

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Joseph J. Simons, Chairman**  
                                  **Noah Joshua Phillips**  
                                  **Rohit Chopra**  
                                  **Rebecca Kelly Slaughter**  
                                  **Christine S. Wilson**

**In the Matter of**

**URTHBOX, INC., a corporation, et al.**

**DOCKET NO.**

**COMPLAINT**

The Federal Trade Commission, having reason to believe that UrthBox, Inc., a corporation (“Corporate Respondent”), and Behnam Behrouzi, individually and as an officer of UrthBox, Inc. (collectively, “Respondents”), have violated the Federal Trade Commission Act, 15 U.S.C. § 45, and the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8403, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Corporate Respondent UrthBox, Inc., is a California corporation with its principal office or place of business at 535 Mission Street, Suite 1820, San Francisco, California 94105.
2. Respondent Behnam Behrouzi is an officer of Corporate Respondent. Individually or in concert with others, he controlled or had the authority to control the acts and practices alleged in this complaint. His principal office or place of business is the same as that of Corporate Respondent.
3. Since 2014, Corporate Respondent has advertised, offered for sale, sold, and distributed snack boxes to consumers. Corporate Respondent has offered consumers one-, three-, and six-month subscriptions to receive its snack boxes. The monthly cost of its snack boxes has ranged from \$19.99 to \$199.00 depending on the box size. Corporate Respondent has required its customers to pre-pay the entire cost of the subscription term.
4. The acts and practices of Respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

## Corporate Respondent's Free Snack Box Offering

5. From October 2016 to November 2017, Corporate Respondent offered consumers a “free trial” of its snack boxes. As part of its free trial box offering, Corporate Respondent automatically enrolled consumers who ordered the free trial box in a six-month subscription of the same box, which typically cost \$77 to \$269 depending on the box size, unless they cancelled prior to the program’s subscription date.

6. Since the fall of 2016, Corporate Respondent disseminated, or has caused to be disseminated, advertisements for its free trial snack boxes, including but not necessarily limited to the attached Exhibits A-D. Those materials contain the following statements:

A. “TASTY SNACK BOX FREE”

(Exhibit A, UrthBox banner ad) (in or after October 2016).

B. “UrthBox Gives Away 5,000 Free Snack Boxes in April 2017 for Its ‘UrthDay’ Celebration in Observance of Earth Day

....

[H]ealth and earth conscious consumers nationwide will get a free UrthBox, valued at up to \$49 USD, by visiting [www.urthbox.com/urthday](http://www.urthbox.com/urthday) and being one of 5,000 people to claim their free box.... Consumers will pay a \$2.99 shipping and handling fee for the free UrthDay box.”

(Exhibit B, [www.prnewswire.com](http://www.prnewswire.com)) (April 2017)

C. “Enjoy a FREE TRIAL Box of Tasty #Snacks From UrthBox! Vegan & Gluten-Free Options! Ends Tdy!”

(Exhibit C, posting on UrthBox’s Twitter account) (January 2017).

D. “Enjoy a FREE Trial of Tasty Snacks From UrthBox!  
ENJOY A FREE FIRST BOX OF TASTY SNACKS!  
Just Pay \$2.99 for Shipping & Handling

....

GET YOUR FREE BOX  
DISCOVER TASTY SNACKS EVERY MONTH

....

CLICK HERE TO GET YOUR FIRST BOX FREE!”

(Exhibit D, [www.certifiKID.com](http://www.certifiKID.com)) (April 2017).

