



THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN

**ABA**  
AMERICAN BAR ASSOCIATION  
Antitrust Law Section

# CROSS-BORDER UPDATE WITH THE ENFORCERS

## Marketing Enforcement Trends in Canada, the US, and the UK

*Moderators:*

**Michael Binetti**  
**Tegan O'Brien**

Affleck Greene McMurtry LLP  
Cassels Brock & Blackwell LLP

*Panelists:*

**Cecilia Parker Aranha**  
**Bryan Cowell**  
**Lesley Fair**

UK Competition and Markets Authority  
Competition Bureau Canada  
U.S. Federal Trade Commission



May 2021



**Bryan Cowell  
doesn't speak for the  
Competition Bureau.**

**Cecilia Parker Aranha  
doesn't speak for the  
Competition and  
Markets Authority.**

**Lesley Fair doesn't  
speak for the FTC.**

# COVID-19 RESPONSE



# FEDERAL TRADE COMMISSION

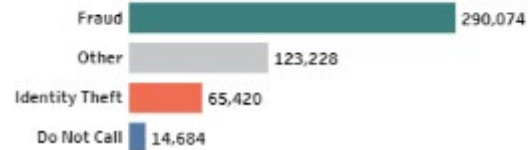


## FTC COVID-19 and Stimulus Reports

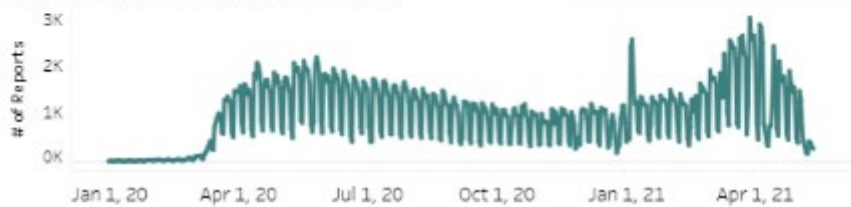
Consumer Sentinel Network Reports

\*Data from January 1, 2020 to May 13, 2021

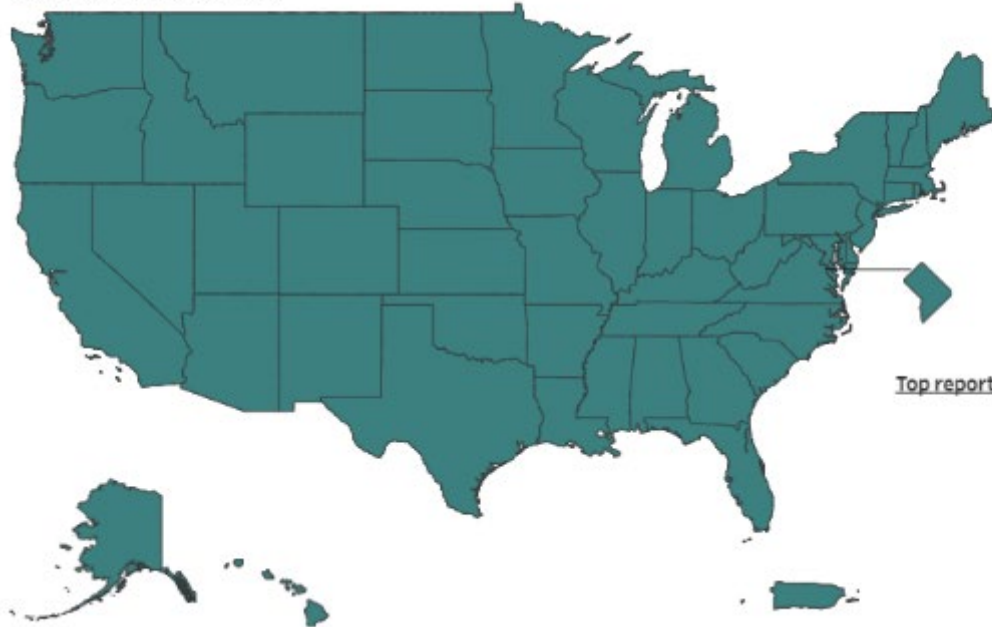
### Reports by type: (Select Report Type)



### Report trends over time: (Select Time Period)



### Reports by state: (Select State)



491,318

Overall Reports

\$435.56M

Total Fraud Loss

\*38.8% of Fraud reports indicate a loss

\$350

Median Fraud Loss

### Top reports were about:



# FEDERAL TRADE COMMISSION

## PROTECT YOURSELF - THRIVE: ANTI VIRAL WELLNESS BOOSTER

CONTAINING CLINICALLY RESEARCHED  
INGREDIENTS, THRIVE CAN HELP MAKE  
A DIFFERENCE IN YOUR LIFE.

