

# PUBLIC SUBMISSION

<b>As of:</b> February 08, 2024 <b>Received:</b> February 07, 2024 <b>Status:</b> Posted <b>Posted:</b> February 07, 2024 <b>Tracking</b> <b>No.</b> lsc- 84eb-qeou <b>Comments</b> <b>Due:</b> February 07, 2024 <b>Submission</b> <b>Type:</b> Web
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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-2023-0064-3197  
Comment from American Beverage Licensees (ABL)

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## Submitter Information

**Email:** bodnovich@ablusa.org  
**Organization:** American Beverage Licensees (ABL)

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## General Comment

See attached file(s)

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## Attachments

24 2.7 ABL Comment - FTC Junk Fees



February 7, 2024

April Tabor  
Secretary of the Commission  
Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Ave, NW  
Washington, DC 20580

**RE: "Unfair or Deceptive Fees NPRM, R207011"**

Dear Secretary Tabor:

On behalf of the beverage retailer members of the American Beverage Licensees ("ABL"), we are writing to share our view regarding the notice of proposed rulemaking ("NPRM") on the Trade Regulation Rule on Unfair or Deceptive Fees.

ABL is a trade association representing the retail tier of the U.S. alcohol industry. Its members include thousands of bars, taverns, and package liquor stores that sell beer, wine, and spirits in states across the country. As an important cog in the hospitality industry economic machine, direct retail beverage alcohol sales in the United States create more than 2.03 million well-paying jobs and generate over \$27.9 billion in federal taxes and \$20.0 billion in state and local taxes.

ABL appreciates the opportunity to share its perspective concerning the trade regulation rule proposed in the notice of proposed rulemaking and understands that the objective of the FTC's proposed rule is to protect consumers from hidden or misleading fees throughout the economy. However, given the scope and breadth of the rule, we are deeply concerned about the unintended consequences it would have on local bars, taverns, and on-premise licensed alcohol retailers – honest businesses that value their customers and operate in a highly competitive marketplace.

We urge the FTC to consider the impact this rule could have on small businesses – as opposed to large-scale businesses or industries with high degrees of consolidation – and place an emphasis on disclosure and transparency instead of adding strict requirements for otherwise lawful and honest businesses.

While many bars, taverns and restaurants have survived the COVID-19 pandemic – and more recently product shortages, workforce challenges and subsequently extreme inflationary environment – survival is not the same as profitability. Despite these challenges, and profit margins that tend to average between 2-4%, these Main Street businesses, which sponsor Little Leagues and recreational sports teams; donate time, space and more to worthy causes; and create millions of jobs should not be faced with yet another additional burden.



Service fees charged by bars, taverns and other on-premise beverage alcohol licensees are not in and of themselves unfair or deceptive. In addition to the fact that fees often cover costs of services and products for customers, disclosure of fees on menus or prior to an order being placed is already required by some states or local jurisdictions.

Eliminating the ability of on-premise food and drink businesses to use service charges to manage their costs while operating in a highly competitive market puts them at a disadvantage. Unlike other industries that are more concentrated, there are hundreds of thousands of restaurants, bars, and taverns for consumers to choose between. Just as a restaurant that sells food that does not taste good will be subject to consumers' taking their business to other establishments, consumers are free to do the same should they object to a business' pricing policy for a meal or a drink. Diners or imbibers are not captured like they might be when engaging in commerce more concentrated industries.

It is also worth noted that when discussing "the potential benefits and costs of the proposed rule" within the restaurant industry, the FTC NPRM concedes "we lack data to quantify several of these benefits and costs." This acknowledgement underscores the difficulty in applying a broad, sweeping rule to such a wide swath of business types and environments. Just as it would be folly (not to mention unconstitutional) for the federal government to advance a national retail alcohol regulatory structure, the FTC creating an overly prescriptive and rigid set of national pricing guidelines – the authority to promulgate which has already been called into question by other organizations – that constrain the operational flexibility of small on-premise food and beverage businesses is misguided.

While there is never a place for intentional deception of consumers, there should also be a reasonable expectation that once consumers are presented with the costs of a meal or drink, they are responsible for their own choices. Provided fees or charges associated with an order are communicated to patrons before an order is placed, it should be fair to assume that the customer accepts the terms of the business' pricing policies, just as a guest accepts a "No Shirt, No Shoes, No Service" policy when they enter a business.

Prior to a rulemaking that does not necessarily take into account the pricing policy nuances of industries as varied as cruise lines and corner taverns, we encourage the FTC to consider focusing on the disclosure of policies and practices instead of the prohibition of them. This could include initiating industry-specific workshops, education campaigns for businesses and consumers, and an enforcement strategy of existing laws that focuses on individual actors and actions.

Finally, we would like to emphasize that enforcement is fundamental when adopting a new rule or enforcing existing ones. When rules are not enforced evenly, winners and losers are chosen, honest businesses suffer, and consumers are confused – outcomes that the NPRM is seeking to remedy. Rules should be applied evenly to similarly situated business, and we



would caution that due to the sheer size and nature of the hospitality business marketplace, the ability to enforce such a rule evenly would be quite challenging.

As the FTC weighs public comments during its review of the Trade Regulation Rule on Unfair or Deceptive Fees, we urge it to consider the unintended consequences a final rule make have on bars, taverns, restaurants, and their customers, and undertake initiatives prior to or lieu of a final rulemaking that provide education and greater awareness of policies for specific industries on the topic of service fees.

Thank you for your time and the consideration.

Sincerely,

A handwritten signature in black ink that reads "John D. Bodnovich". The signature is written in a cursive style with a large, stylized "J" and "B".

John D. Bodnovich  
Executive Director  
American Beverage Licensees