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

Office of the Chair

Statement of Chair Lina M. Khan
Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya
In the Matter of Lyft, Inc.,
Commission File No. 2223028

October 25, 2024

Today the FTC charged rideshare operator Lyft with making deceptive earnings claims about how much money drivers could expect to make per hour and how much they could earn in special incentives. The FTC's proposed order would require Lyft to end this deceptive conduct by ensuring its claims about drivers' pay are based on typical earnings. Lyft would further need to substantiate with evidence any claims it makes about drivers' pay, clearly notify drivers about the terms of its "earnings guarantee" offers, and pay a $2.1 million civil penalty.

Millions of Americans today rely on "gig" work. Gig companies tout that the work they offer can provide flexibility and other advantages. But many gig arrangements can involve significant precarity, as well as serious asymmetry of risk and information. Unlike a traditional job, workers do not know how much they will earn, or how many hours they will need to work to make a living wage.[1] This uncertainty is heightened when gig firms use algorithmic-based variable pay, where individual workers are paid "different hourly wages—calculated with ever-changing formulas using granular data on location, individual behavior, demand, supply, or other factors—for broadly similar work."[2] It can be difficult for workers to collectively organize.[3] And workers note that a variety of opaque decisions by gig firms—such as arbitrary lockouts and abrupt suspensions—can further undermine a worker's ability to gauge how much they can earn.[4]

Given this backdrop, gig companies' marketing to workers requires serious scrutiny. In the absence of salary or hour commitments, workers rely on gig companies' marketing—and the companies know it. It's critical that this marketing be truthful. The stakes are high. Americans are making serious life decisions—such as whether to leave a job or forgo an opportunity—and their livelihoods are on the line. Unfortunately, the FTC's work here shows that unfair or deceptive practices are all too common.[5]

---

[1] FTC Policy Statement on Enforcement Related to Gig Work (Sept. 15, 2022) at 5, https://www.ftc.gov/legal-library/browse/policy-statement-enforcement-related-gig-work.
[2] Indeed, scholarly research has revealed that the on-demand economy is typified by opaque, unpredictable, and variable wage practices. *See generally* Veena Duball, *On Algorithmic Wage Discrimination*, 123 COLUM. L. REV. 1929 (2023).
[3] *See, e.g.*, Josh Jacob, *Avenues for Gig Worker Collective Action After* Jinetes, 123 COLUM. L. REV. 208 (2023).
[4] *See, e.g.*, Natalie Lung et al., *How Uber and Lyft Used a Loophole to Deny NYC Drivers Millions in Pay*, BLOOMBERG (Oct. 10, 2024), https://www.bloomberg.com/graphics/2024-uber-lyft-nyc-drivers-pay-lockouts.
[5] The agency's work in this area began in 2017 when it brought a case against Uber alleging deceptive wage claims. Press Release, Fed. Trade Comm'n, Uber Agrees to Pay $20 Million to Settle FTC Charges That It Recruited Prospective Drivers with Exaggerated Earnings Claims (Jan. 19, 2024), https://www.ftc.gov/news-

The complaint notes that Lyft in 2021 faced a significant shortage of drivers, warning internally of a "supply crunch." To address this shortage, the company launched a marketing campaign aimed at attracting more drivers to the platform and urging current drivers to work longer hours. To do so, Lyft made aggressive claims on social media and elsewhere about how much drivers could earn on the platform.[6] For example, the company targeted New Jersey residents with claims that drivers could earn up to $34 an hour. In fact, median earnings in New Jersey were only $25 an hour. Lyft advertised to Atlantans they could earn "up to $29/hour." Yet at least four out of five drivers in this region were unable to earn that amount.[7]

As the complaint notes, these disparities were no honest mistake. Lyft carefully tracked drivers' actual earnings, including how long they were logged in, how much they earned in tips and incentives, and median earnings for a 28-day period.[8] Rather than advertising drivers' typical or median earnings, Lyft systematically advertised what the top fifth of drivers would earn. And the company included tips in this calculation, even though many drivers were likely to believe that the tips they earned would be additional to the hourly earnings advertised by the company.[9]

