

FTC Settlement Illustrates Challenges with "Up to" Claims

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August 16, 2024

"Up to" claims can be difficult to substantiate, in part, because the standard for substantiating those claims isn't always clear. Over the years, the FTC, NAD, and courts have articulated different standards that are hard to reconcile with each other. For example, last month, we posted about a decision in which a three-judge panel with the Ninth Circuit determined that an "up to" claim reflected the "upper limit" of what consumers could expect and rejected the plaintiff's assertions that consumers should "always" expect that. This month, the FTC announced a settlement that takes a different view.

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