

Navigating Junk Fee Litigation: Legal Challenges and Compliance Risks in Online Transaction Fees

Understanding legal risks and strategies for online fees

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Presentation Agenda

1. Junk Fee Litigation
2. FTC Negative Option Rule
3. AI Pricing Algorithms
4. False Reference Price Litigation
5. Q&A

Background on Junk Fee Litigation

The rise in junk fee litigation stems from coordinated efforts by federal and state regulators and a spike in private lawsuits targeting hidden and misleading charges.

Regulatory Crackdown

Since 2022, agencies have intensified enforcement:

- **FTC:** Introduced the *Rule on Unfair or Deceptive Fees* requiring upfront price disclosure in ticketing and short-term lodging. Broader rules may extend to delivery apps and food services.
- **CFPB:** Cracked down on surprise overdraft, NSF, and account info fees, securing major settlements from banks like Bank of America.
- **States:** Laws like California's *Honest Pricing Law* (effective July 2024) ban drip pricing. Other states (e.g., NY, MD, NC) have passed sector-specific laws like ticket sales or hospitality.

Private Litigation Growth

Regulatory momentum has fueled consumer class actions and mass arbitrations:

- **Class Actions:** Target banks, ticket sellers, and landlords for undisclosed fees. California law allows penalties up to \$2,500 per violation.
- **Mass Arbitration:** Used when class actions are barred by service agreements.

Drivers of the Surge

- Government priority and aggressive regulatory enforcement
- New state laws
- Public Demand

Overview of Junk Fee Litigation in the Digital Marketplace

Defining Junk Fees in Online Transactions

Definition of Junk Fees

Junk fees are extra charges in online purchases not related to shipping or taxes and often undisclosed upfront.

Consumer Impact

These fees can mislead buyers, causing confusion and dissatisfaction during online transactions.

Legal and Regulatory Concerns

Junk fees may violate consumer protection laws, prompting regulatory scrutiny to ensure transparency.



Historical Evolution and Recent Surge in Litigation

Early Litigation Focus

Initial lawsuits targeted specific junk fees to protect consumers from "unfair" or "hidden" charges.

Expansion of Fee Challenges

Recent cases now challenge a wide variety of junk fees across different industries and regions.

Drivers of Litigation Surge

Increased consumer litigation and recent statutory amendments have fueled the recent rise in junk fee lawsuits.



Legal Theories and Enforcement Trends Driving Litigation

Broad Consumer Protection Statutes and Their Application

Consumer Protection Laws

The California Consumer Legal Remedies Act sets rules to protect consumers from unfair business practices and deceptive fees.

Framework Against Deceptive Fees

Unfair Competition Law provides a legal framework to challenge and eliminate deceptive fee practices in commerce.

Court Interpretations

Courts have interpreted these statutes broadly to address junk fees in online transactions effectively.



The CLRA's Drip Pricing Provision and Related California Laws

CLRA Pricing Disclosure Rules

The CLRA mandates full price disclosure upfront to protect consumers from hidden fees and deceptive pricing tactics.

Drip Pricing Definition

Drip pricing involves revealing additional costs late in the purchase process, misleading consumers about total price.

Legal Actions in California

Litigation targets hidden fees in online marketplaces, enforcing laws against drip pricing to ensure transparency.



Emerging Enforcement Priorities Among Public Agencies

Focus on Undisclosed Fees

Enforcement agencies are targeting companies that hide or misrepresent fees to consumers.

Transparent Pricing Enforcement

Agencies emphasize the need for clear and honest pricing to protect consumers.

Regulatory Vigilance in California

California shows increased regulatory activity focusing on consumer protection laws.



Types of Non-Shipping, Non-Tax Fees Under Scrutiny

Shipping Protection Fees and Their Legal Implications

Deceptive Fee Disclosure

Shipping protection/insurance fees can be seen as deceptive if not clearly disclosed to customers before purchase.