The complaint alleges that Lyft also relied on an "Earnings Guarantees" promotion that falsely suggested drivers would receive a specific lump-sum bonus if they completed a required number of rides within a specific timeframe. Typical ads for the promotion would guarantee drivers could earn a certain amount if they completed a certain number of rides, such as $2,200 for 140 rides in their first month of driving. But this promise was illusory. First, the guarantee required only that Lyft cover the *difference* between what drivers earned and what was guaranteed. Thus, as Lyft acknowledged internally, "the face values [of the ads] are much higher

---

events/news/press-releases/2017/01/uber-agrees-pay-20-million-settle-ftc-charges-it-recruited-prospective-drivers-exaggerated-earnings. In 2021, in an action initiated by Trump-appointed Chair Joe Simons and brought over the finish line by Acting Chair Slaughter, the FTC reached a settlement with Amazon returning more than $60 million to Amazon Flex drivers whose tips were allegedly illegally withheld. Press Release, Fed. Trade Comm'n, Amazon To Pay $61.7 Million to Settle FTC Charges It Withheld Some Customer Tips from Amazon Flex Drivers (Feb. 2, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/02/amazon-pay-617-million-settle-ftc-charges-it-withheld-some-customer-tips-amazon-flex-drivers. In 2022, the FTC issued a Policy Statement on Enforcement Related to Gig Work committing itself to continued work in the gig area. *Id.* In 2022, the FTC took action against HomeAdvisor for allegedly misleading service providers, and in the following year obtained an order barring false claims and providing millions in redress. Press Release, Fed. Trade Comm'n, FTC Order Requires HomeAdvisor to Pay Up To $7.2 Million and Stop Deceptively Marketing its Leads for Home Improvement Projects (Jan. 23, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-order-requires-homeadvisor-pay-72-million-stop-deceptively-marketing-its-leads-home-improvement. This year, the FTC challenged allegedly deceptive earnings claims and other unlawful practices by Arise and Care.com, securing conduct relief and more than $15 million for affected workers. Press Release, Fed. Trade Comm'n, FTC Takes Action Against Gig Work Company Arise Virtual Solutions for Deceiving Consumers About Pay in Marketing Its Business Opportunity (July 2, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-takes-action-against-gig-work-company-arise-virtual-solutions-deceiving-consumers-about-pay; Press Release, Fed. Trade Comm'n, FTC Takes Action Against Care.com for Deceiving Caregivers About Wages and Availability of Jobs on its Site, Impeding Cancellation Process (Aug. 26, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/08/ftc-takes-action-against-carecom-deceiving-caregivers-about-wages-availability-jobs-its-site.

[6] Complaint, United States v. Lyft, Inc., No. 24-cv-7443 (N.D. Cal. Oct. 25, 2024) at ¶¶ 4-6, https://www.ftc.gov/legal-library/browse/cases-proceedings/222-3028-lyft-inc-us-v [hereinafter Complaint].

[7] Complaint at ¶ 25.

[8] Complaint at ¶ 23.

[9] Complaint at ¶ 26.

than the actual payout[.]"[10] Second, Lyft advertised these guarantees knowing that only about one in five drivers would ultimately qualify for a bonus.[11]

For Lyft, this campaign was a success. As the complaint notes, the company's earnings claims increased leads for new drivers by about 24%.[12] And its Earnings Guarantees would spur more drivers to work more hours, while ensuring—by design—that most drivers would not actually receive a payout.[13]

For drivers, Lyft's campaign was highly misleading. From January 2021 to April 2022, Lyft received tens of thousands of complaints from drivers reporting confusion about the Earnings Guarantees. In one complaint, for example, a driver stated, "That is not right and it's not fair false information on [Lyft's] behalf. . . . This is complete false advertisement . . . . [Y]our promotion that was offered to me was very misleading. It seemed like if I completed 15 rides I would instantly receive an extra $125." Another driver complaint to Lyft stated, "I'm going to need Lyft to reference the guarantee thing differently and not put it as you getting this amount for a certain number of rides because it makes it confusing between [earnings guarantees and bonuses]." By no later than May 2021, Lyft employees who directly interact with drivers were escalating drivers' concerns about Earnings Guarantees internally at Lyft. But it was not until months later, in November 2021, that Lyft took any action to revise its Earnings Guarantee. Lyft's revised ads, however, failed to reduce driver confusion, and the company continued to receive thousands of complaints every month.[14]