FORMULATED WITH POTENT ANTIVIRAL  
HERBAL EXTRACTS, THRIVE BY WHOLE  
LEAF ORGANICS IS THE PERFECT WAY  
TO STRENGTHEN YOUR IMMUNITY  
AGAINST PATHOGENS LIKE "COVID-19,"  
**THE CORONAVIRUS.**

RECOMMENDED DOSE FOR ADULTS - 1  
CAPSULE 3 TIMES A DAY. SAFE FOR  
DAILY SHORT TERM USE, AND TO  
COMBAT AILMENTS THE FLU, COLDS,  
BRONCHIAL INFECTIONS, FUNGAL AND  
YEAST BASED ISSUES, AS WELL AS THE  
CORONAVIRUS.



Formulated with clinically tested and proven ingredients.  
Our time test formulas are proven and deliver results

“Formulated with potent antiviral herbal extracts, Thrive by Whole Leaf Organics is the perfect way to strengthen your immunity against pathogens like COVID-19, the coronavirus.”

“Formulated with clinically tested and proven ingredients. Our time tested formulas and proven and deliver results.”

# FEDERAL TRADE COMMISSION



**3M Model 8000 Respirator Mask  
(Easier Breathing) In Stock – Pay  
Today, Ships Tomorrow! Going Fast!**

**\$19.95**

★★★★★ (No reviews yet) [Write a Review](#)

SKU:  
112208

Quantity:  
▼ 1 ▲

**Add to Cart** [Add to Wish list](#)

[Facebook](#) [Email](#) [Print](#) [Twitter](#) [Pinterest](#)

# FEDERAL TRADE COMMISSION




# FEDERAL TRADE COMMISSION

CARES Act Paycheck Protection Program

WE ARE A DIRECT LENDER FOR THE PPP LOAN PROGRAM!

Paycheck Protection Program questions? Can't get your bank to answer the phone? Get the personal attention you need. Our staff are here to help.



On March 27, 2020, the CARES Act was signed into law making the SBA Paycheck Protection Program disaster loan available to small business owners.

Program highlights are:

- No Collateral
- No Personal Guaranty
- No Fees
- No SBA Guaranty Fees

For answers to frequently asked questions click [HERE](#) If you are ready to begin the application process, [Apply Here](#).





Government  
of Canada

Gouvernement  
du Canada

## Competition Bureau cracking down on deceptive marketing claims about COVID-19 prevention or treatment

From: [Competition Bureau Canada](#)

### News release

**Warning to businesses: Review your marketing and labelling, and take immediate action to comply with the law**

May 6, 2020 - GATINEAU, QC - Competition Bureau

The Competition Bureau is warning all businesses against making false or misleading claims that their products and services can prevent, treat or cure COVID-19.

The Bureau is actively monitoring the marketplace and taking action to stop potentially deceptive claims that could give Canadians a false impression that products or services can treat COVID-19 infections or protect against the coronavirus.

The Bureau has issued direct compliance warnings to a variety of businesses across Canada to stop potentially deceptive claims, including warnings against:

- making claims that herbal remedies, bee-related products, vitamins, vegetables or other food and drink products can prevent COVID-19 infections; and
- making claims—without first conducting the testing required by law—that certain UV and ozone air sterilization systems, as well as certain air filters or air purifiers, will effectively kill or filter out the virus.

# COMPETITION BUREAU

- Working with partners, particularly Health Canada
- Area of focus is unsubstantiated performance claims
- Over 40 warning letters sent
- Most recipients have taken appropriate corrective actions
- Bureau continues to monitor the situation

# COMPETITION AND MARKETS AUTHORITY

Price gouging



# COMPETITION AND MARKETS AUTHORITY

## Cancellations



# ADVERTISING CLAIMS





# COMPETITION AND MARKETS AUTHORITY


## Greenwashing



# FEDERAL TRADE COMMISSION

## CBD health claims

**Operation  
CBDeceit**



Despite what they say, **no CBD product is medically proven** to prevent, treat, or cure:

- ▶ Alzheimer's
- ▶ anxiety
- ▶ arthritis
- ▶ autism
- ▶ autoimmune disorders
- ▶ bipolar disorders
- ▶ cancer
- ▶ cardiovascular issues
- ▶ childhood autism
- ▶ chronic pain
- ▶ colitis
- ▶ COVID-19
- ▶ Crohn's
- ▶ depression
- ▶ diabetes
- ▶ gastrointestinal disorders
- ▶ glaucoma
- ▶ heart attacks
- ▶ high blood pressure
- ▶ high blood sugar
- ▶ hypertension
- ▶ insomnia
- ▶ Irritable bowel syndrome
- ▶ multiple sclerosis
- ▶ overactive bladder
- ▶ Parkinson's disease
- ▶ psoriasis
- ▶ PTSD
- ▶ schizophrenia
- ▶ strokes
- ▶ substance abuse

Source: Federal Trade Commission | [consumer.ftc.gov](https://consumer.ftc.gov)

Steve's Distributing, Reef Industries, CBD Meds, HempmeCBD, Epichouse, and Bionatrol Health (consent orders); and Kushly (proposed consent order)

# FEDERAL TRADE COMMISSION

## Substantiation



**Stopping on a dime. It's worth every penny.**

A family (mother and two children) stands between a silver SUV and a silver sedan with a damaged front end. In the bottom left corner, there is a box of Wagner OEx brake pads and a single brake pad.

