



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

January 19, 2025

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Hochul:

I write to express my support for ongoing legislative efforts to outlaw unfair and abusive business practices.

In recent years, New York has delivered key consumer protection wins. These wins have included legislation prohibiting drug price gouging, legislation prohibiting the reporting of medical debt to consumer reporting agencies, and legislation combating subscription traps and junk fees.¹ In the last few months, New York has enacted even greater protections for consumers in a variety of different economic sectors.² I hope to see this momentum continue with the addition of a prohibition against unfair and abusive³ practices to New York's statute outlawing deception in the marketplace.

Given potential changes in how federal enforcers approach consumer protection in the coming years, equipping state enforcers with this additional authority is especially critical.

The flexibility that unfairness authority affords has been crucial to the Commission's efforts to protect the American people in an ever-evolving economy over almost a century. As the Commission noted almost 45 years ago, Congress provided the FTC with a general mandate to combat unfair practices because it "recognized the impossibility of drafting a complete list of unfair trade practices that would not quickly become outdated or leave loopholes for easy

¹ Press Release, Governor Hochul Signs Four New Laws to Protect Consumers from Price Gouging, Medical Debt and Unfair Business Practices (Dec. 13, 2023), <https://www.governor.ny.gov/news/governor-hochul-signs-four-new-laws-protect-consumers-price-gouging-medical-debt-and-unfair>.

² Press Release, Money in Your Pockets: Governor Hochul Signs Five New Laws to Protect Consumers and Save Them Money (Nov. 25, 2024), <https://www.governor.ny.gov/news/money-your-pockets-governor-hochul-signs-five-new-laws-protect-consumers-and-save-them-money>.

³ Although Section 5 of the FTC Act does not prohibit abusive practices, other laws that the Commission enforces do. See, e.g., Fair Debt Collection Practices Act, Section 802(e) (noting that it is the purpose of the Fair Debt Collection Practices Act to eliminate abusive collection practices); Telemarketing Sales Rule, 16 C.F.R. 310 (prohibiting abusive telemarketing acts and practices). Further, New York has successfully utilized the provision of the Dodd-Frank Act that empowers state agencies to directly enforce that law's prohibition on unfair, deceptive, or abusive conduct. See, e.g., Press Release, NYDFS Reaches Agreement on Final Consent Judgment with Condor Capital, Obtaining Full Restitution for Consumers Under Dodd-Frank Lawsuit (Dec. 19, 2014), https://dfs.ny.gov/reports_and_publications/press_releases/pr1412191.

evasion.”⁴ That has proven true. The Commission’s unfairness authority has enabled it to keep pace with the economy and protect people from a wide range of predatory and exploitative business practices. For example, the Commission has used this authority to tackle unscrupulous rental housing practices,⁵ unauthorized debits and charges,⁶ unreasonable data security practices that put personal information at risk,⁷ and dark patterns that manipulate people and subvert their will.⁸

The FTC Act’s prohibition against unfair practices has also been a key tool amid rapid technological advances. Deception authority alone has some limits, given that consumers may not have any real choice when it comes to the technologies that firms deploy on them. For example, in 2023 the FTC brought its first case challenging how a company deployed and used facial recognition technology. In that matter, Rite Aid was found to be using AI-driven facial recognition technology that wrongfully tagged people as shoplifters—including a school-aged girl.⁹ The FTC, relying on its unfairness authority, charged that Rite Aid unlawfully failed to take reasonable steps to ensure that the technology did not harm consumers. The Commission’s landmark settlement banned Rite Aid from using the technology for several years.

The FTC’s unfairness authority is also integral to protecting children and teens online. While COPPA provides valuable protections, it does not protect teens and does not address predatory online behavior. The FTC’s recent case against NGL Labs illustrates how crucial the agency’s unfairness authority is to protecting minors from cyberbullying and online harassment.¹⁰ Using that authority, the Commission prosecuted the company for marketing and promoting anonymous messaging apps to kids and teens despite the severe risks of harassment and bullying to which the apps exposed them. As a result, the Commission obtained an order banning NGL Labs from marketing and providing anonymous messaging apps to users under 18. Similarly, in its action against Epic Games, the FTC used unfairness authority to address in-game chat and

⁴ Fed. Trade Comm’n, Policy Statement on Unfairness (Dec. 17, 1980), <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness>.

