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New FTC Initiative Targets Deceptive AI Claims and a Generative AI Service

The Federal Trade Commission (FTC) recently initiated an enforcement sweep called Operation AI Comply against several companies that allegedly “relied on artificial intelligence as a way to supercharge deceptive or unfair conduct.”

The sweep signals the FTC’s continued focus on alleged abuses of artificial intelligence (AI) and reinforces the following points:

- Companies should ensure that any claims about the role and effectiveness of AI in their products and services are supportable.
- A company may be accused by the FTC of violating Section 5 of the FTC Act if the AI product or service is likely to be used by others in deceptive or unfair ways.
- The FTC will continue to focus on AI-related enforcement actions where companies appear to be overpromising based on AI or using AI to foster unfair and deceptive practices.¹

The sweep, [announced on September 25, 2024](#), targets a range of companies and builds on other actions the FTC has brought to address unfair and deceptive AI-related practices.

Four of the Enforcement Actions Target Alleged Deceptive Claims About AI-Driven Services and Products

The FTC filed complaints against Ascend Capventures Inc., Empire Holdings Group LLC, and FBA Machine, alleging that each company used AI hype and false earnings claims to get consumers to invest. As a result of the complaints against these three companies, federal courts issued orders temporarily halting the scheme each company is accused of engaging in and putting the schemes under the control of a receiver.

According to the complaint against DoNotPay, Inc., the company promised that its AI chatbot could replace a human lawyer, but the chatbot did not work as promised and DoNotPay did not conduct testing to see if it did. DoNotPay also claimed to offer another legal service that the FTC alleges was ineffective. DoNotPay agreed to a proposed settlement order that would require it to pay \$193,000, provide a notice to certain consumers about the limitations of its service, and prohibit the company from making claims about its ability to substitute for any professional service without evidence to support those claims.

¹ The FTC has brought several other enforcement actions involving claims about AI, including actions against [Automators LLC](#) and [Career Step, LLC](#). See also our January 2, 2024, client alert “[Proposed FTC Order Suggests Blueprint for AI Adoption](#).”

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Remaining Enforcement Action Targets a Generative AI Service That Drafts Online Reviews

The FTC charged Rytr LLC with violating the FTC Act by providing consumers with the means to generate false and deceptive written content for consumer reviews and engaging in an unfair business practice by offering a service that is likely to harm consumers and honest competitors. In dissenting statements, two Commissioners suggested that the action against Rytr suggests that merely providing draft content that could be used unlawfully violates the FTC Act even though the developer neither deceived nor caused injury to a consumer. Both statements noted that the action could stymie innovation.

Key Points

As a part of Operation AI Comply, the FTC will continue to focus on AI and may apply its enforcement tools in novel ways as the Commission tests the bounds of its authority under Section 5.

Despite the uncertainty, the existing regulatory landscape can help companies understand steps they can take to reduce enforcement risks. These steps include:

- Basing representations about what services and products relying on AI can do on competent and reliable evidence (*i.e.*, tests, analyses, research and studies) created according to generally accepted standards in the relevant field.
- Vetting AI provided by third parties that is incorporated into products by either independently testing the technology or receiving assurances about what the third-party product can do.
- Implementing testing and risk assessments before deploying products and services based on AI and monitoring them periodically thereafter for any “drift” in the AI models.
- Considering the commonly discussed AI development principle of “do no harm” in the design process.
- Weighing the benefits of any product against the risk of potential harm, including harm perpetuated by users of the service, and mitigating those risks.