

The Ad Standard: Monthly Update

September 2025

The Federal Trade Commission once again signaled its continued focus on making it easy to cancel recurring charges and avoid misleading practices in negative option plans. In a lawsuit against LA Fitness, the FTC alleged that the difficulty cancelling a gym membership violated the FTC Act and the Restore Online Shoppers Confidence Act. Although the FTC's Click to Cancel Rule was vacated by the Eighth Circuit in July 2025, the FTC alleges that practices making it difficult for consumers to cancel a subscription or failing to adequately inform consumers about their ability to cancel services violates existing laws.

This month, both cases at the NAD and in proposed class action litigation highlight the risks of advertising products as "all natural" or "free-of" ingredients that today's consumers are trying to avoid. Two recent NAD cases reminded advertisers that they might be able to truthfully tout the absence of certain ingredients in their products but should not make unsupported claims that the removed ingredients are harmful or toxic. Additionally, new class actions continue to be filed alleging that consumers are misled by claims that products are "all natural," contain "100%" of a named ingredient, or are "free-of" substances consumers seek to avoid. The class actions allege that the presence of processed ingredients or ingredients perceived as harmful make the "all natural," "100%," or "free-of" claims false and misleading. By contrast, however, a New York court recently dismissed a class action alleging that understating the amount of an ingredient was misleading. The Court held that "it defies common sense" that it would be material to consumers to get slightly more of the ingredient they are seeking.

TOPICS

FTC Focus 2

Deceptive Pricing and Subscriptions 2

Financial Fraud 2

Fraudulent Claims Related to AI..... 3

Warning Letter 4

Workshops 4

Analysis 4

Class Actions 4

"All Natural," "100%," or "Free-Of" Claims 4

Recent Dismissals5

NAD Focus 6

Endorsements 6

Health Claims..... 6

Savings Claims and Price Comparisons 8

FTC Focus

Deceptive Pricing and Subscriptions

1. In August, the FTC sued Fitness International, LLC and Fitness & Sports Clubs, LLC, which operate LA Fitness, alleging that the difficulty in cancelling gym memberships and related services is a violation of the FTC Act and ROSCA. According to the complaint, consumers could cancel only by going to the gym or by mail. Cancelling in person required cancelling with one specific employee, which restricted cancellation hours to times when consumers are typically at work despite most locations operating up to 19 hours per day, seven days per week.

[FTC Sues LA Fitness for Making it Difficult for Consumers to Cancel Gym Memberships | Federal Trade Commission](#)

2. Match Group, Inc., and Match Group, LLC (Match), the owners and operators of various well-known dating sites, have agreed to pay \$14 million; to not misrepresent any material restrictions, limitations, or conditions relating to guarantees; to stop locking consumers out of paid-for accounts; and to simplify Match.com's cancellation processes. The FTC's complaint alleged that Match deceptively induced consumers to subscribe to Match.com by promising them a free six-month subscription if they did not "meet someone special" but failed to adequately disclose several onerous requirements that users must meet before the company would honor its guarantee and also failed to provide paid-for services by suspending the accounts of users who unsuccessfully filed billing disputes.

[Match Group Agrees to Pay \\$14 Million, Permanently Stop Deceptive Advertising, Cancellation, and Billing Practices to Resolve FTC Charges | Federal Trade Commission](#)

Financial Fraud

1. Assurance IQ, LLC and MediaAlpha, Inc., will pay a total of \$145 million to settle FTC charges that they misled millions of consumers seeking to buy comprehensive health insurance. The FTC alleged that the two entities caused consumers to purchase plans that did not provide the promised health care coverage and bombarded them with telemarketing and robocalls. Emphasizing that unlawful lead generation in connection with health insurance is an FTC priority, Christopher Mufarrige, Director of the Bureau of Consumer Protection, said that "Consumers should receive accurate, truthful, and non-misleading information about the coverage insurance provides."

