



Office of Commissioner
Melissa Holyoak

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

Concurring Statement of Commissioner Melissa Holyoak

Arise Virtual Solutions, Inc., FTC Matter No. 2223046

July 1, 2024

I support this settlement, because the facts alleged in the complaint give the Commission reason to believe that Arise Virtual Solutions made unsubstantiated earnings claims in violation of Section 5 of the FTC Act¹ and otherwise violated the Commission’s Business Opportunity Rule² in connection with offering business opportunities to consumers. I write separately with three brief observations.

First, although the facts alleged here indicate that Arise offered a “business opportunity” covered by the Rule, other companies operating in the “gig economy” do not necessarily do so.³ Chair Khan’s statement asserts that this is a good example of the Commission working together with the Department of Labor because DOL is separately suing Arise for misclassification of agents as independent contractors.⁴ Such coordination here is puzzling. The Business Opportunity Rule provides that a purchaser is “a person who *buys* a business opportunity.”⁵ In determining whether a worker is an independent contractor under the Fair Labor Standards Act, the focus is on whether “the worker is, as a matter of economic reality, in business for themselves.”⁶ Chair Khan argues: “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.”⁷ Chair Khan’s statement suggests that the Rule would cover a worker who enters an employment relationship based on deceptive marketing of the opportunity—but deceptive marketing of an *employment relationship* is not deceptive marketing of a *business opportunity*.

Second, although the complaint refers at times to the consumers who purchased Arise’s business opportunity as “workers,” my support for this complaint rests on our statutory mandate

¹ 15 U.S.C. § 45(a).

² 16 C.F.R. pt. 437.

³ Cf. Policy Statement on Enforcement Related to Gig Work, FTC, at 4, Sept. 15, 2022, <https://www.ftc.gov/legal-library/browse/policy-statement-enforcement-related-gig-work> (asserting that the gig economy has “three market features that implicate the Commission’s consumer protection missions”: “Control Without Responsibility,” “Diminished Bargaining Power,” and “Concentrated Markets”).

⁴ Statement of Chair Lina M. Khan, *Arise Virtual Solutions, Inc.*, FTC Matter No. 2223046 at 2 (July 1, 2024) (“Khan Statement”).

⁵ 16 C.F.R. § 437.1(n) (emphasis added).

⁶ 29 C.F.R. § 795.105(b).

⁷ Khan Statement at 2.

to protect *consumers*. Other federal agencies may properly address issues pertaining to “workers” as such,⁸ whereas the Commission protects *consumers*, working or otherwise.⁹

Third, the monetary relief in this order is warranted based on the alleged violations of the Business Opportunity Rule. I need not, therefore, consider whether the complaint adequately alleges that the company had “actual knowledge” of law violations by virtue of having received a Notice of Penalty Offenses Concerning Money-Making Opportunities.

⁸ *See, e.g.*, 8 U.S.C. § 1188(a)(1). *See also* Remarks of Commissioner Melissa Holyoak at the Competitive Enterprise Institute’s Annual Summit, Rediscovering Adam Smith: An Inquiry in the Rule of Law, Competition, and the Future of the Federal Trade Comm’n, at 9-10, May 31, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-cei.pdf.

⁹ Of course, the Commission also protects consumers that are small businesses. *See, e.g., FTC v. Cyberspace, Com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006); *FTC v. FleetCor Techs., Inc.*, 620 F. Supp. 3d 1268, 1280 (N.D. Cal. 2022); *FTC v. IFC Credit Corp.*, 543 F. Supp. 2d 925, 941 (N.D. Ill. 2008).