Duplicate Shipping Costs

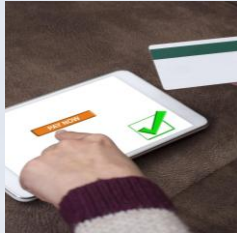
Charges that duplicate existing shipping costs raise concerns about unfair business practices.

Legal Scrutiny and Fairness

Courts review whether shipping protection fees are unfair or misleading to consumers.



Mandatory Delivery Charges in Checkout Processes



Drip Pricing Definition

Drip pricing involves adding mandatory fees during checkout without upfront disclosure to consumers.



Legal Implications

Undisclosed delivery charges can be illegal under consumer protection laws, especially in California.



California Fee Litigation

California's fee litigation landscape is evolving to address mandatory delivery fees and protect consumers.

Other Discretionary or Hidden Fees Targeted by Lawsuits

Types of Hidden Fees

Common hidden fees include handling charges, service fees, and convenience fees often undisclosed upfront.

Legal Issues with Fees

Lawsuits arise when fees are not transparently disclosed and appear after initial pricing is presented.



Compliance Risks and Practical Guidance for Online Businesses

Risk Assessment: Identifying Vulnerable Fee Practices



Conduct Thorough Audits

Regular and detailed audits help uncover fees that may be considered unnecessary or excessive.

Identify Vulnerable Charges

Pinpoint fee structures that are susceptible to being labeled as junk fees by regulators or customers.

Prevent Legal Challenges

Proactive risk assessment helps avoid regulatory scrutiny and legal problems related to fees.

Best Practices for Transparency and Disclosure



Upfront Fee Disclosure

Clearly disclose all fees at the beginning to prevent hidden charges and build trust.

Avoid Drip Pricing

Prevent drip pricing by ensuring all costs are visible and included in initial pricing.

Justified and Lawful Fees

Ensure all fees are fair, justified, and comply with legal regulations to reduce litigation risks.

Build Consumer Trust

Transparency promotes consumer confidence, leading to stronger business relationships.

Mitigation Strategies: Legal Review and Process Adjustments



Legal Review of Pricing Policies

Conducting regular legal reviews ensures pricing policies comply with current regulations and reduce litigation risks.

Training Customer-Facing Teams

Providing training equips teams to communicate pricing clearly and handle fee-related inquiries effectively.

Checkout Process Adjustments

Adjusting checkout processes helps ensure transparent fee disclosures and compliance with legal standards.

Conclusion

Legal Challenges in Junk Fee Litigation

Online businesses face complex legal challenges related to junk fee litigation, particularly in California.

Importance of Transparent Policies

Adopting clear and transparent fee policies helps businesses manage risks and maintain consumer trust.

Navigating Legal Risks

Understanding the legal landscape and scrutinizing fee practices enable businesses to navigate risks effectively.

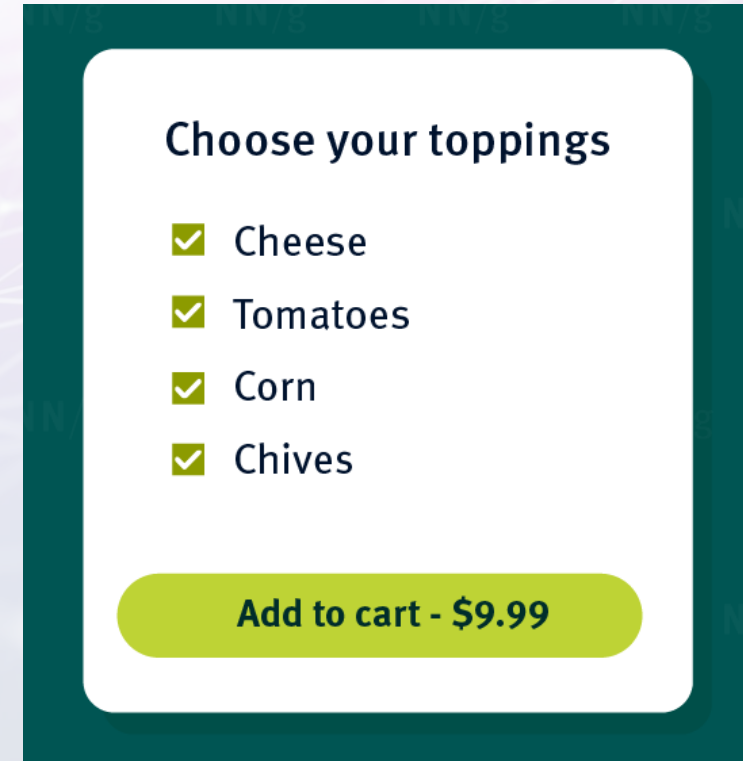
FTC Negative Option Rule: Requirements and Implications