## Desktop Version of Website

7. Using a computer, consumers who clicked on links in Corporate Respondent’s advertisements for a free snack box were directed to a version of Corporate Respondent’s website that promoted the free snack box offer, including but not necessarily limited to the

attached Exhibit E (June 2017). The landing page of the website stated “A MONTHLY BOX OF HEALTHY SNACKS! .... FIRST BOX FREE! JUST PAY SHIPPING,” or similar language. (Exhibit E-1) The landing page also contained an image of Corporate Respondent’s snack box and a large, bright green button stating “GET FREE TRIAL!,” or similar language. Consumers who clicked the “GET FREE TRIAL!” or similar button on the landing page were sent to the bottom of the landing page where they were asked to choose the size of their free snack box, such as mini, small, medium, and large. (Exhibit E-2) For each snack box size, this section of the landing page reiterated the “FREE TRIAL!” offer and indicated the regular monthly price, which was crossed out (e.g., ~~\$29.99~~ for the small box). The page also stated that consumers would pay just \$2.99 to \$14.99 for shipping and handling, depending on the box size.

8. After selecting their box size, consumers were directed to a screen where they chose a box type, such as classic, gluten-free, vegan, or diet. (Exhibit E-3) The large header at the top of the page read: “GET YOUR FREE TRIAL.”

9. After selecting their box type, consumers reached a checkout page. (Exhibit E-4 to E-5) The focal point of the checkout page was a form that consumers filled out with their name, shipping address, billing address, credit card information, and account information. The bright green header at the top of the form stated: “You’re Getting A Free UrthBox!” After consumers completed the form, consumers reached a big green “CONTINUE” button.

10. Consumers who completed the form on the checkout page and clicked the large, bright green “CONTINUE” button were automatically enrolled in a six-month subscription for the box size and type that they selected for the free trial. Corporate Respondent charged consumers the total amount owed for six months of snack box shipments on the first of the month following shipment of the free box. Consumers had to cancel before the first of the month following shipment of the free box to avoid this six-month pre-payment charge.

11. On its website, Corporate Respondent did not clearly and conspicuously disclose, before obtaining the consumers’ billing information: (1) the length of the subscription term (six months); and the amount that Corporate Respondent charges the consumer (the six-month pre-payment charge). When Corporate Respondent originally offered the free snack box offer on its website, it failed to adequately disclose these terms to consumers. On or around February 2017, Corporate Respondent added information about these terms on its “Terms & Conditions” and “FAQ” pages, which were accessible to consumers via hyperlinks. Consumers, however, were not required to click on these hyperlinks to obtain a free snack box. Moreover, consumers were unlikely to click on these hyperlinks because, as labeled, they failed to convey the importance, nature, or relevance of the information to which they lead. Moreover, when clicked, consumers would have had to scroll through lengthy pages with dense legalese to find the relevant information.

12. On or around February 2017, Corporate Respondent also added the following statement to the Checkout Page:

#### Free Trial Shipment

UrthBox is a members only snack club that delivers new products every month. After your free trial, you'll get six months of regular monthly deliveries for just \$19.99 a month pre-paid. Please enjoy your free UrthBox on us!

This disclosure, however, was in relatively small font and was not in close proximity to the "CONTINUE" button. Moreover, it did not clearly disclose that Corporate Respondent would charge consumers for the entire six months (e.g., \$119.99) and the timing of the charge (the first of the month following shipment of the free box). For the reasons described in Paragraphs 11 and 12, consumers were unlikely to see and understand material terms of the free snack box offer before providing their billing information.

#### Mobile Version of Website

13. Using a mobile device, consumers who clicked on links in Corporate Respondent's advertisements for a free snack box were directed to a mobile version of Corporate Respondent's website that promoted the free box offer, including but not necessarily limited to the attached Exhibit F (July 2017). The landing page of the mobile website stated "A MONTHLY BOX OF TASTY SNACKS! ...FIRST BOX FREE! JUST PAY SHIPPING." (Exhibit F-1) The landing page also contained an image of Corporate Respondent's snack box and a large, bright green button stating "GET FREE BOX" or similar language. Consumers who clicked the "GET FREE BOX" or similar button on the landing page were sent to the bottom of the landing page where they were asked to select the size of their free snack box, such as mini, small, medium, and large. (Exhibit F-1) For each snack box size, this section of the landing page reiterated the "FREE TRIAL!" offer and indicated the regular monthly price, which was crossed out (e.g., \$29.99 for the small box). The page also stated that consumers would pay just \$2.99 to \$14.99 for shipping and handling, depending on the box size.

