s intended purpose of empowering consumers and facilitating informed choices.

A more prudent approach would be to significantly narrow the rule, focusing on industries where undisclosed mandatory fees are more prevalent and harmful to consumers. Acknowledging the distinct roles and objectives of both flat and variable fees in different industries is crucial, and the proposed rule’s failure to recognize the benefits of variable pricing structures, which allow fees to scale based on the nature of the items or services purchased, is a significant oversight. A more nuanced and narrowly tailored approach is essential to address the specific challenges posed by undisclosed mandatory fees without stifling businesses or limiting consumer choices. As it stands, the proposed rule risks inflicting more harm than good.

Accordingly, the Proposed Rule superficially claims to target “unfair or deceptive fees,” but in real-world practice promises only regulatory confusion, overbroad application, economic loss, stifled innovation and investment, protracted litigation and wasted resources. On that basis, CFIF respectfully urges rejection or modification of the proposed rule.

Sincerely,

Timothy Lee
Senior Vice President of Legal and Public Affairs

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Id.