Rule promulgated by the FTC – May 2025

A negative option contract is:

- “[A] provision . . . under which the consumer's **silence or failure to take affirmative action to reject . . . or to cancel** the agreement is interpreted by the . . . seller **as acceptance or continuing acceptance** of the offer, including . . . :
 - (1) An automatic renewal;
 - (2) A continuity plan;
 - (3) A free-to-pay conversion or fee-to-pay conversion; or
 - (4) A pre-notification negative option plan”

16 CFR 425.2



Choose your toppings

- ✓ Cheese
- ✓ Tomatoes
- ✓ Corn
- ✓ Chives

Add to cart - \$9.99

What is a Negative Option Contract?

THE BIG 1¢ STEAL!

TAKE ANY 11 ALBUMS FOR A PENNY. THEN TAKE A 12TH ONE FREE! plus shipping and handling

if you join Columbia Record & Tape Club now and agree to buy 8 more selections (at regular Club prices) in the next 3 years

317776 SUPERTRAMP <small>[REX] ...fanciest last words...</small>	318154 DURAN DURAN <small>[COLUMBIA] RIO</small>	318626 WILLIE NELSON <small>[COLUMBIA] TOUGHER THAN LEATHER</small>
318386 MARTY ROBBINS <small>[COLUMBIA] BIGGEST HITS</small>	318188 MICKEY GILLEY <small>[COLUMBIA] BIGGEST HITS</small>	318675 PLACIDO DOMINGO <small>[COLUMBIA] My Life For A Song</small>
319016 WILLIE NELSON <small>[COLUMBIA] WYLLON JENNINGS TAKE IT TO THE LIMIT</small>	318303 CULTURE CLUB <small>[COLUMBIA] RIDING TO BE CLEVER</small>	320713 BOB SEGER & THE SILVER BULLET BAND <small>[COLUMBIA] NIGHT MOVES</small>
321067 THE CHARLIE DANIELS BAND <small>[COLUMBIA] A DECADE OF HITS</small>	321323 NATALIE COLE <small>[COLUMBIA] I'm Ready</small>	320754 JOHNNY LEE <small>[COLUMBIA] HEY BARTENDER</small>
321109 AMERICA <small>[COLUMBIA] YOUR MOVE</small>	321331 HERBIE HANCOCK <small>[COLUMBIA] Future Shock</small>	321166 AL CAIOLA <small>[COLUMBIA] Guitar Of Plenty</small>
321300 Barbra Streisand's Greatest Hits, Vol. II <small>[COLUMBIA]</small>	321349 CRYSTAL GAYLE <small>[COLUMBIA] Greatest Hits</small>	321315 Gordon Lightfoot <small>[COLUMBIA] SALUTE</small>

What is a Negative Option Contract?

☒ **Make this a monthly recurring donation**



**Let's break a fundraising record on
President Trump's birthday! Join now!**
This additional donation will process on 6/14

“The provision and use of the option to use default, pre-checked recurring donation boxes may be inherently misleading, cause unauthorized transactions . . .”

