

Two Firsts for FTC Civil Penalty Enforcement: ROSCA for Automatic Renewals and Penalty Offense Authority for Money-Making Claims

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On Friday, the FTC announced what would ordinarily be an unremarkable enforcement action against a company for unsubstantiated earnings claims. The FTC alleges that WealthPress, an investment advice company purporting to offer training from experts on trading strategies, made a series of unsubstantiated earnings claims such as “make \$24,840 or more every single week,” “track the BIG money,” and the opportunity may “quite literally transform your life.”

The case marks two important firsts for advertisers offering products or services through automatic renewal terms and for companies making money-making claims or using endorsements and testimonials. Specifically, the action is the first time the FTC has obtained civil penalties under the Restore Online Shoppers’ Confidence Act (ROSCA). The FTC also made good on its promise to bring cases under its Penalty Offense Authority, marking the first time the FTC has obtained civil penalties from a recipient of its [Penalty Offense Notice for Money-Making Claims](#).

Civil Penalties for Misrepresentations related to Automatic Renewal Terms under ROSCA

The FTC previously laid the groundwork for the ROSCA count against WealthPress in its 2021 action against MoviePass, which we discussed [here](#). In that case, the FTC alleged that MoviePass violated ROSCA by deceptively advertising its passes as offering “one movie per day” and then preventing subscribers from using the service as advertised. While that settlement did not include civil penalties, then-Commissioner Phillips dissented on the grounds that ROSCA could not be fairly interpreted as addressing *any* claim about the characteristics of a product/service subject to an automatic renewal term. Instead, ROSCA authorizes civil penalties for failure to clearly and conspicuously disclose “all material terms *of the transaction*” before obtaining a consumer’s express informed consent to the negative option offer.

That tension is also present in the WealthPress case - with Commissioner Wilson issuing a [concurring statement](#) on the 4-0 vote (Commissioner Phillips’ former slot remains open) stating that she supports “the inclusion of a ROSCA count in this complaint under the highly specific circumstances presented here.” Commissioner Wilson goes on to explain that the defendant made the deceptive claims “part of the terms of sale” by including a disclosure about profitability in the Terms and Conditions that consumers consented to at purchase. She notes that “[i]nformation of this type that appears in another format, though, may more appropriately be viewed as a claim about the good or service and not a term of the transaction,” which would render it outside the scope of ROSCA.

Other Commissioners appear to be less cognizant of that distinction, such that any advertiser offering an automatic renewal feature could be on the hook for civil penalties for alleged misrepresentations if the FTC views the misrepresentation as part of the “material terms of the transaction.”

Civil Penalties under Penalty Offense Authority

While the FTC has brought many actions involving earnings and opportunity claims (including [one](#) in November that explicitly references the Penalty Offense Notices), the WealthPress case marks the first time that the FTC has obtained civil penalties against an advertiser following receipt of its [Penalty Offense Notice for Money-Making Claims](#).

Many of the claims identified in the complaint are quintessential examples of aggressive claims likely to garner regulatory scrutiny, whereas others are more mundane, such as “we give you everything you need, and if you’re a beginner not a problem.” The FTC also notes that disclaimers in the Terms and Conditions (for example, “The past performance of any trading system or methodology is not necessarily indicative of future results”) were incapable of qualifying the aggressive earnings claims made elsewhere.

In addition to Penalty Offense Notices concerning Money-Making Claims, the FTC has issued notices concerning [Endorsements and Testimonials](#) and [For-Profit Educational Institutions](#), which may be the next target for civil penalties under the Penalty Offense Authority.