



Business Blog

## One for the money: Latest Notice of Penalty Offenses takes on deceptive money-making claims

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By: Lesley Fair | October 26, 2021

Money-making claims have been around for as long as there's been money. They show up in promotions for gig work, multilevel marketing, “be your own boss” seminars, and work-from-home offers. But when tried-and-true tactics turn into tried-and untrue, the FTC has a long history of challenging deceptive claims related to money-making opportunities. Those misrepresentations are [the subject of the FTC's latest use of its penalty offense authority](#). Over [1,100 companies](#) are now on notice that making certain misleading claims in the future could trigger financial penalties of up to \$43,792 per violation.

If you've been following developments at the FTC, you know that the agency has announced the revitalized use of a procedure authorized under Section 45(m)(1)(B) of the FTC Act. Under the law, the agency may notify companies that certain acts or practices have been found in administrative decisions, other than consent orders, to be deceptive or unfair. Companies that receive a Notice of Penalty Offenses now have “actual knowledge” that those practices violate the law. If the company engages in that conduct after receiving a Notice or is otherwise found to have knowledge, the FTC may seek civil penalties in federal court. The FTC recently sent Notices of Penalty Offenses to [for-profit educational institutions](#) and advertisers, retail platforms, ad agencies, and others that use [endorsements and testimonials](#). The latest announcement: a Notice of Penalty Offenses Concerning Money-Making Opportunities.

The nature of the business isn't what invokes the possible penalty. The [cases cited in the Notice](#) run the gamut from vending machine operations to “grow mushrooms at home” schemes. Rather, the FTC's concern is with misleading representations that promoters make to lure in prospects – claims that have already been found to be deceptive. Consult the complete [Notice of Penalty Offenses](#), but here are the kinds of claims that could result in civil penalties for companies that receive the Notice:

- Misrepresenting the profits or earnings that may be anticipated by a participant in a money-making opportunity,
- Misrepresenting that sales of a money-making opportunity will be made to only a limited number of prospective participants,
- Misrepresenting that prospective participants will be screened or evaluated for suitability,

- Misrepresenting that participants don't need experience in order to earn income,
- Misrepresenting that a prospective participant must act immediately to purchase or to be considered for a money-making opportunity,
- Misrepresenting that purchasing a money-making opportunity is risk-free or involves little risk,
- Misrepresenting the position being offered to prospective participants, such as by failing to disclose that it is a sales position when such is the case, and
- Misrepresenting the amount or type of training that will be given to participants.

There are two notable quotes in the [cover letters to the Notice](#) that merit further attention. First – and let's be clear about this – FTC staff “is not singling out your company or suggesting that you have engaged in deceptive or unfair conduct. We are widely distributing similar letters and the notices to business opportunities, franchises, multi-level marketing companies, coaching companies, gig companies, and others.” The second key quotation: “[N]othing in this letter or the attached notices alter, modify, or impact your obligations, if any, under the Business Opportunity Rule, the Franchise Rule, or any other federal rule or statute.”

Whether or not your company received a Notice, it's a good time for a compliance reboot. The [Franchises, Business Opportunities, and Investments portal](#) in the FTC Business Center includes links to brochures, cases, rules, blog posts, and other resources to help streamline your efforts to stay within the law.

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