These complaints along with Lyft's internal data should have put the company on notice that drivers were likely to be misled. The FTC also issued the company a reminder. In October 2021, the Commission sent Lyft a Notice of Penalty Offenses ("NPO"). That Notice included a synopsis of the relevant law on deceptive earnings claims, a synopsis that had been voted out unanimously by the Commission.[15] The Notice stated that it is an unfair or deceptive trade practice to make false, misleading, or deceptive representations concerning the earnings that may be anticipated by a participant in a money-making opportunity. Yet, as the complaint notes, Lyft continued making its misleading claims.[16]

The order being announced today puts an end to these practices. It requires that Lyft: advertise only what *typical* drivers earn, clearly disclose the truth about its earnings guarantees,

---

[10] Complaint at ¶ 33.
[11] Complaint at ¶¶ 30-39. This promotion vividly illustrates how the asymmetry of information between gig workers and platforms advantages platforms. An individual driver knows, at most, how much *they* earn, and even this can be difficult to predict *ex ante*. The complaint alleges that Lyft did not clearly disclose to them, for example, that working additional hours to be eligible for this promotion is unlikely to yield them any additional compensation. Lyft exploited this fact, designing the promotion to minimize payout while maximizing the number of drivers who work extra hours. Our order is designed to put an end to this gamesmanship.
[12] Complaint at ¶ 29.
[13] Complaint at ¶ 34.
[14] Complaint at ¶ 40-46.
[15] Press Release, Fed. Trade Comm'n, FTC Puts Businesses on Notice that False Money-Making Claims Could Lead to Big Penalties (Oct. 26, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-puts-businesses-notice-false-money-making-claims-could-lead-big-penalties.
[16] Complaint at ¶ 47-52.

and provide notice to its drivers about the settlement. Lyft is also required to pay a $2.1 million civil penalty.

Commissioners Holyoak and Ferguson take issue with this relief, for two stated reasons. First, they contend that the Commission has exceeded its authority by seeking civil penalties after serving Lyft with the NPO. Second, Commissioner Ferguson contends that Lyft's ads touting earnings that at least 80% of drivers would not actually receive cannot have deceived drivers because these ads included the phrase "up to," and that any drivers who may have been misled by these ads were being unreasonable. Their arguments are contrary to the FTC Act and would undermine the authority Congress has granted the Commission to protect Americans from unfair or deceptive practices.

I.

Three years ago, the Commission unanimously approved issuing a Notice of Penalty Offenses detailing long-condemned deceptive practices around money-making opportunities. This bipartisan support was unsurprising. Section 5(m)(1)(B) is not a new authority, and the FTC's approach to enforcing it is not novel either. What was new is *AMG*—the Supreme Court decision announcing that Section 13(b) of the FTC Act did not authorize monetary equitable relief.[17] The Court's opinion cited other FTC Act provisions that unlock monetary relief, including Section 5(m)(1)(B).[18] Unremarkably, five Commissioners agreed that this statutory provision could aid our efforts to deter deceptive money-making claims.

In the three years since, the law has not changed, but the Commission's composition has. And Commissioners Holyoak and Ferguson take a different view of Section 5(m)(1)(B). They do not question that the authority is clearly and explicitly spelled out in our statute. Rather, they seem to want to create new hurdles.

To recap: Section 5(m)(1)(B) of the FTC Act affords the FTC the authority to assess civil penalties against any company which has engaged in an act or practice that the Commission has determined in a proceeding is "unfair or deceptive," with "actual knowledge that such act or practice is unfair or deceptive and is unlawful under [the FTC Act]."[19] Here, the FTC's lawsuit sufficiently alleges that Lyft engaged in an unfair or deceptive act or practice—misrepresenting likely earnings from gig work—and that Lyft had actual knowledge that this was unfair or deceptive and thus unlawful under the FTC Act.