[Assurance IQ and MediaAlpha to Pay a Total of \\$145 Million to Settle FTC Charges That They Misled Consumers Seeking Health Insurance | Federal Trade Commission](#)

2. The FTC has obtained a preliminary injunction against the three companies that executed the IM Mastery Academy schemes and the two individuals who led it, prohibiting them from making misleading earnings claims and misrepresenting material facts, including the amount of capital required to participate and the terms of any refund, cancellation or exchange policy. In the complaint, the FTC and state of Nevada alleged that the scheme used false or baseless earning claims to entice consumers to purchase investment training on financial markets, causing \$1.2 billion in total harm to consumers. The defendants were also alleged to have persuaded consumers to

buy into their multi-level marketing business venture, which involves marketing the defendants' training services to others. Previously, the FTC [settled](#) with Global Dynasty Network, LLC, Jason Brown, and Matthew Rosa concerning similar allegations. Under the settlement, the defendants are banned from making any representations about potential earnings without having written evidence that those claims are typical.

[FTC Secures Preliminary Injunction Against IM Mastery Academy and Its Owners | Federal Trade Commission](#)

Fraudulent Claims Related to AI

1. Operators of Click Profit have entered into a proposed settlement with the FTC over claims that the e-commerce business deceived consumers into paying millions to create and operate lucrative online stores. The complaint alleged that Click Profit and its operators made false and unsubstantiated claims about potential earnings that rarely, if ever materialized, falsely claimed to use AI and have exclusive partnerships with well-known brands, and used illegal contract clauses to suppress negative reviews. The proposed settlement includes a monetary judgment and will suspend the operators from doing business in the industry.

[FTC Case Against E-Commerce Business Opportunity Scheme and its Operators Results in Permanent Ban from Industry | Federal Trade Commission](#)

2. The FTC has filed a complaint alleging that Air AI Technologies falsely advertised their flagship feature as “conversational AI,” claiming that it can replace human customer service representatives. However, consumers would often fail to earn the promised profits and the defendants falsely promised that such consumers were protected by a refund or buy-back guarantee. The FTC alleged that the defendants made deceptive claims about business growth, earnings potential, and refund guarantees to take advantage of small businesses and entrepreneurs.

[FTC Sues to Stop Air AI from Using Deceptive Claims about Business Growth, Earnings Potential, and Refund Guarantees to Bilk Millions from Small Businesses | Federal Trade Commission](#)

3. The FTC has given final approval to an order against Workado, LLC, requiring it to stop advertising the accuracy or efficacy of its AI content detection products unless it has competent and reliable evidence showing those products are as accurate as claimed. Workado markets its AI Content Detector as being able to determine whether written content was developed using generative AI technology or if it was written by a human being, however, the FTC complaint alleged that the AI model was trained or fine-tuned to effectively classify only academic content rather than the wide range of material the company claimed.

[FTC Approves Final Order against Workado, LLC, Which Misrepresented the Accuracy of its Artificial Intelligence Content Detection Product | Federal Trade Commission](#)

Warning Letter

Chair Ferguson sent a letter to Alphabet, Inc. cautioning that recent reporting suggests that Gmail's spam filters block political fundraising messages as dangerous spam from Republican senders but fail to block similar messages sent by Democrats, noting that partisan treatment of comparable political emails could be an unfair or deceptive practice under Section 5 of the FTC Act.

[Chairman Ferguson's Letter to Alphabet, Inc. CEO re: Potential FTC Act Violations Related to Partisan Administration of Gmail | Federal Trade Commission](#)

Workshops

On August 4, the FTC and the Justice Department's Antitrust Division, along with the Department of Commerce and the Department of Health and Human Services, jointly hosted the last of three listening sessions to discuss ways to make prescription drugs more affordable for Americans by promoting competition by increasing generic and biosimilar availability. The first workshop was held on June 30 and the second on July 24.