Wagner OEx brake pads can stop your truck, SUV or crossover up to 50 feet sooner than other leading pads.\* It can mean 50 feet saved when you need it most. And when your family's safety is on the line, isn't that what really matters? Find out more at [wagnerbrake.com](http://wagnerbrake.com).

**WAGNER OEx**

\*Based on a comparison of stopping distances for a 2011 Ford F-150, 2011 Toyota RAV4 and 2011 Honda CR-V. Actual stopping distances may vary. Always use proper braking technique. Always wear your seat belt. ©2011 Wagner Brake Pad Co. All rights reserved.

“Wagner OEx brake pads can stop your truck, SUV, or crossover up to 50 feet sooner than other leading pads.\* It can mean 50 feet saved when you need it most. And when your family’s safety is on the line, isn’t that what really matters?”

# FEDERAL TRADE COMMISSION

Made in USA

The screenshot displays a website with a prominent 'MADE IN USA' banner featuring an American flag. On the left, a sidebar lists benefits: 'Same Day Production' with a clock icon, 'Eco Friendly Products' with a leaf icon, 'Made in USA' with a flag icon, 'Rush Production' with a calendar icon, and 'No Minimums Just 1'. Below this, a 'Hot Products!' section lists 'Buttons', 'Can Coolers', and 'Drinkware' with corresponding icons. The main content area is divided into four columns: 'Silicone Wristbands' (showing blue wristbands with a 'TIG' logo, priced 'As low as \$0.09 ea'), 'Temporary Tattoos' (showing a 'FULL COLOR' tattoo, priced 'As low as \$0.02 ea'), 'Custom Buttons' (showing buttons with 'LOVE' text, priced 'As low as \$0.14 ea'), and 'Custom Can Coolers' (showing an orange cooler with 'COOL STORY BRO' text, priced 'As low as \$0.25 ea'). Each product column includes an 'Order Now' button.



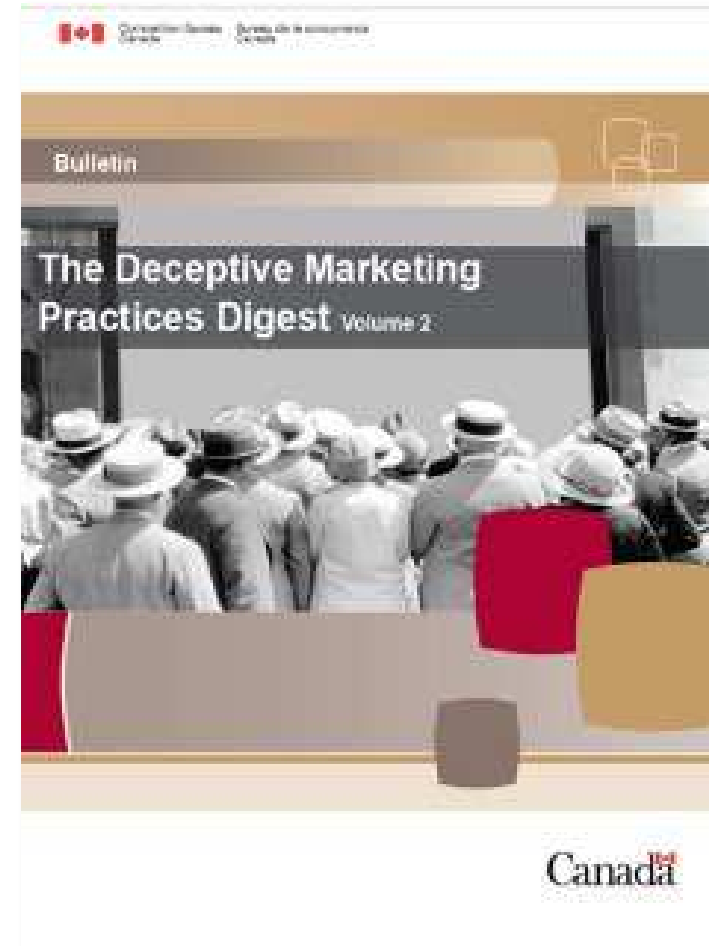


## Bureau's approach to claim substantiation:

“A representation will be considered misleading where it is made “to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an **adequate and proper test** thereof, the **proof of which lies on the person making the representation.**”

## What is an adequate and proper test?

- It will depend on the general impression created by the representation.
- The test must be conducted before the representation is made.
- The test is conducted under controlled circumstances.
- Subjectivity is to be removed as much as possible.
- The test must support the claim being made.
- The result claimed is not a mere chance or one time effect.