Lyft received a Notice of Penalty Offenses that clearly spelled out with citations to past Commission decisions on point that "[i]t is an unfair or deceptive trade practice to misrepresent, explicitly or implicitly, that participants will or are likely to earn any specific amount or percentage" and that "[i]t is an unfair or deceptive trade practice to misrepresent the profits or earnings that may be anticipated by a prospective participant by failing to disclose conditions or

[17] *AMG Capital Management, LLC v. FTC*, 141 S. Ct. 1341 (2021).
[18] *Id.* at 1349.
[19] 15 U.S.C. § 45(m)(1)(b).

limitations affecting such income . . . ."[20] Nevertheless, as noted in the complaint, Lyft misled drivers into believing that they were likely to make a specific amount of earnings that most drivers were unlikely to achieve, and it promised guaranteed earnings that were illusory due to poorly disclosed conditions. Thus, Lyft was clearly on notice that it needed to scrutinize its advertising to workers.

Federal court decisions interpreting Section 5(m)(1)(B) of the FTC Act are few and far between. In the 1980s, the Reagan-era FTC chose to focus its efforts on using Section 13(b) of the FTC Act to secure consumer redress. Other statutory provisions, including Section 5(m)(1)(b), were rendered dormant. Once the Court unanimously held that 13(b) did not authorize monetary equitable relief, the Commission chose to activate its remaining statutory tools to secure consumer redress and obtain civil penalties.

Commissioners Holyoak and Ferguson argue that the FTC cannot obtain civil penalties if the defendant made "earnings claims for different products in different contexts with differing levels of substantiation" from the products, contexts, and substantiation at issue in a case synopsized in an NPO.[21] Commissioner Ferguson would go even further: he casts doubt on whether final FTC cease-and-desist orders issued some number of decades ago could ever be used as predicates for obtaining civil penalties against alleged Section 5 violators today.[22] For any Section 5(m)(1)(B) liability to attach, it appears my colleagues would require a past Commission cease-and-desist order to have all but made a *specific* determination that Lyft's advertising was in fact deceptive.

But this is not what the FTC Act requires. The text of the statute plainly provides that civil penalty liability attaches when one has acted or engaged in a practice "with actual knowledge that such act or practice is unfair or deceptive and is unlawful under [the FTC Act]."[23] Nowhere does the text reference specific products, contexts, or substantiation. The additional requirements that Commissioners Holyoak and Ferguson wish to impose may reflect their view of what the law should be, but they do not reflect what the law actually is.

Indeed, one of the few courts to have considered NPOs flatly rejected the position Commissioners Ferguson and Holyoak seem to adopt. In *Sears, Roebuck & Co*., the court found unpersuasive the argument that "Section 5(m)(1)(B) must be construed to require a *specific* determination by the Commission in a prior Section 5(b) proceeding that the *particular* acts are unfair or deceptive." After analyzing the text of the statute, the Court concluded that "the language of Section 5(m)(1)(B) does not expressly include such a narrow requirement."[24] *Hopkins Dodge*, which Commissioner Ferguson cites, is not to the contrary: there, the court concluded that the Commission could not use an NPO to obtain civil penalties for violations of Regulation Z and the Truth in Lending Act when the final FTC cease-and-desist decisions cited

---

[20] Penalty Offenses Concerning Money-Making Opportunities, Fed. Trade Comm'n, https://www.ftc.gov/enforcement/notices-penalty-offenses/penalty-offenses-concerning-money-making-opportunities (last visited Sept. 25, 2024) at 1(d), (f).

[21] Dissenting Statement of Comm'r Melissa Holyoak re Lyft, Inc. (Oct. 25, 2024) at 2.

[22] Statement of Comm'r Andrew N. Ferguson Concurring in Part & Dissenting in Part, United States v. Lyft (Oct. 25, 2024) [hereinafter Ferguson Statement] at 10.

[23] 15 U.S.C. § 45(m)(1)(B).

[24] FTC v. Sears, Roebuck & Co., No. 81-A-503, 1983 WL 1889 (D. Colo. Oct. 18, 1983) (emphasis in original).

by the Commission in the credit-lending NPO did not contain findings that the conduct at issue were unfair or deceptive.[25] Here, by contrast, the NPO sent to Lyft referenced final Commission cease-and-desist orders holding that practices Lyft allegedly engaged in were unfair or deceptive, and fairly put Lyft on notice that its advertising practices were deceptive.