[FTC and DOJ Host Listening Session on Lowering Americans' Drug Prices Through Competition | Federal Trade Commission](#)

Analysis

The FTC's latest Consumer Protection Data Spotlight shows a more than four-fold increase since 2020 in reports from people 60 and over who say they lost \$10,000 or more in scams, with some losing their entire life savings. Typically, the threat actors steal money by impersonating government agencies or businesses to convince consumers to transfer their money to them to ostensibly protect it. The combined losses reported by older adults who lost more than \$100,000 increased eight-fold, from \$55 million in 2020 to \$445 million in 2024.

[FTC Data Show a More Than Four-Fold Increase in Reports of Impersonation Scammers Stealing Tens and Even Hundreds of Thousands from Older Adults | Federal Trade Commission](#)

Class Actions

“All Natural,” “100%,” or “Free-Of” Claims

A plaintiff recently commenced a proposed class action in the Southern District of New York against beverage maker Mitra-9 Brands, LLC alleging that it misled consumers with claims that its kratom drinks are safe and “all natural,” when they contain “active ingredients” that are highly addictive. The complaint seeks damages under New York General Business Law Section 350, which prohibits false advertising in the conduct of any business, trade, or commerce and New York General Business Law Section 349, which prohibits unlawful deceptive acts or practices in the conduct of any business, trade, or commerce.

Cheswick v. Mitra-9 Brands, LLC, No. 1:25-cv-06795 (S.D.N.Y. Aug. 15, 2025).

A plaintiff recently commenced a class action alleging that Post Holdings, Inc. uses artificially made citric acid as a preservative in its dog food products despite the labels claiming they contain no preservatives. Plaintiff alleges violations of California’s Consumers Legal Remedies Act, California’s Unfair Competition Law, and breach of express warranty.

Cortez v. Post Holdings, Inc., No. 2:25-cv-01067 (E.D. Cal. Aug. 14, 2025).

A plaintiff commenced a proposed class action alleging that Langers Juice Company, Inc. represented its Langers Concord Grape 100% Juice Product as “100% Juice” and made with “100% Concord Grape Juice from Concentrate” but that it contains synthetic, non-natural additives such as ascorbic acid (a human-made preservative) and citric acid (a human-made additive). Plaintiff alleges violations of California’s Consumers Legal Remedies Act, California’s Unfair Competition Law, California’s False Advertising Law and breach of express warranty.

Georgopoulos v. Langers Juice Co., No. 3:25-cv-06514 (N.D. Cal. Aug. 1, 2025).

A plaintiff commenced a proposed class action alleging that the defendant beverage companies market Mountain Valley Spring Water as “purely sourced” and “free of pollutants” but that lab testing shows that it contains arsenic, uranium, and bromoform in violation of Florida’s Deceptive and Unfair Trade Practices Act.

Nadel v. Primo Water Corp., No. 9:25-cv-80993 (S.D. Fla. Aug. 11, 2025).

A proposed class action was commenced alleging that Rotisystems, Inc. falsely and misleadingly labeled and marketed its Roli Roti Butcher’s Organic Beef Bone Broth because it contains only approximately 65% of the protein that the defendant claims it does, in violation of California’s Consumers Legal Remedies Act, California’s Unfair Competition Law, and California’s False Advertising Law and breach of express warranty.

Fuentes v. Rotisystems, Inc., No. 4:25-cv-07182 (N.D. Cal. Aug. 25, 2025).

A plaintiff commenced a proposed class action alleging that Cinco Spirits Group, LLC represents that its Cincoro tequila brand products contain “100% agave” but actually contain material amounts of ethanol not derived from agave plants. Plaintiff primarily asserts violations of the Florida Deceptive and Unfair Trade Practices Act, which prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.

Haschemie v. Cinco Spirits Grp., No. 1:25-cv-23864 (S.D. Fla. Aug. 27, 2025).

