

FTC Sends Notices to Businesses Promoting Money-Making Opportunities

The Bottom Line

- The FTC has issued three rounds of Notices of Penalty Offenses *this month* – a sharp shift for an enforcement power that was largely abandoned in the 1980's.
- As the FTC continues to explore its enforcement options in the wake of the Supreme Court's decision in *AMG Capital Management*, which limited the FTC's ability to recover civil penalties, businesses should ensure that their practices are lawful and in compliance with FTC regulations.

The Federal Trade Commission (FTC) put more than 1,100 companies offering money-making opportunities on notice that they could incur civil penalties of up to \$43,792 per violation for making false and misleading claims regarding potential earnings. This is the latest instance showing the FTC's continued use of its Penalty Offense Authority under Section 5 of the FTC Act.

Three Waves of Notices

The FTC sent notices to a broad array of businesses, including franchises, multi-level marketing companies, investment coaches and "gig" employers, reminding them that they must follow the law when making earnings claims to potential participants.

The FTC's latest wave of notices follows two earlier waves:

1. The first concerning misrepresentations by for-profit educational institutions about job and earnings prospects,
 2. The second concerning misleading endorsements, including in online reviews and on social media.
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The Notices

A Notice of Penalty Offenses allows the FTC to seek civil penalties against a company that engages in conduct that it knows has been found unlawful in a previous FTC administrative order, aside from a consent order.

Cited deceptive acts and practices related to money-making opportunities include:

- Misrepresenting anticipated profits or earnings;
- Falsely claiming that sales of a money-making opportunity will be made to only a limited number of prospective participants;
- Misrepresenting that prospective participants will be screened or evaluated for suitability;
- Misrepresenting that participants do not need experience in order to earn income;

- Misrepresenting that a prospective participant must act immediately;
 - Misrepresenting that purchasing a money-making opportunity is risk-free or involves little risk;
 - Failing to disclose the position being offered to prospective participants; and
 - Misrepresenting the amount or type of training that will be given to participants.
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Importance of Compliance with Endorsement and Testimonial Guidelines

Importantly, recipients were also put on notice regarding endorsements and testimonials, as companies frequently use testimonials to advertise money-making opportunities (for example, by using testimonials to mislead consumers about the rewards of participating in a money-making opportunity).

As discussed in our [prior alert](#), these include:

- Falsely claiming an endorsement by a third party;
 - Misrepresenting that an endorser is an actual user, a current user or a recent user;
 - Continuing to use an endorsement without good reason to believe that the endorser continues to subscribe to the views presented;
 - Misrepresenting that an endorsement represents the experience, views or opinions of users or purported users;
 - Using an endorsement to make deceptive performance claims;
 - Failing to disclose an unexpected material connection with an endorser; and
 - Misrepresenting that the experience of endorsers represents consumers' typical or ordinary experience.
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A Notice Is Not a Confirmation of Wrongdoing

Keep in mind that the fact that a company has received a Notice of Penalty Offenses is not an indication that the company has engaged in any wrongdoing. Additionally, the Notice of Penalty Offenses does not create any new obligations or requirements for recipients. However, if a recipient nonetheless engages in conduct that the FTC has previously found unlawful under Section 5 of the FTC Act, the recipient may be subject to substantial civil penalties.

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