- *Seagull v. WinRed, Inc.*, No. X07HHDCV226154527S, 2023 WL 4322714, at *4 (Conn. Super. Ct. June 28, 2023)

Rule promulgated by the FTC – May 2025

Disclosures: . . . “it is a violation of this part . . . to fail to disclose to a consumer . . .”

1. Clear and conspicuous disclosures of material terms
2. “Immediately adjacent”
3. Prior to acceptance

16 CFR 425.4

Consent:

- “Obtain the consumer’s unambiguously affirmative consent . . .separately from any other portion of the transaction”

16 CFR 425.5

But wait!

United States Court of Appeals
For the Eighth Circuit

No. 24-3137

Custom Communications, Inc., doing business as Custom Alarm

Petitioner

v.

Federal Trade Commission

Respondent

“ . . . we certainly do not endorse the use of unfair and deceptive practices in negative option marketing, **the procedural deficiencies of the Commission's rulemaking process are fatal here. . . . vacatur of the entire Rule is appropriate in this case . . .**”

- *Custom Commc'ns, Inc. v. Fed. Trade Comm'n*, 142 F.4th 1060, 1074–75 (8th Cir. 2025)

Effect?

SUPREME COURT OF THE UNITED STATES

Syllabus

TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.
v. CASA, INC., ET AL.

“Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action. See 5 U.S.C. § 706(2) (authorizing courts to ‘hold unlawful and set aside agency action’).”

Trump v. CASA, Inc., 145 S. Ct. 2540, 2554 (2025)

BUT many states have Automatic Renewal Laws with similar provisions

Best practices:

1. Clear and conspicuous disclosure of subscription terms

- That the subscription will continue until canceled by the customer
- A description of the cancellation policy
- The amount that will be charged
- That the amount may change (if relevant), and the amount to which it will change, if known
- When the subscription will expire, or if it is continuous (unless the length is chosen by the consumer)

2. Separate consent to automatic renewal agreements

- No confusing information
- Retain verification

3. Post-signup written acknowledgements and notifications

The screenshot displays a subscription plan interface. At the top, it says "Your plan" with a "Change plan" link. The plan is "Premium Individual" for "1 Premium account" at a price of "\$0.00" for "1 month". It indicates the "Start free month" begins "Today" and the "Start billing date" is "Aug 20, 2024". Below this, a list of terms states: "Only \$11.99 + tax / month after 1 month trial", "You won't be charged until Aug 20, 2024", "Cancel anytime. Offer terms apply.", and "We'll remind you 7 days before you get charged."

Your plan Change plan	
Premium Individual 1 Premium account	\$0.00 For 1 month
Start free month	Today
Start billing date	Aug 20, 2024
<ul style="list-style-type: none">• Only \$11.99 + tax / month after 1 month trial• You won't be charged until Aug 20, 2024• Cancel anytime. Offer terms apply.• We'll remind you 7 days before you get charged.	

BUT many states have Automatic Renewal Laws with similar provisions

Best practices:

4. **Businesses must provide a “cost-effective, timely and easy-to-use” cancellation mechanism**, such as a toll-free phone number or e-mail address (online if the user signed up online)
5. **Notifications if:**
 - The subscription term is one year or longer
 - The subscription contains an expiring free trial or initial discount period longer than 31 days
6. **Note on arbitration:**
 - “[T]he notices on the ‘Start my trial’ screens of the JustAnswer website were not sufficiently conspicuous to bind Plaintiffs, because they were less conspicuous than the ARL's statutory notice requirements”
 - *Sellers v. JustAnswer LLC*, 73 Cal. App. 5th 444, 453 (2021)

QUIZ!

We'd love your feedback

Before you go, take a minute to let us know how we can improve.