## Recent Cases

### TRUE Sports Inc.

- 3<sup>rd</sup> case in the hockey helmets trilogy, following similar settlements with Bauer and Reebok-CCM
- Bureau concluded some claims made by TRUE gave impression helmets could reduce concussions
- Claims relied on studies that focused on sports with fundamentally different injury patterns than hockey
- Settlement by way of consent agreement

## Recent Cases

### NuvoCare

- The Bureau alleges NuvoCare and its CEO make unsubstantiated weight loss and fat burning claims on its website.
- A temporary consent agreement was agreed to in May 2020, which prohibits NuvoCare from making these claims.
- The Temporary Consent Agreement will remain in effect until the Bureau's investigation is resolved with a Consent Agreement with NuvoCare or a decision of the Competition Tribunal.



# FINANCIAL INJURY TO CONSUMERS



## Subscription Traps and Negative Option Billing



Government  
of Canada

Gouvernement  
du Canada

### Free trial that turns out to be a monthly subscription: it's a trap

From: [Competition Bureau Canada](#)

#### News Release

September 20, 2017 – OTTAWA, ON – Competition Bureau

You are reviewing your bank or credit card statement when you stumble upon a charge that you can't recall. The description doesn't help either. The following month, the same charge appears, and again the next month. You've probably fallen into a subscription trap.

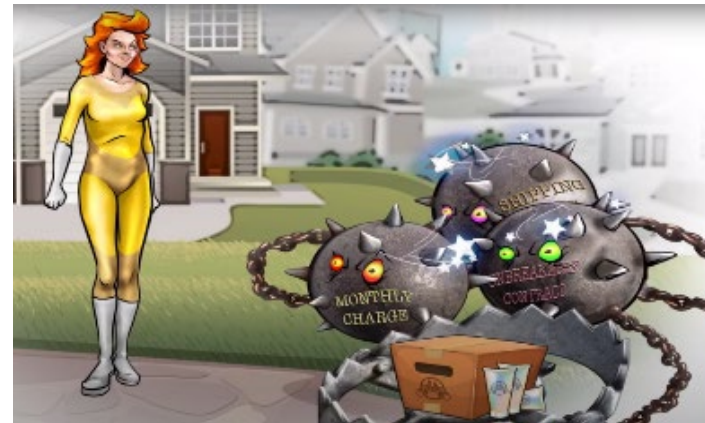
Typical subscription traps entice consumers – usually via social media advertising, sponsored news articles or pop-up surveys on trusted websites – to sign up for a “free trial” to access a “limited time offer”. The websites typically market a variety of goods like health or beauty products. Once you provide your credit card information to cover the small cost of shipping, you've unknowingly signed up for a monthly subscription and are now making monthly payments.

Subscription traps are difficult to identify and stop. Dishonest companies will use high pressure sales tactics to rush your decision. They'll hide the link to the terms and conditions and pre-check sign-up or acceptance boxes. They can also resort to strict cancellation clauses that make it extremely difficult to stop delivery and billing. Sometimes, they'll try to pass themselves off as a trusted company by using URLs that are very close to those of a company you know.

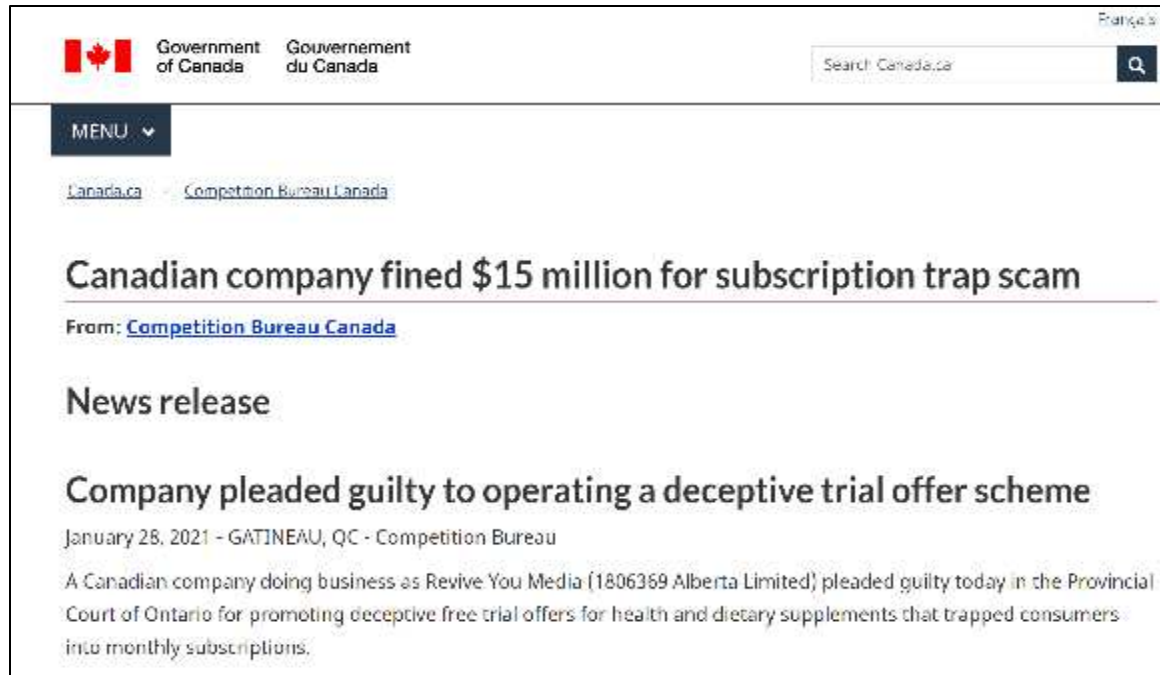
Before signing up for a free trial:

- Research the company offering the product. If there are a lot of complaints, stay clear.

- “Free trial”
  - Full cost
  - Monthly billing
  - Other products
- False or misleading can be the product itself or the billing terms



# COMPETITION BUREAU



## Recent Case – Guilty plea

- The Bureau obtained a guilty plea from corporation “Revive You Media” or 1806369 Alberta Limited
- The corporation was promoting deceptive free trial offers for health and dietary supplements, using claims such “risk-free trial” and “just pay a small shipping fee”
- Consumers ended up trapped in monthly subscriptions
- The corporation was fined \$15 million; includes a 10 year prohibition order



# FEDERAL TRADE COMMISSION

## ROSCA

**Special Offer**  
**38% OFF**  
Annual Membership!

✓ **\$59<sup>95</sup>** for 12 Months

☐ **Payment Option**  
4 equal monthly installments of **\$19<sup>75</sup>**  
(Save 17%)

Is this a gift? [Click Here](#)

In a recent study surveying more than **5,000 parents** who use ABCmouse.com with their children, over **85%** reported a significant **positive impact** on their children's learning.

**Award-Winning Curriculum!**

**Easy Enrollment!**

**1 Create Your Family Account**

Email

Confirm Email

Password

Confirm Password

**2 Enter Your Payment Information**

☐ VISA ☐ M/C ☐ AmEx ☐ PayPal ☐ Pay with Amazon

Cardholder Name

Credit Card Number

Expiration Date MM  / YY  CVV

Billing Zip/Postal Code   
(Gift International Cards, please enter 12345)

Phone Number   
(Optional, but recommended)

**Easy Cancellation**  
If your family does not absolutely love ABCmouse, you can cancel at any time!  
🔒 Your information is safe and protected.

**3** ☐ I agree to the [Terms & Conditions](#)

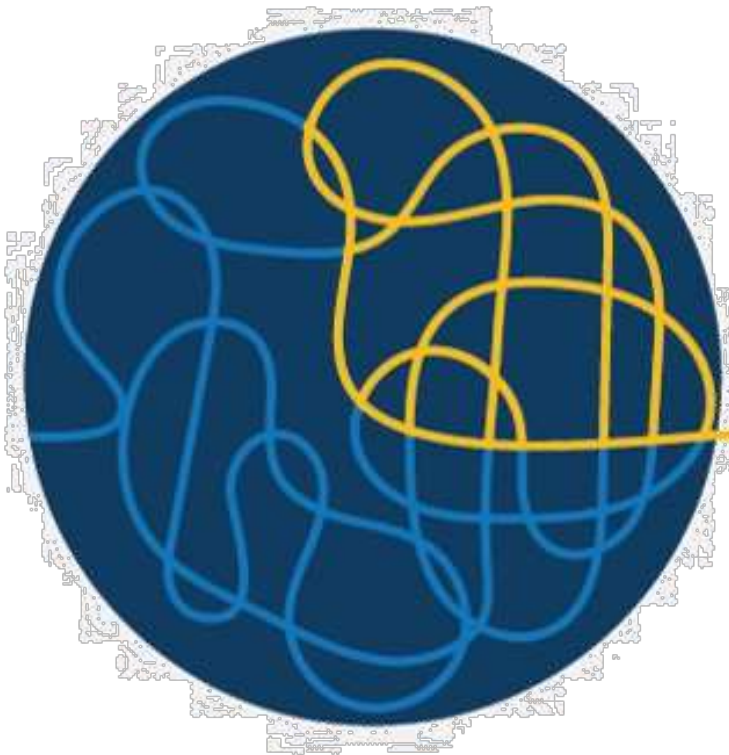
**Submit**

## Easy Cancellation

“If your family does not absolutely love ABCmouse, you can cancel at any time!”