Recent Dismissals

Eleventh Circuit: Florida Deceptive and Unfair Trade Practices Act Claims That Sound in Fraud Must Comply with Rule 9(b)

The Ninth Circuit affirmed the dismissal of a putative class action alleging that swimwear company LuliFama.com LLC and certain social media influencers failed to disclose payments for the influencers’ social media endorsements in violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), which generally prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” The Eleventh Circuit held that FDUTPA claims that sound in fraud must comply with Rule 9(b)’s particularity requirement. The Eleventh Circuit explained that if the “allegations closely track the elements of common law fraud, then the plaintiff’s claim sounds in fraud for purposes of Rule

9(b).” The Eleventh Circuit stated that the complaint “failed to allege the facts underlying [the] claim with the required particularity” because it failed to allege “the who, what, when, where, and how” of the allegedly wrongful conduct.

Pop v. LuliFama.com LLC, No. 24-11048, 2025 U.S. App. LEXIS 19386 (11th Cir. Aug. 1, 2025).

Southern District of New York: “Inconceivable” That Energy Drink Consumers Would be Concerned By “A Tiny Bit More Caffeine” Than Advertised

On July 31, 2025, the Southern District of New York dismissed a proposed class action alleging that Prime Hydration LLC’s energy drinks contain 15-25 milligrams more caffeine than the 200 milligrams indicated on its labels and in its advertising and that this amounts a violation of Sections 349-350 of the New York General Business Law, which prohibits conduct that materially misleads consumers. The district court held that it “fails to see how a reasonable consumer, acting reasonably under the circumstances, would be materially misled in this context.” Noting that consumers of the products are generally seeking more caffeine, not less, as evidenced by their desire to purchase the product in the first place, the court concluded that “it defies common sense to suggest that it would be material that the Products contain a mere 7-11% additional caffeine—the exact thing those consumers are seeking.”

In re Prime Energy Consumer Litigation, No. 24 Civ. 2657, 2025 U.S. Dist. LEXIS 148034 (S.D.N.Y. July 31, 2025).

NAD Focus

Endorsements

In a Fast-Track SWIFT case, NAD recommended that Agendia, Inc., clearly and conspicuously disclose its connection to a doctor in its social media posts featuring the doctor’s endorsement of MammaPrint, Agendia’s early-stage breast cancer test. Genomic Health, Inc. (GHI). In Agendia’s social media posts promoting the doctor’s comments touting MammaPrint over GHI’s test and stating that GHI test is inappropriate for black women as it is less accurate than MammaPrint. The doctor co-authored publications with Agendia, served as a participant in an Agendia study, and was reimbursed for her travel expenses to an Agendia meeting. NAD noted that Agendia amplified the doctor’s statements in posts from its own social media account, closely associating the company with her positive statements and that their relationship “may not be reasonably expected and can affect the weight a consumer may give her endorsement.”

[Agendia, Inc. \(Agendia Disclosures\)](#), Report #7489, *NAD/CARU Case Reports* (August 2025)

Health Claims

Following a challenge by infant formula competitor, Nuture, LLC. to advertising by Kendal Nutricare Limited, NAD concluded that Kendal’s advertising did not make an unqualified “all natural” claim about its infant formula because the challenged claims were either qualified or contextualized by surrounding language that clarified the scope of the claim. NAD recommended that Kendal modify or discontinue “clean” claims including, “Clean Recipes—When it comes to our recipe, we don’t make compromises” and “The most clean formula on the market.” NAD also recommended that Kendal discontinue the claim “We don’t do palm oil, corn syrups, soy, fish oil or other cheap additives” in a context in which it compared other products as “cheap” noting there was no evidence demonstrating that nonfat milk, palm oil, corn syrups, soy and fish oils are cheap or problematic additives when present in infant formula. NAD further recommended that Kendal discontinue or modify several comparative superiority claims to avoid conveying the unsupported message that

Kendamil products contain more fatty acids and essential vitamins than competitors because the research studies Kendal relied on did not evaluate Kendamil's products or any competitor products. NAD also recommended that Kendal discontinue the use of the claim "FDA Approved" to avoid conveying the misleading message that Kendamil's formula is endorsed or formally approved by the FDA.

