

## Forthcoming FTC Rules Could Include Deceptive Earnings Claims and Targeted Marketing

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On February 10, 2022 the Federal Trade Commission [announced](#) that it intends to vote whether to issue an Advance Notice of Proposed Rulemaking on “deceptive earnings claims for business ventures, gig or other work opportunities, or educational, coaching or training offerings.” The vote is set to take place on February 17, 2022 at an open meeting. A webcast will be available on the FTC’s website after the meeting.

Interestingly, while the announcement references a wide spectrum of earnings claims., it does not reference the FTC’s [Business Opportunity Rule](#). The Business Opportunity Rule requires business opportunity sellers to give prospective buyers specific information to help them evaluate a business opportunity, thus ensuring that the prospective purchasers have the information they need in order to assess the risks of buying a work-at-home program or any other business opportunity.

This announcement should be of great interest to digital marketers, especially if the FTC issues a new rule - with civil monetary penalties for violation thereof – that broadly regulates earnings claims. It is undoubtedly the result of the recent U.S. Supreme Court’s *AMG* decision that held the FTC cannot obtain monetary relief under Section 13(b). The FTC can, however, seek monetary relief when a rule is violated.

Digital marketers may recall that in October of 2021, the FTC sent [Penalty Offense Notices](#) to over 1,000 companies that promoted money-making opportunities. The Notices stated that the agency intends to seek civil penalties of up to \$43,792 per violation if they deceive or mislead consumers about potential earnings in violation of prior litigated FTC administrative cases. This includes, without limitation, multi-level marketers, “coaches” that promise big rewards and strategies to beat the odds, “gigs” that pitch a steady second income, investment promotions and business opportunity promotions.

“Preying on consumers and workers with bogus promises of big earnings should never be profitable,” said [FTC lawyer](#) Samuel Levine, Director of the FTC’s Bureau of Consumer Protection.

The prior Notices outline eight (8) categories of misrepresentations that the FTC determined to be unfair or deceptive, including, but not limited to, the amount of earnings possible, that represented earnings are typical, that no experience is necessary, the amount of training provided, that not

everyone will qualify, that the position offered is in reality a sales position, that there is little or no risk, and the creation of a false sense of urgency in order to participate.

From the FTC's perspective, stated "disclaimers are not always effective and are not a defense if the net impression is still misleading" and marketers can be held liable for deceptive earnings claims made by independent salespeople.

Companies receiving the Notices also received a copy of the recently issued Notice of Penalty Offenses concerning [endorsements and testimonials](#), as companies frequently use testimonials to advertise money-making opportunities. Together, the notices make clear that it is illegal to use testimonials to mislead consumers about the rewards of participating in a money-making opportunity.

Recall that in October 2020, the FTC published a paper entitled [The Case for Resurrecting the FTC Act's Penalty Offense Authority](#). Digital marketers should note that the foregoing seems to indicate that the next round of notices may very well related to targeted marketing and/or deceptive data harvesting.

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