

ALERT

FTC Announces Rule on “Junk Fees” and Pricing Disclosures in Certain Industries

December 18, 2024

On December 17, 2024, the Federal Trade Commission (FTC or Commission) released its final Trade Regulation Rule on Unfair or Deceptive Fees, also called the “Junk Fees Rule” by the Commission. For companies involved in offering ticketing services for live events or short-term lodging (such as hotels or vacation rentals), the Rule requires disclosure of a “Total Price” that includes mandatory fees, requires disclosure of any additional fees before payment, and prohibits misrepresentations about fees or charges. Notably, the scope of entities covered by the final Rule is much narrower than the Commission’s original proposal, and the narrower Rule passed on a bipartisan basis on a 4-1 vote. The Rule will take effect 120 days after publication in the Federal Register.

Below, we provide a brief overview of the Rule’s procedural history, as well as the Rule’s threshold definitions and key provisions.

The FTC Significantly Narrowed the Scope of the Final Rule from the Original Proposal

In the FTC’s Notice of Proposed Rulemaking, released in October 2023, the agency proposed a rule that would have applied to *any* business that “offers goods or services.” However, the final Rule is significantly narrower, applying only to prices, fees, and charges for a “Covered Good or Service”, which is limited to (1) live-event tickets, and (2) short-term lodging.

As a result, companies that offer or are involved in ticketing services for live events or for short-term lodging (such as hotels and vacation rentals) should review the final Rule in more detail to assess compliance obligations.

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Threshold Definitions

The Rule addresses both “hidden” fees and “misleading” fees and applies to a Business providing a Covered Good or Service. The Rule defines a “Business” to include entities that offer goods and services, “including, but not limited to, online, in mobile applications, and in physical locations.” As explained above, however, the Rule only applies to certain goods or services – “(1) [l]ive-event tickets; or (2) [s]hort-term lodging, including temporary sleeping accommodations at a hotel, motel, inn, short-term rental, vacation rental, or other place of lodging.”

The Rule’s section on “hidden” fees requires businesses to accurately display the Total Price of a Covered Good or Service when making any representation about the price. The Rule defines the “Total Price” as the “maximum total of all fees or charges a consumer must pay for any good(s) or service(s) and any mandatory Ancillary Good or Service, except that Government Charges, Shipping Charges, and fees or charges for any optional Ancillary Good or Service may be excluded.” Mandatory Ancillary Goods and Services are goods or services offered to a consumer as part of the same transaction that they do not have the option to decline, and that must be included in the Total Price. Government Charges include fees or charges – such as taxes – imposed on the transaction by a federal, state, local, or tribal government. Shipping Charges include fees or charges “that reasonably reflect the amount a Business incurs to send physical goods to a consumer, including through the mail, private mail and shipping services, or by freight.” Government Charges and Shipping Charges may be excluded from the “Total Price” but still must be accurately disclosed.

The Rule Includes Two Key Components

First, the Junk Fees Rule makes it an unfair or deceptive practice to offer, display, or advertise the price of a Covered Good or Service without Clearly and Conspicuously disclosing the Total Price. Moreover, Businesses offering Covered Goods or Services must disclose the Total Price more prominently than other pricing information, aside from the final amount of payment, which should be more prominently disclosed than the Total Price.

Additionally, before a consumer consents to pay for a Covered Good or Service, the Business must disclose, in a manner that is as prominent as the Total Price: (1) “[t]he nature, purpose, and amount of any fee or charge imposed on the transaction that has been excluded from Total Price and the identity of the good or service for which the fee or charge is imposed; and” (2) “[t]he final amount of payment for the transaction.”

Second, the Junk Fees Rule prohibits Businesses from misrepresenting, in any offer, display, or advertisement for a Covered Good or Service: (1) any fee or charge (including the nature, purpose, amount, or refundability of any fee or charge) and (2) the identity of the good or service for which the fee or charge is imposed.

The Rule Preempts Inconsistent State Laws

The final Rule preempts state laws only to the extent that they are “inconsistent” with the rule. The Rule does not preempt any state laws that offer consumers greater protections.

Companies in Impacted Industries Should Assess Compliance Obligations

While the FTC significantly scaled back the scope of the proposed Rule, companies offering goods and services in industries involving live-event ticketing or short-term lodging should review the final Rule and related commentary in more detail, to begin assessing compliance obligations. Once the Rule is effective, the FTC can seek monetary penalties and other relief for violations.

For more information about the Rule, please contact one of the authors listed on this alert. Wiley’s FTC Regulation team has a deep bench of attorneys with experience serving a wide array of companies and business groups who deal with FTC and consumer regulatory issues across industries.