Kendal Nutricare Limited (Kendamil Infant Formula), Report #7422, *NAD/CARU Case Reports* (July 2025)

Following a challenge by other cookware manufacturers—some of whom sell products coated with PFAS, also known as "forever chemicals"—NAD determined that ceramic nonstick cookware manufacturer, Caraway Home, Inc., supported its "free of PFAS" and "non-toxic" claims, but recommended that Caraway discontinue or modify certain comparative claims suggesting that traditional nonstick cookware is harmful to consumer health due to the presence of forever chemicals and that Caraway's cookware is a safer, non-toxic alternative. NAD concluded that Caraway did not provide a reasonable basis for claims that competing nonstick cookware is toxic or harmful to health.

Caraway Home, Inc. (Nonstick Cookware), Report #7444, *NAD/CARU Case Reports* (August 2025)

NAD determined that The Procter & Gamble Company (P&G) provided a reasonable basis for the name and product performance claims for its Crest 3D White Brilliance Deep Stain Remover Toothpaste, following a challenge brought by competitor GuruNanda, LLC. P&G provided scientific evidence and clinical studies to support the product's whitening, stain removal, and stain prevention claims and cited several studies on stain repellency technology and found that certain challenged implied claims were not conveyed. NAD recommended P&G discontinue or modify its "extra strength fluoride" claim to avoid conveying the unsupported message that the product's higher fluoride content provides greater enamel strengthening and protection than standard concentrations.

The Procter & Gamble Company (Crest 3D White Brilliance Deep Stain Remover Toothpaste), Report #7442, *NAD/CARU Case Reports* (August 2025)

NAD determined that P&G provided a reasonable basis for whitening claims for its Crest 3D Whitestrips, following a challenge by GuruNanda, LLC. At issue were P&G's express claims on its Crest 3D Whitestrips product labeling: "[X] Levels Whiter" and "Levels [X] Whiter" with the levels ranging from "4" to "34" depending on the product, as well as implied claims that whiteness improvement is a typical result achieved by the majority of consumers using the products. NAD found that P&G's clinical studies and meta-analysis of 22 clinical studies support the claim that the relative advertised whiteness improvement is typical of what a majority of consumers will experience.

The Procter & Gamble Company (Crest 3D Whitestrips), Report #7443, *NAD/CARU Case Reports* (August 2025)

The Good Feet Store, which sells arch supports, for its The Good Feet Arch Support System, was recommended to modify or discontinue express claims asserting that the product is clinically proven to provide significant pain relief and "Engineered To Once Again Help You Live the Life You Love Without Pain" as well as customer testimonials describing how Good Feet's arch supports instantly eliminated pain and foot problems. After reviewing clinical studies Good Feet provided, NAD determined that the studies were "insufficiently reliable" to support health-related pain relief claims, as the studies were not double-blinded, randomized, or controlled, and relied on participants' self-reported pain levels.

The Good Feet Store (Arch Support System), Report #7430, *NAD/CARU Case Reports* (August 2025)

Savings Claims and Price Comparisons

On appeal, a panel of the National Advertising Review Board (NARB) recommended that T-Mobile US, Inc. discontinue the following express savings claims: “Families can switch and save 20% vs. the other big guys plans plus streaming services” and “Switch and save versus AT&T and Verizon’s comparable plans plus streaming.” The principal issue on appeal was whether T-Mobile’s addition of the phrase “plus streaming services,” or “plus streaming,” to its reference to monthly plan costs for its competitors clearly communicates to reasonable consumers that T-Mobile’s price comparisons “are based on adding to the cost of the competitor’s monthly price plan the cost of optional streaming services to match the streaming services offered for free by T-Mobile with its comparable plans.” Agreeing with NAD, the NARB panel concluded that reasonable consumers can conclude that the promoted savings is based on the cost of the wireless plans without any adjustments for additional benefits.

T-Mobile US, Inc. (T-Mobile Mobile Telephone Service), Report #7415-340, *NARB Case* (August 2025)

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** In April 2025, Simpson Thacher announced plans to expand its Bay Area presence with an office in San Francisco.*

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