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

Statement of Chair Lina M. Khan
Arise Virtual Solutions Inc.
Commission File No. 2223046

July 1, 2024

Arise recruits tens of thousands of "gig" workers to serve as customer service representatives for its corporate clients, which include large, brand-name companies. In its complaint against Arise, the FTC charges that the company regularly used misleading advertisements stating that individuals who signed up on their platform would have access to jobs that paid "up to $18/hour" doing remote customer service work for major corporations. In reality, the pay was nearly always below the levels Arise advertised.[1] Additionally, Arise required those signing up to pay hundreds of dollars out of pocket for a host of products and services, from equipment and mandatory certification courses to background checks and "platform usage fees." As the complaint notes, Arise's earnings claims did not factor in the substantial fees and unpaid time individuals faced when joining and using the Arise platform.

The FTC charges that Arise's practices were deceptive and violated Section 5 of the FTC Act, and that these practices persisted even after the FTC sent Arise the Notice of Penalty of Offenses Concerning Money-Making Opportunities in April 2022. The complaint also charges that Arise violated the Business Opportunity Rule, which requires that prospective workers receive key disclosures about earnings claims and other important information before they decide to invest their time and money in a business opportunity.[2] This is the first case where the Commission has charged a company in the gig economy with violating the Business Opportunity Rule.

In pursuing this matter, the FTC coordinated with the Department of Labor ("DOL"), which has separately sued Arise for misclassifying its agents as independent contractors rather than employees in violation of the Fair Labor Standards Act ("FLSA").[3] The FTC has long

[1] In his separate statement, Commissioner Ferguson suggests that what analysis governs the substantiation of "up to" claims under Section 5 is an open question. As it has for decades in Section 5 deception cases, the Commission assesses "up to" claims by analyzing whether it is "likely to mislead reasonable consumers under the circumstances." *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 1984 FTC LEXIS 71, at *177 (1984). Likewise, claims must be supported by a "reasonable basis" to be substantiated. *Id*. at 124–125, 170 n.5; *In re Thompson Medical Co., Inc.*, 104 F.T.C. 648, 1984 FTC LEXIS 6, at *435 (1984). These determinations are, as Commissioner Ferguson recognizes, "context"-specific; what meaning a particular claim conveys depends on the circumstance. A claim that workers would "earn up to $350" when in reality "few" of them receive the stated amount is deceptive, as the Commission alleged in *In re Diesel Truck Drivers Training Sch., Inc.*, 86 F.T.C. 1062, 1975 FTC LEXIS 34, *4–5 (1975). Claims that individuals could earn "up to" a certain amount might lead them to "reasonably believe that the statements of earnings potential represent *typical* or *average* earnings," as the Commission alleged and the district court held in *FTC v. Febre*, 1996 WL 396117, at *2 (N.D. Ill. July 3, 1996) (emphases added). These cases involving "up to" earnings claims are not cited in Commissioner Ferguson's statement, but if there's a "monumental" difference in the Commission's approach to them and the case in front of us today, it's hard to see.
[2] 16 CFR § 437 (2012).
[3] *See* Press Release, U.S. Dept. of Labor, U.S. Dept. of Labor Sues Nat'l Customer Support Service Provider in

coordinated with federal and state enforcers across its investigations, and this matter exemplifies the value of these partnerships.[4] Collaborating with DOL can prove especially fruitful in gig economy matters, where firms often market themselves as offering up entrepreneurial opportunities even as they retain significant control over the workers who sign up.[5]

As a result of FTC's order, Arise will be required to turn over $7 million, which will be used to provide redress to those harmed by the shortfall in promised wages. And to ensure that Arise cannot misuse the proposed FTC judgment to offset DOL's claim to compensation for unpaid training time, Section IV of the proposed order establishes that the FTC judgment does not offset any recovery by DOL to compensate consumers for unpaid training time.

I am grateful to the FTC team, primarily based out of the Midwest Regional Office, for their terrific work on this matter.

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Florida For Workers Misclassified As Independent Contractors (June 29, 2023), https://www.dol.gov/newsroom/releases/WHD/WHD20230629-1. The D.C. Attorney General also charged Arise with misclassifying its workers and recently settled the matter, securing $3 million in combined redress and penalties. Press Release, Off. of the Att'y Gen. for D.C., Att'y Gen. Schwalb Secures $3 Million For Workers & DC in Wage Theft Enforcement Action (Mar. 12, 2024), https://oag.dc.gov/release/attorney-general-schwalb-secures-3-million-workers.

[4] It is unclear why Commissioner Holyoak finds it "puzzling" that the FTC and DOL coordinated on this matter. It is routine for federal enforcers to coordinate and share information when investigating the same entity. Preferring instead that federal enforcers operate in complete siloes would be wasteful and inefficient. The coordination between the FTC and DOL follows the Memorandum of Understanding that the agencies entered in 2023. Press Release, Fed. Trade Comm'n, FTC, Department of Labor Partner to Protect Workers from Anticompetitive, Unfair, and Deceptive Practices (Sept. 21, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-department-labor-partner-protect-workers-anticompetitive-unfair-deceptive-practices.

[5] As scholars have noted, gig platform arrangements can reflect a business model that centralizes control while outsourcing risk, costs, and liability, raising key questions about the application of labor law and antitrust law. *See, e.g.*, Sanjukta Paul, *Uber as For-Profit Hiring Hall: A Price-Fixing Paradox and its Implications*, 38 BERKELEY J. EMP. & LAB. L. 233 (2017); Marshall Steinbaum, *Antitrust, The Gig Economy, and Labor Market Power*, 82 L. & CONTEMP. PROBS. 45 (2019), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4918&context=lcp.