Continue →

[No thanks, cancel my subscription immediately](#)

Special Offer

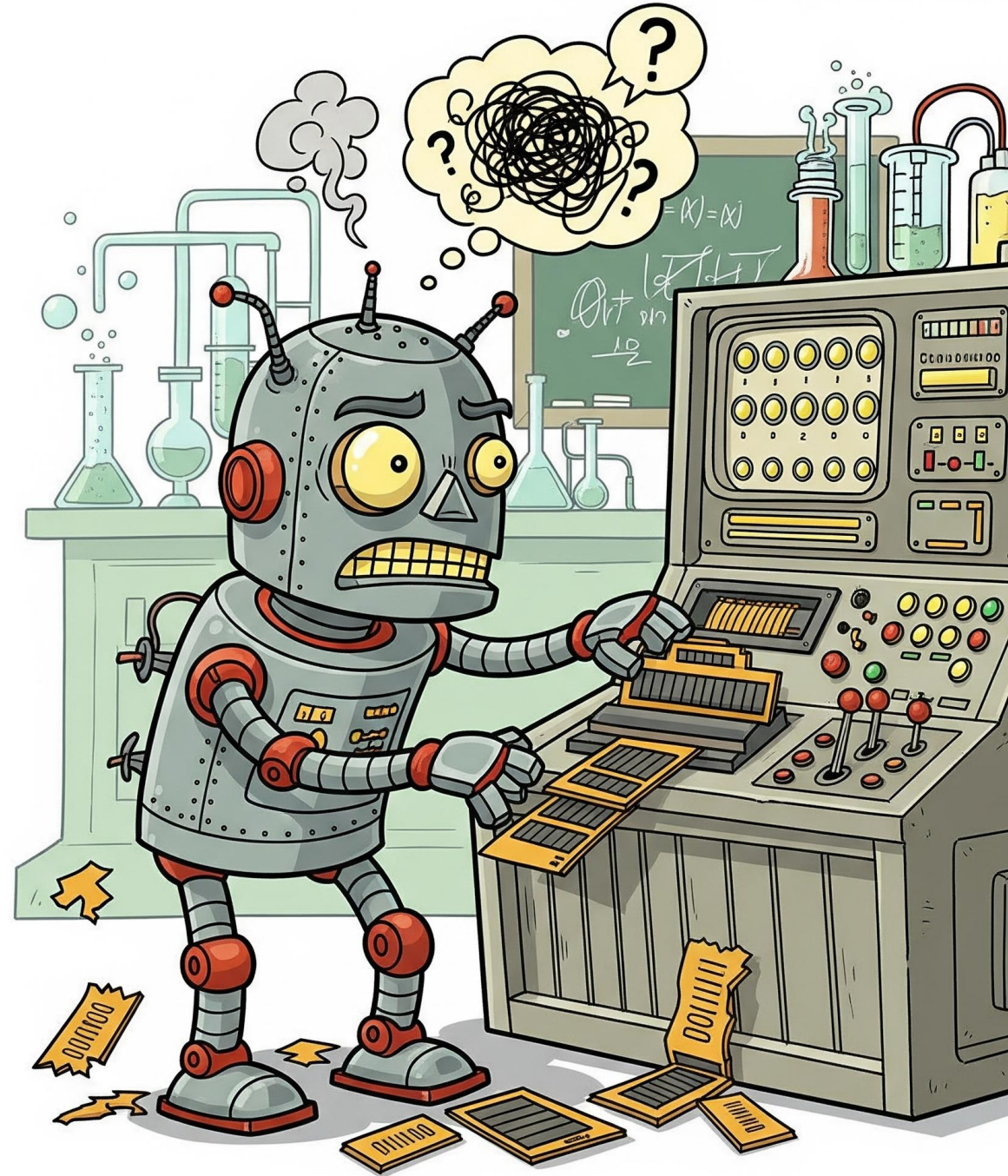
Wait, don't go!

Get 20% off for 3 months when you accept this special offer.