# FEDERAL TRADE COMMISSION

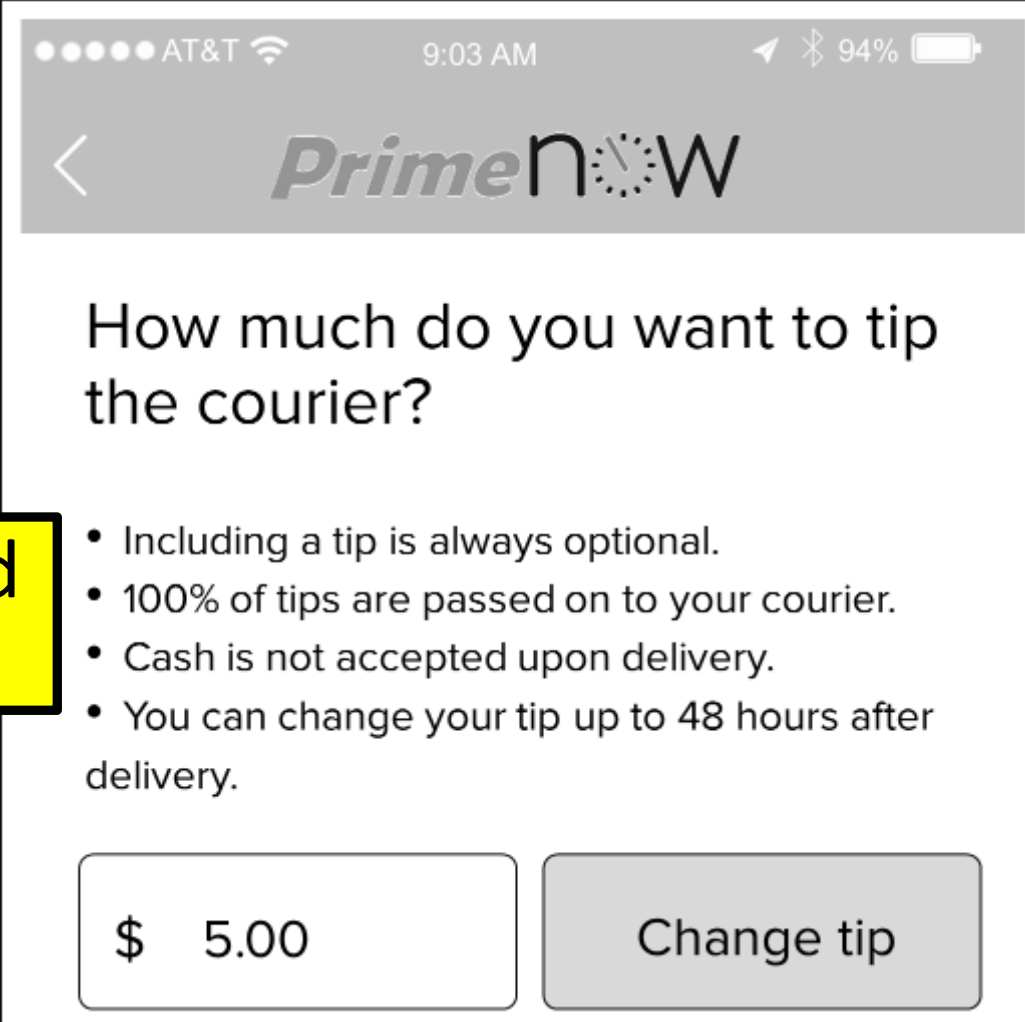


## Bringing **Dark Patterns** to **Light** AN FTC WORKSHOP

April 29, 2021

# FEDERAL TRADE COMMISSION

**“100% of tips are passed on to your courier.”**



The screenshot shows the Amazon PrimeNow app interface. At the top, the status bar displays 'AT&T', signal strength, '9:03 AM', location services, Bluetooth, and '94%' battery. Below the status bar is a navigation bar with a back arrow and the 'PrimeNow' logo. The main content area asks 'How much do you want to tip the courier?'. Below this question is a list of four bullet points: 'Including a tip is always optional.', '100% of tips are passed on to your courier.', 'Cash is not accepted upon delivery.', and 'You can change your tip up to 48 hours after delivery.' At the bottom, there are two buttons: a white button with a black border showing '\$ 5.00' and a grey button labeled 'Change tip'.

How much do you want to tip the courier?

- Including a tip is always optional.
- 100% of tips are passed on to your courier.
- Cash is not accepted upon delivery.
- You can change your tip up to 48 hours after delivery.