⁵ Press Release, Fed. Trade Comm’n, FTC Takes Action Against Invitation Homes for Deceiving Renters, Charging Junk Fees, Withholding Security Deposits, and Employing Unfair Eviction Practices (Sept. 24, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-takes-action-against-invitation-homes-deceiving-renters-charging-junk-fees-withholding-security>.

⁶ See, e.g., *FTC v. Amazon.com, Inc.*, 71 F. Supp. 3d 1158, 1167 (W.D. Wash. 2014) (denying motion to dismiss unfairness claims based on permitting children to make in-app purchases without parental authorization); *FTC v. Inc21 Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010) (concluding that defendants unfairly “crammed” consumers’ phone bills with bogus charges).

⁷ See, e.g., *FTC v. Wyndham Worldwide Corp.*, 799 F.3d 236, 248 (3d Cir. 2015).

⁸ See, e.g., *Epic Games, Inc.*, FTC File No. 1923203 (alleging that Epic Games used dark patterns to trick users of its Fortnite game into unauthorized charges); *Compl., FTC v. Amazon*, No. 2:23-cv-0932 (W.D. Wa. June 21, 2023) (alleging unfair use of “dark patterns” to trick consumers into automatically renewing Prime subscriptions).

⁹ Press Release, Fed. Trade Comm’n, Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards (Dec. 19, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without>.

¹⁰ Press Release, Fed. Trade Comm’n, FTC Order Will Ban NGL Labs and its Founders from Offering Anonymous Messaging Apps to Kids Under 18 and Halt Deceptive Claims Around AI Content Moderation (July 9, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-order-will-ban-n-gl-labs-its-founders-offering-anonymous-messaging-apps-kids-under-18-halt>.

voice communication features that were on by default and exposed kids and teens to harassment and bullying.¹¹

A digital economy with rampant commercial surveillance, in which consumers often have no meaningful control over what happens to their data, also exemplifies the need for unfairness authority. The FTC recently used this authority to take action against data broker Mobilewalla, which harvested sensitive personal information from the real-time bidding exchanges that fuel the targeted advertising industry.¹² Real-time bidding exchanges host the online auctions that determine which advertisement gets served to a specific individual on a specific website or app and capture reams of personal and sensitive data that then get broadcast to anyone seeking to bid on the ad slot. Mobilewalla harvested data, including precise geolocation data, from those exchanges even when it did not have a winning bid and then sold and analyzed it, even using it to create a report about participation in protests.

The Commission's actions against Mobilewalla other data brokers that have trafficked in people's precise geolocation data underscore the important ways that unfairness authority can help protect core civil liberties, including health freedoms, religious liberty, and the right to protest. These FTC actions, grounded in unfairness, have curbed the sale of people's sensitive geolocation data, creating key safeguards. Not only is this information used to track and target people for commercial purposes, but it is also available to government authorities. This poses grave concerns, especially when core freedoms may be at risk.

I urge New York to adopt the proposal to add a prohibition on unfair and abusive business practices.

Please do not hesitate to reach out if I can be of assistance in your efforts to enact this critically needed reform.

Best wishes,



Lina Khan
Chair
Federal Trade Commission

Identical letters sent to:

¹¹ Press Release, Fed. Trade Comm'n, Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars over FTC Allegations of Privacy Violations and Unwanted Charges (Dec. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>.

¹² Press Release, Fed. Trade Comm'n, FTC Takes Action Against Mobilewalla for Collecting and Selling Sensitive Location Data (Dec. 3, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-takes-action-against-mobilewalla-collecting-selling-sensitive-location-data>.

The Honorable Carl E. Hestie, Speaker, New York State Assembly

The Honorable Crystal D. Peoples-Stokes, Majority Leader, New York State Assembly

The Honorable William A. Barclay, Minority Leader, New York State Assembly

The Honorable Nily Rozic, Chair of the Committee on Consumer Affairs and Protection, New York State Assembly

The Honorable Andrea Stewart-Cousins, President Pro Tempe and Majority Leader, New York State Senate

The Honorable Robert G. Ort, Minority Leader, New York State Senate

The Honorable Rachel May, Chair of the Committee on Consumer Protection, New York State Senate