It is true that the money-making claims the Commission challenged in the past were made in different industries and through different channels than those claims being challenged in this action. But the *practice*—making deceptive earnings claims of atypical earnings—is the same. The fact that Lyft's ads appeared on the internet or that drivers signed up on their phones does not render lawful an otherwise deceptive practice. Suggesting that Lyft can ignore this precedent because it was selling rideshare opportunities via an app finds no support in the statute. Indeed, the cases cited in the NPO sent to Lyft involved companies that were effectively the "gig" employers of their time.[26]

II.

Commissioner Ferguson also dissents because he believes that the advertising claims here (apart from the guaranteed income claim) were not deceptive because Lyft used the phrase "up to" just before its claimed figures. He focuses particularly on the fact that Lyft claimed that the hourly earnings advertised were achieved by 20% of its drivers. That is enough, he believes, to

[25] United States v. Hopkins Dodge, Inc., 849 F.2d 311, 314 (8th Cir. 1988). Indeed, the Commission's actions after the *Hopkins Dodge* decision are a telling indication that the Commission—then run by a Republican-led majority—certainly thought it could revise the credit lending NPO there to address the narrow concern raised by the Eighth Circuit. It issued two Orders to Show Cause ("OTSC") to reopen the underlying cases and show that the practices were deceptive and unfair practices: *In re Seekonk Freezer Meats Inc.*, 111 F.T.C. 380 (F.T.C. 1988) and *In re Reliable Mortgage Corp.,* 111 F.T.C. 384 (F.T.C. 1988). In fact, the Commission in those two OTSC's explicitly stated that it was doing so to address the deficiencies noted by the Eighth Circuit in that decision. Unfortunately, the defendants didn't respond, and so the Commission couldn't supplement the factual record in those matters with evidence that the practices were deceptive and unfair. That left the Commission with the purely legal question of whether Congress intended violations of Regulation Z to be deceptive and unfair acts or practices within the meaning of the FTC Act, and the Commission concluded it did not. *In re Reliable Mortgage Corp.,*113 F.T.C. 816 (F.T.C. 1990). If the Commission had believed the flaw in the NPO was that the practices were in industries other than the auto dealership at issue in *Hopkins Dodge*, it would have never issued those OTSC's.

[26] The NPO Lyft received cited to two particularly relevant FTC cease-and-desist orders. In a 1971 action, the FTC alleged that Universal Electric made misleading claims about specific earnings to workers interested in its business opportunity of selling radio and TV vacuum tubes – the "tech" of its time – including that they "can earn up to $400 a month." *In re Universal Elec. Corp.*, 78 F.T.C. 265, 294 (F.T.C. 1971). But "[i]ncome in the foregoing amount [would] not be realized by persons investing the sum indicated," and the company's representations were held to be "unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act." *Id*. at 274 (initial decision of hearing officer); *id*. at 297 (adopting hearing officer's decision as decision of the Commission). Similarly, in *Encyclopedia Britannica*, the Commission found that respondents deceptively advertised a substantial "guaranteed income" to job-seekers, but those who accepted a position "seldom, if ever, receive the guaranteed income," in part due to undisclosed limitations and conditions. *In re Encyclopedia Britannica*, 87 F.T.C. 421, 487 (F.T.C. 1976). It was held that "all evidence supports the findings of unlawful conduct" and the company's representations were "deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act." *Id.* at 503, 513 (initial decision of hearing officer); *id.* at 521 (adopting in relevant part the hearing officer's decision as decision of the Commission). Commissioner Ferguson's efforts to distinguish away the agency conclusions regarding both of these cases only re-emphasizes the ultimate logic of his approach with respect to precedent cited in NPOs, which is to slice and dice the facts and legal conclusions of each case so finely as to make them effectively disappear for NPO liability purposes. By doing so, he effectively reads words into the statute that are not there, and would turn this statutory mandate from Congress into a nullity.

render it accurate. Prospective gig workers who believe that these earnings would be more widely achievable are, as he describes, "unreasonable."

