

FTC JUNK FEES RULE TARGETS TICKET SALES AND HOTEL RENTALS

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The Federal Trade Commission has issued a long-anticipated final Rule on Unfair or Deceptive Fees (the Rule), colloquially known as the “Junk Fees” Rule, targeting mandatory hidden fees and ensuring transparent pricing disclosures in ticket sales and hotel rentals. By its terms, the Rule will take effect 120 days after its publication in the Federal Register, which has yet to occur as of this writing.

The final Rule is significantly narrower than when it was originally proposed. In October 2023, when the FTC published its Notice of Proposed Rulemaking, the draft rule was to broadly apply to all industries – much like California’s “Junk Fees” law, which took effect July 1, 2024 and which we covered in a prior post.

The final FTC Rule, however, focuses exclusively on the live-event ticketing and short-term lodging industries. These two offerings are defined as “covered goods or services.” While the Rule still defines “businesses” broadly, a business will be subject to the Rule only if it offers covered goods or services, and only in connection with its activity to offer those covered goods or services.

The Rule prohibits both “hidden” fees—failing to clearly and conspicuously disclose the fees associated with a covered good or service—as well as “misleading” fees – misrepresenting the fees associated with a covered good or service.

HIDDEN FEES

As to the first prohibition, the Rule requires all mandatory fees for covered services to be included in the “total price” shown to consumers. This total price must be the most prominent price displayed in any advertisement or listing. The Rule applies to ticket sales regardless of whether tickets are sold directly, through venues, or by third-party resellers. The Rule also applies to hotels, motels, inns, and other temporary accommodations, including short-term rentals and vacation rentals. However, the Rule excludes long-term residential leases and corporate housing arrangements.

The Rule allows certain fees to be excluded from the total price displayed, as long as these fees are clearly and prominently disclosed before the transaction is completed. These fees include (1)

government-imposed taxes such as sales and lodging taxes; 2) optional amenities for short-term lodging such as parking or spa services; (3) shipping charges; and (4) fees for additional goods or services selected by the consumer during the transaction. We suggest clients carefully review their order processing flow to ensure that fees are appropriately disclosed in accordance with the new Rule.

MISLEADING FEES

As to the prohibition on “misleading” fees, the Rule prohibits misrepresenting any fee or charge, including its “nature, purpose, amount, or refundability”. Of particular note, the Rule prohibits misrepresenting the reason the fee is being charged. This ban applies in offers or advertisements made for any covered good or service. We encourage clients to carefully review the names of any fees they may charge to ensure they comply with the Rule’s requirements.

OTHER MANDATORY SURCHARGES

In addition to the two prohibitions discussed above, the Rule also has specific provisions relating to two other forms of mandatory surcharges. First, the Rule requires merchants to include credit card surcharges and processing fees in the total displayed price, but only if payment by credit card is *mandatory*. Since many payment network rules separately prohibit merchants from surcharging debit cards, giving consumers the option to pay with a debit card or other payment option that avoids surcharging may ensure that the surcharge is always optional.

Second, the Rule takes a more restrictive approach to “convenience fees” charged by merchants. Unless convenience fees are avoidable *in the checkout channel*, they are deemed mandatory and must be disclosed. This view that such surcharges are required, i.e., not reasonably avoidable, is particularly significant since demonstrating a lack of reasonable avoidance is one of the three elements the FTC must prove to determine if an act or practice is unfair. The FTC therefore appears to be strengthening the background context necessary for it to meet this element.

THE VOTE

The FTC approved the Rule in a 4-1 vote, with Chair Lina Khan, Commissioner Alvaro Bedoya, Commissioner Rebecca Slaughter, and Commissioner Melissa Holyoak voting yes. Commissioner Andrew Ferguson—who, as discussed in a [separate client alert](#), will be Chair under the next administration—casting the only dissenting vote. [Commissioner Ferguson clarified that his dissent](#) was not about the merits of the Rule, but criticized its timing and procedural approach during a presidential transition period. This near-unanimity strongly suggests that the next administration will allow the Rule to come into effect 120 days after its publication in the Federal Register. Clients should therefore begin preparing to comply with the Rule in the first half of 2025.

For questions or more information, contact one of the authors, [Merrit Jones](#), [David B. Schwartz](#), [Dan Rockey](#) and [Rebecca Spraggins](#), or a member of BCLP’s [Marketing & Advertising Law](#) team.

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