\$ 5.00      Change tip

# COMPETITION AND MARKETS AUTHORITY

## Self-funded IVF



# COMPETITION AND MARKETS AUTHORITY

## Care homes



# **SOCIAL MEDIA, INFLUENCERS, and CONSUMER REVIEWS**





# COMPETITION AND MARKETS AUTHORITY

## Social media influencers



# COMPETITION AND MARKETS AUTHORITY

Fake online reviews



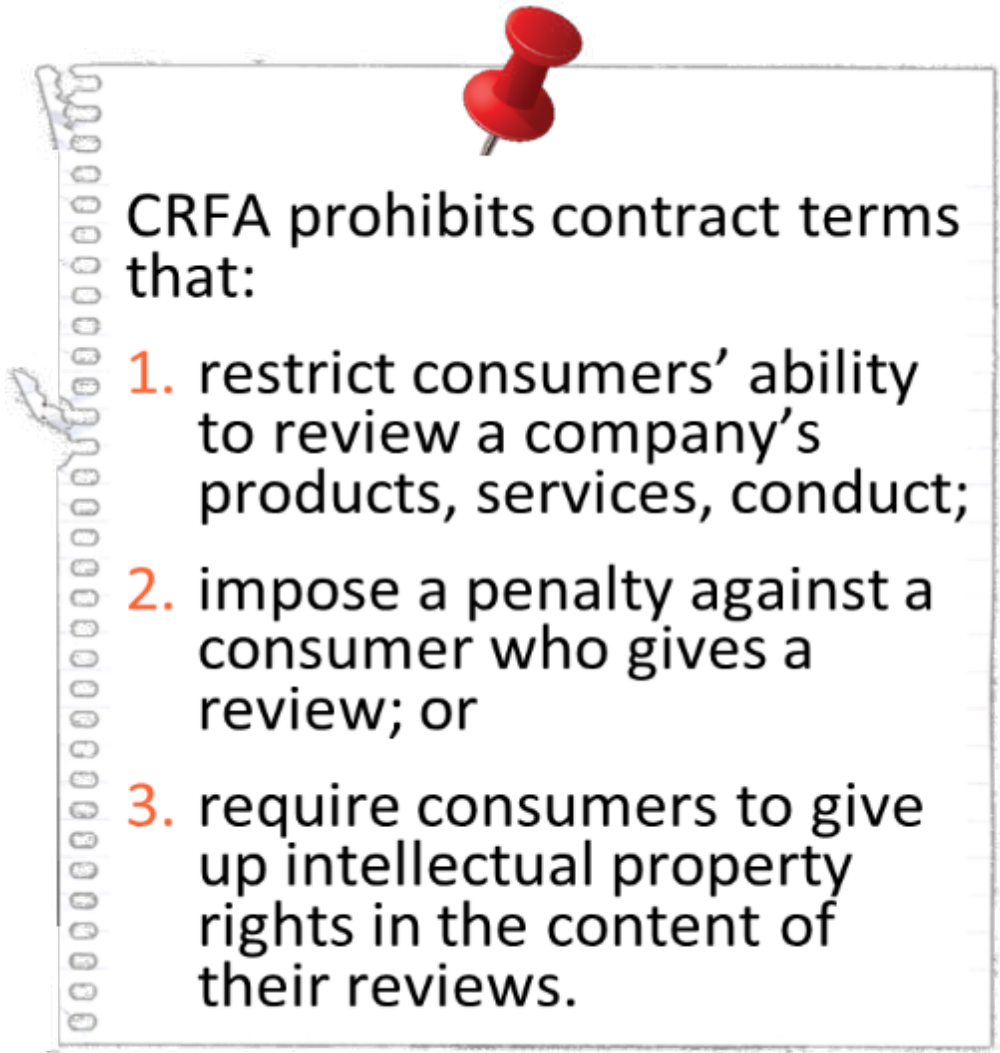
## COMPETITION BUREAU'S APPROACH:

- Influencer marketing can be an effective and efficient advertising tool.
- Bureau conducted a thorough review of the field and created a plan to address issues.
- Close to one hundred letters sent to advertising agencies and companies
- Bureau provided influencers with specialised guidance and a targeted campaign to advise of legal obligations.
- Influencers must disclose material connections in their posts so as to not mislead consumers.





# FEDERAL TRADE COMMISSION



CRFA prohibits contract terms that:

1. restrict consumers' ability to review a company's products, services, conduct;
2. impose a penalty against a consumer who gives a review; or
3. require consumers to give up intellectual property rights in the content of their reviews.