Accept offer

AI Pricing Algorithms: Legal and Compliance Considerations

8/28/2025



What is Algorithmic Pricing?

Programs that use complex data to set dynamic prices:

- Location
- Surges in demand
- Individualized information based on browsing history, purchase data
- AI accelerates these tools



Legal Risks

- Allegations of price fixing, collusion, and anti-competitive behavior
- Principally in:
 - Hotel prices
 - Rental prices
 - Healthcare reimbursement amounts



2024 – Government Enforcement Actions

“If anything, the use of A.I. or algorithmic-based technologies should concern us more because it’s **much easier to price fix when you’re outsourcing it to an algorithm** versus when you’re sharing manila envelopes in a smoke-filled room.”

— *Jonathan Kanter, Assistant Attorney General*

STATE OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188,

Plaintiffs,

v.

REALPAGE, INC.
2201 Lakeside Blvd.
Richardson, TX 75082,

Defendant.

COMPLAINT

2024 – Government Enforcement Actions

Allegations:

- Violations of Sherman Act
- Landlords shared **non-public, commercially sensitive pricing data** and occupancy rates with each other via RealPage
- Landlords **agreed to set prices** with software recommendations

VIII. VIOLATIONS ALLEGED

First Claim for Relief: Violation of Section 1 of the Sherman Act by Unlawfully Sharing Information for Use in Competitors' Pricing

224. Plaintiffs incorporate the allegations of paragraphs 1 through 223 above.

225. Each landlord using AIRM and YieldStar has agreed with RealPage to provide RealPage daily nonpublic, competitively sensitive data. RealPage invites each landlord to share this information so that it can be pooled to generate pricing recommendations for the landlord and its competitors. Each of these landlords uses RealPage software, knowing or learning that RealPage will use this data to train its models and provide floor plan price recommendations and unit-level pricing not only for the landlord, but for the landlord's competitors (and vice versa). Landlords are therefore

Plaintiff's civil actions

Allegations:

- Sherman Act violations
- Horizontal and vertical pricing collusion (“hub and spoke”) between hotels and software company
- Anti-competitive effect: prices go up

UNITED STATES DISTRICT COURT DISTRICT OF NEVADA	
RICHARD GIBSON, and HERIBERTO VALIENTE,	Case No.
Plaintiffs,	CLASS ACTION COMPLAINT
v.	<u>JURY TRIAL DEMANDED</u>
MGM RESORTS INTERNATIONAL, CENDYN GROUP, LLC, THE RAINMAKER GROUP UNLIMITED, INC., CAESARS ENTERTAINMENT INC., TREASURE ISLAND, LLC, WYNN RESORTS HOLDINGS, LLC,	
Defendants.	
CLASS ACTION COMPLAINT	

Results?

DOJ Action is ongoing

Consent judgment:

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREYSTAR MANAGEMENT SERVICES, LLC

Defendant.

No. 1:24-cv-00710-WLO-JLW

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on January 7, 2025;

AND WHEREAS, the United States and Defendant, Greystar Management Services, LLC, have consented to entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law;

Results?

Some plaintiff's actions have moved past the pleadings stage:

Allegations sufficient where plaintiffs alleged RMS [pricing software] works “only if each lessor [defendant] **divulges confidential and commercially sensitive pricing** information” and “**de-prioritized occupancy** in favor of algorithmic pricing”

“The Court finds that plaintiffs have plausibly alleged a conspiracy in violation of § 1 of the Sherman Act.”

— *Duffy v. Yardi Sys., Inc.*, 758 F. Supp. 3d 1283 (W.D. Wash. 2024)

Results?