Of course, Lyft could have chosen to specifically and expressly advertise that only the top 20% of drivers in each market achieved the specified earnings. It didn't. Lyft instead chose to advertise using an ambiguous "up to" qualifier, leaving people considerable room to interpret the typicality of those earnings. Commissioner Ferguson's arguments here fall short. First, the complaint alleges that Lyft, in some instances, made deceptive wage claims that did not have the "up to" qualifier.[27] And second, Lyft packed in likely tips when determining the hourly wage it would advertise, something that many prospective drivers would not anticipate constituted part of their expected hourly rate. Lyft's target audience consists of hardworking Americans seeking opportunities to make additional income. Hourly rates don't usually come with strings attached, so it's not surprising that prospective Lyft drivers might focus on the hourly rate and overlook vague qualifiers like "up to."

Commissioner Ferguson's response: any prospective Lyft gig workers who may have been misled are being "unreasonable."[28] He thinks "ambitious" drivers "brimming with justified confidence in their abilities and work ethic" may be motivated to know what the very few top earners make, even though nowhere does Lyft reference top earners in the advertising at issue here.[29] In his view, it is of no moment if consumers tend to focus on the wage prominently represented by the ad rather than the "up to" language alongside it, because they should know that the dictionary defines "up to" as denoting an upper limit or boundary.[30] Even if this rereading of the claims at issue renders them technically true, this misses the mark, for we have long held—and courts have agreed—that technically true ads may be deceptive if they create a misleading net impression.[31]

The reasonableness standard meets consumers where they are and gives credence to reasonable interpretations of representations, omissions, or practices, even if these are not the only available interpretations.[32] Here, Commissioner Ferguson seems to hold his own interpretation of the claims at issue as the only "reasonable" interpretation. This paternalism is at odds with what the law requires, which is to assess whether consumers are deceived. Commissioner Ferguson's approach would seem to create broad safe harbors for deception, even by advertisers who know their advertisements are deceptive. Advertisers would effectively be free to offer carefully chosen words that exploit all manner of cognitive biases around claims that are logically true and "reasonable" (to Commissioner Ferguson) but misleading.

---

[27] Complaint at ¶¶ 19, 27 Fig. F.
[28] Ferguson Statement at 3-4.
[29] *Id.* He seems to be operating from an impression that Lyft drivers are in control of most of the conditions dictating their earnings, when research suggests that the opposite may be true, and that the defining sentiment among gig workers is a *lack* of control and understanding as to why and how their pay is determined. *See generally* Duball, Algorithmic Wage Discrimination, *supra* note 2.
[30] Ferguson Statement at 3-4.
[31] *Thompson Med. Co. v. FTC*, 791 F.2d 189, 197 (D.C. Cir. 1986) ("[L]iterally true statements may . . . be found deceptive[.]").
[32] *Deception Statement* at pp. 3–4.

Commissioner Ferguson also critiques a consumer study that the Commission made public back in 2012 on "up to" energy-saving claims by windows manufacturers.[33] The study—made in an entirely different context—does not implicate the analysis of Lyft's "up to" claims. Still, Commissioner Ferguson explains why he believed that study was flawed and uses it as a basis for dismissing the use of empirical studies and subordinating them to his own view of whether a claim is truly ambiguous.

In a case where copy testing is deemed necessary and relevant,[34] experts in the field weigh in on the appropriate design and methodology, based on the specific advertising and questions at issue. This includes the test conditions, specific choices about controls, and other parameters. In his critique of the Bristol Windows study, Commissioner Ferguson concludes that study's results are nonsensical because different versions of the ads did not produce any statistically significant differences. But that does not render the results nonsensical. Different words and presentations may very well lead to the same overall net impression. In fact, that is precisely the point. An advertiser who seeks to follow the law needs to ensure that whatever choice of words they use, the final *net impression* is not misleading. In the Bristol Windows study, the results led the experts overseeing it to conclude that the net impression for many consumers was that they would likely achieve the energy savings specifically touted in the ads and that various qualifying language, including the words "up to," did not change that net impression. This does not mean that *no* qualifying language would ever work, but it does suggest that merely adding the words "up to" is likely an ineffective way to qualify specific advertised results.

Commissioner Ferguson also challenges the researcher's decision to remove the ad from consumers prior to asking questions. He believes it would have been better practice to let consumers keep the ads. He cites no research or other evidentiary basis to support this point or to explain why not letting consumers retain the ads renders the results unreliable. In fact, commonsense suggests otherwise: in the modern era of advertising on the web, consumers do not typically physically retain advertisements, scrutinizing them for any and every nuance. Leaving the ad in front of the participant during questioning risks turning the exercise into a reading comprehension test rather than a study of what messages consumers take away from ads.