## CONSUMER REVIEW FAIRNESS ACT

# PRIVACY and DATA SECURITY



# FTC DATA SECURITY CASES

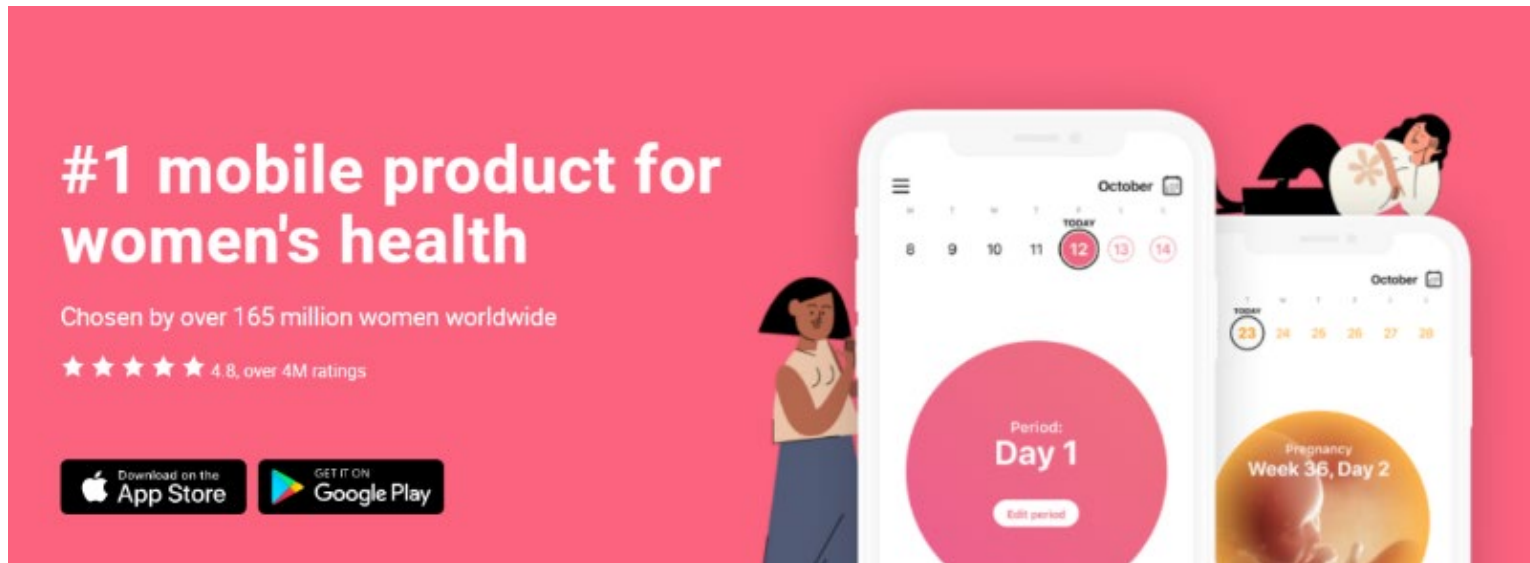




# FTC CONSUMER PRIVACY CASES



# FEDERAL TRADE COMMISSION



# FEDERAL TRADE COMMISSION



## FTC Settlement with Zoom



Millions of people go to school, have virtual doctor's visits, or take part in work meetings on Zoom, every day. And they share sensitive info in the process.

**So what does the FTC's settlement mean for you?**

It puts your security top of mind for Zoom. And requires Zoom to protect your information for many years to come — or pay big fines.

# COMPETITION AND MARKETS AUTHORITY

## Privacy information in app stores



App Store



Google play





## Facebook Matter

- Resolved by way of consent agreement, registered in May 2020
- First Bureau case at the intersection of competition and privacy
- Bureau concluded Facebook made false or misleading claims about privacy Canadians' personal information on Facebook and Messenger
- Facebook agreed to pay \$9 million penalty, and \$500,000 to cover investigative costs



## CASL Mobile App Initiative

- November 2020, jointly with CRTC and OPC
- 36 letters sent to companies involved in the mobile applications industry in Canada
- Letters asked that they review their practices and take preventive or corrective measures where necessary.
- We reminded mobile app companies of their obligations under Canada's Anti-Spam Legislation (CASL), and those related to the promotion, installation and use of mobile apps under the *Personal Information Protection and Electronic Documents Act* (PIPEDA) and the *Competition Act*.



Office of the  
Privacy Commissioner  
of Canada

Commissariat  
à la protection de  
la vie privée du Canada



Competition Bureau  
Canada

Bureau de la concurrence  
Canada



Canadian Radio-television and  
Telecommunications Commission

Conseil de la radiodiffusion et des  
télécommunications canadiennes



THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN



AMERICAN BAR ASSOCIATION  
Antitrust Law Section

# CROSS-BORDER UPDATE WITH THE ENFORCERS

*Moderators:*

**Michael Binetti**

[mbinetti @agmlawyers.com](mailto:mbinetti@agmlawyers.com)

**Tegan O'Brien**

[taobrien@cassels.com](mailto:taobrien@cassels.com)

*Panelists:*

**Cecilia Parker Aranha**

[Cecilia.ParkerAranha@cma.gov.uk](mailto:Cecilia.ParkerAranha@cma.gov.uk)

**Bryan Cowell**

[bryan.cowell@Canada.ca](mailto:bryan.cowell@Canada.ca)

**Lesley Fair**

[lfair@ftc.gov](mailto:lfair@ftc.gov)