Some have been dismissed:

Holding that **no Sherman Act violation** where:

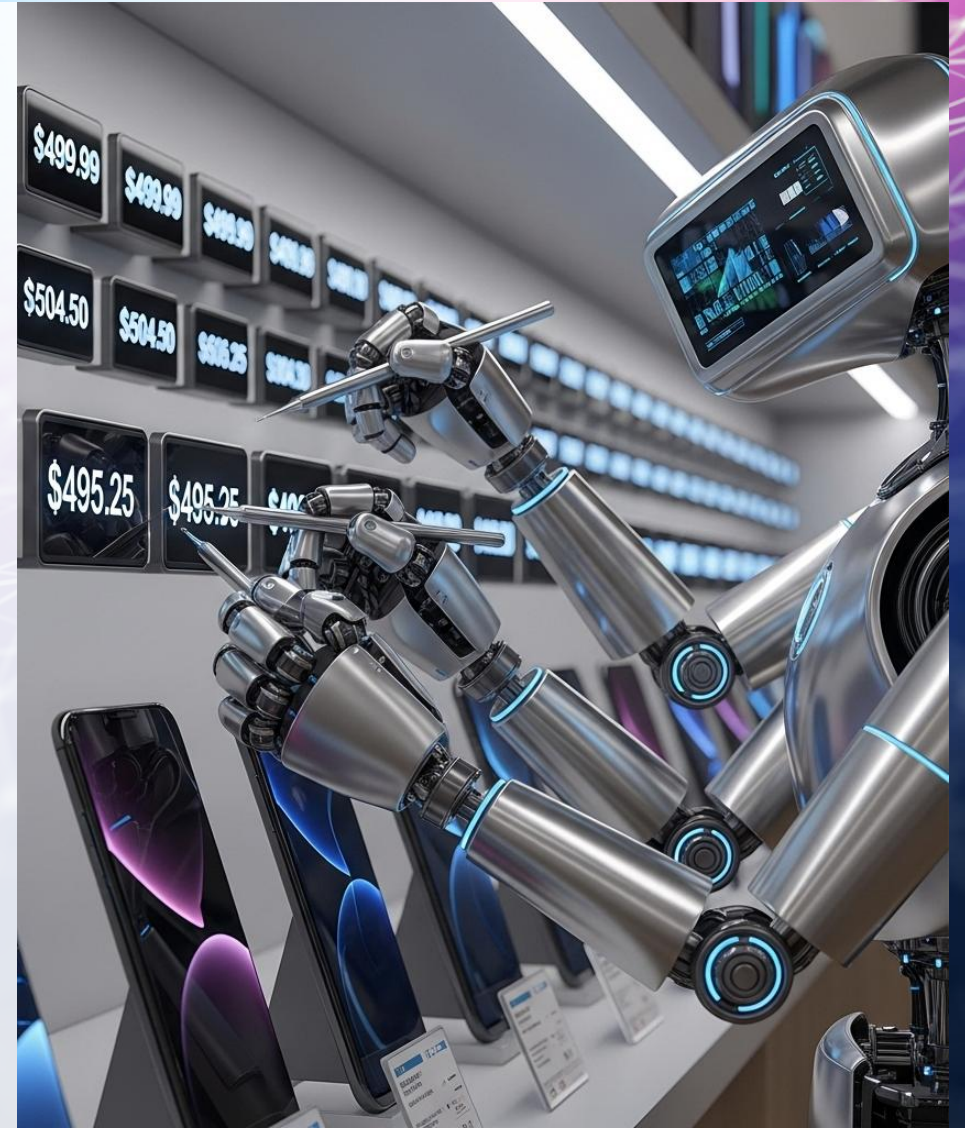
- Pricing software was not a “vertical agreement”
- Software akin to bookkeeper or tax advisor
- “[R]evenue-management software products serve a ‘back-office’ function; they are not used to make hotel rooms available in the first instance”

— *Gibson v. Cendyn Grp., LLC*, No. 24-3576, 2025 WL 2371948 (9th Cir. Aug. 15, 2025)