III.

Over the last few years, the FTC has made a concerted effort to ensure we are fully and faithfully using our statutory authority to protect workers—whether by banning noncompetes, challenging mergers that undermine labor market competition, or halting a clear pattern of deceiving workers. Commissioners Ferguson and Holyoak may believe that the FTC should not prioritize using our tools to protect American workers from illegal business practices.[35] But gig

[33] Ferguson Statement at I(B). MANOJ HASTAK & DENNIS MURPHY, EFFECTS OF A BRISTOL WINDOWS ADVERTISEMENT WITH AN "UP TO" SAVINGS CLAIM ON CONSUMER TAKE-AWAY AND BELIEFS (2012), https://www.ftc.gov/reports/effects-bristol-windows-advertisement-savings-claim-consumer-take-away-beliefs.

[34] Extrinsic evidence is not always necessary. When claims are reasonably clear from the face of the advertisement, the finder of fact can rely "on its own reasoned analysis" to determine what claims, including implied ones, are conveyed. *Kraft, Inc. v. FTC*, 970 F.2d 311, 319, 320 (7th Cir. 1992) ("Common sense and administrative experience provide adequate tools to make findings").

[35] For example, Commissioners Ferguson and Holyoak dissented on the Commission's final rule banning noncompete clauses for workers, which would boost wages, expand opportunity, and promote economic liberty.

firms do not enjoy an exemption under the FTC Act because they are marketing to workers rather than end-customers. Lyft engaged in clear deception that harmed workers and may have steered them away from better opportunities. Our recent actions against *Care, Arise, and Amazon* suggest this is not uncommon.[36] Workers are entitled to the same honest marketing as any other consumers.

***

They also publicly celebrated the paring back of labor-related questions in the updated Hart-Scott-Rodino form, even though including these requirements would have further strengthened enforcers' ability to prevent mergers that undermine competition in labor markets and harm workers. Commissioner Holyoak also generally seems hostile to the FTC working with federal enforcement partners at the National Labor Relations Board and the Department of Labor. *See, e.g.*, Dissenting Statement of Comm'r Andrew N. Ferguson Joined by Comm'r Melissa Holyoak In the Matter of the Non-Compete Clause Rule (June 28, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-noncompete-dissent.pdf; Dissenting Statement of Comm'r Melissa Holyoak Joined by Comm'r Andrew N. Ferguson In the Matter of the Non-Compete Clause Rule (June 28, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/2024-6-28-commissioner-holyoak-nc.pdf; Oral Statement of Comm'r Andrew N. Ferguson, In the Matter of the Non-Compete Clause Rule (April 23, 2024) https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-oral-statement-noncompete.pdf; Concurring Statement of Commissioner Andrew N. Ferguson In the Matter of Amendments to the Premerger Notification and Report Form and Instructions, and the Hart-Scott-Rodino Rule (Oct. 10, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-final-hsr-rule-statement.pdf; Statement of Commissioner Melissa Holyoak, Final Premerger Notification Form and the Hart-Scott-Rodino Rules (Oct. 10, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-hsr-rule-statement.pdf; Concurring Statement of Comm'r Melissa Holyoak, Arise Virtual Solutions (July 1, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-statement-arise-7-1-2024.pdf.

[36] Press Release, Fed. Trade Comm'n, FTC Takes Action Against Care.com for Deceiving Caregivers About Wages and Availability of Jobs on its Site, Impeding Cancellation Process (Aug. 26, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/08/ftc-takes-action-against-carecom-deceiving-caregivers-about-wages-availability-jobs-its-site; Press Release, Fed. Trade Comm'n, FTC Takes Action Against Gig Work Company Arise Virtual Solutions for Deceiving Consumers About Pay in Marketing Its Business Opportunity (July 2, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-takes-action-against-gig-work-company-arise-virtual-solutions-deceiving-consumers-about-pay; Press Release, Fed. Trade Comm'n, FTC Sues Amazon for Illegally Maintaining Monopoly Power (Sept. 26, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power.