FOR PUBLICATION	
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT	
RICHARD GIBSON; ROBERTO MANZO,	No. 24-3576
<i>Plaintiffs - Appellants,</i>	D.C. No. 2:23-cv-00140- MMD-DJA
v.	
CENDYN GROUP, LLC; THE RAINMAKER GROUP UNLIMITED, INC.; CAESARS ENTERTAINMENT, INC.; TREASURE ISLAND, LLC; WYNN RESORTS HOLDINGS, LLC; BLACKSTONE INC.; BLACKSTONE REAL ESTATE PARTNERS VII L.P.; JC HOSPITALITY, LLC,	OPINION
<i>Defendants - Appellees.</i>	

Best practices:

- Generate prices based on internal or public data
- Bar software from using your company's data to make recommendations to competitors
- Take care when communicating with competitors on sensitive topics
- Treat algorithm-based pricing as a suggestion, not a mandate



Finally:
... consider humans.



False Reference Price Litigation: The Current Landscape

Navigating the Risks of Advertising Discounts

What is False Reference Pricing?

- **The Illusion of a Bargain:** Advertising a "discount" from a former price that was never genuinely offered or was artificially inflated.
- **Common Tactics:**
 - Misleading "Original" or "List" Prices
 - Manufacturer's Suggested Retail Prices (MSRPs)
 - Perpetual "sales" that are, in effect, the regular price.
- **The Harm:** Misleads consumers into believing they are getting a better deal than they actually are, creating a false sense of urgency and value.



The Legal Landscape

- **Federal Oversight:** The Federal Trade Commission (FTC) prohibits "unfair or deceptive acts or practices." The FTC's "Guides Against Deceptive Pricing" require that a former price be the "actual, bona fide price" at which an item was offered for a "reasonably substantial period of time."
- **State Laws:** Many states have their own, often stricter, laws. California, Washington, and Oregon are particularly active in private enforcement.
- **The Rise of Class Actions:** Private litigants are driving the enforcement of these laws through class-action lawsuits.

Recent Litigation Trends: West Coast Focus

California: The Epicenter: California is a hotbed for these lawsuits due to its consumer-friendly laws, like the Unfair Competition Law and the False Advertising Law.

Washington: The state's Consumer Protection Act is being used to target retailers for creating a false sense of urgency with "limited-time" sales that are not, in fact, limited.

Oregon: Recent litigation has focused on "Buy One, Get One Free" (BOGO) offers where the price of the first item was allegedly inflated to cover the cost of the "free" one.

Best Practices for Compliance



BE TRUTHFUL AND TRANSPARENT: YOUR "REGULAR" PRICE SHOULD BE A PRICE AT WHICH YOU HAVE GENUINELY OFFERED THE ITEM FOR A SUBSTANTIAL PERIOD. LOOKBACK: 90 DAYS



SUBSTANTIATE YOUR PRICES: KEEP DETAILED RECORDS OF YOUR PRICING HISTORY TO BACK UP ANY ADVERTISED DISCOUNTS.



AVOID PERPETUAL "SALES": IF AN ITEM IS ALWAYS ON SALE, THE SALE PRICE IS THE REAL PRICE.



CLEAR AND CONSPICUOUS DISCLOSURES: IF YOU ARE USING AN MSRP, BE CLEAR ABOUT WHAT THAT PRICE REPRESENTS.



REGULARLY AUDIT YOUR PRICING PRACTICES: PROACTIVELY REVIEW YOUR ADVERTISING AND PRICING TO ENSURE COMPLIANCE.

Key Takeaways & Q&A

- **Increased Scrutiny:** Regulators and plaintiffs' attorneys are actively targeting deceptive pricing.
- **Significant Financial Risk:** Settlements can be extremely costly.
- **Proactive Compliance is Key:** The best defense is a good offense. Ensure your pricing practices are transparent and well-documented.
- **Questions?**

Presenters



Ana Tagvoryan
Partner



Erica Graves
Partner