14. After selecting their box size, consumers were directed to a screen where they chose a box type, such as classic, gluten-free, vegan, or diet. (Exhibit F-2)

15. After selecting their box type, consumers reached a checkout page. (Exhibit F-3 to F-5) The focal point of the checkout page was a form that consumers filled out with their name, shipping address, billing address, credit card information, and account information. The bright green header at the top of the form stated: "Enjoy Your Free UrthBox!" After consumers completed the form, consumers reached a big green "FINISH" button.

16. Consumers who completed the form on the checkout page and clicked the "FINISH" button were automatically enrolled in a six-month subscription for the box size and type that they selected for the free trial. Corporate Respondent charged consumers the total amount owed for six months of snack box shipments on the first of the month following shipment of the free box. Consumers had to cancel before the first of the month following shipment of the free box to avoid this six-month pre-payment charge.

17. Similar to the desktop version of the website, to the extent Corporate Respondent's mobile website relating to the free snack box offer contained purported disclosures about the terms of the free trial offer, any such disclosures were inadequate in terms of their content, presentation, proximity, prominence, or placement such that consumers were unlikely to see or understand such disclosures.

18. In numerous instances, consumers who had ordered a free snack box from Corporate Respondent via the desktop or mobile website did not know that Corporate Respondent had enrolled them in a six-month subscription plan until they discovered a charge on their credit card statement.

### **Corporate Respondent's Advertising Through Customer Reviews and Endorsements**

19. From January 2017 through November 2017, Corporate Respondent conducted an incentive program to induce customers to post positive reviews about its snack boxes on the Better Business Bureau (BBB) website. In numerous instances, when customers contacted Customer Service, Corporate Respondent's representatives offered to send them a free snack box if they posted positive reviews on the BBB's website. Corporate Respondent paid cash bonuses to its Customer Service representatives for each positive review they induced consumers to post on the BBB website. Corporate Respondent's customer service representatives offered participation in the incentive program to hundreds of its customers, including some who called to cancel their snack box subscriptions.

20. To participate in the incentive program, Corporate Respondent's Customer Service representatives instructed customers to click on a link directing them to the customer review portion of the BBB website; to post a positive review of Corporate Respondent; to verify the review with the BBB; and to send a screenshot of their review to Corporate Respondent by email. After customers sent proof that they had posted a positive, verified customer review on the BBB website, Corporate Respondent sent them a free snack box. The BBB requires customers to certify that they "have not been offered any incentive or payment originating from the business to write the review." Without this certification, the BBB would not have posted the review.

21. In numerous instances in connection with the incentive program, Corporate Respondent's customers posted positive reviews on the BBB website to qualify for a free snack box. These reviews appeared to be independent comments reflecting the opinions and experiences of ordinary consumers who had tried Corporate Respondent's products and services. These customers did not disclose that Corporate Respondent had offered them a free snack box in return for their positive customer reviews.

22. In 2017, after Corporate Respondent implemented its BBB incentive program, customer reviews of Corporate Respondent on the BBB website grew exponentially from 9 reviews in 2016, all negative, to 695 reviews for Corporate Respondent in 2017. Of these 695 customer reviews posted in 2017, 612 were positive, 15 were neutral, and 68 were negative. Consequently, the ratio of positive to negative reviews jumped from 100% negative to 88% positive after implementation of the incentive program. A vast majority of the customer reviews that resulted in this growth were submitted pursuant to Corporate Respondent's incentive program.

23. Because of its BBB incentive program, Corporate Respondent's BBB Business Review ratings improved significantly. Corporate Respondent received a much higher "Customer Review Rating" as well as a higher "Composite Rating" on its BBB Business Review page than it would have but for the incentive program. Millions of customers consult BBB Business Reports to make their purchasing decisions each month. Those consumers who accessed the Business Report for Corporate Respondent during 2017 would have seen hundreds of positive, "verified," customer reviews that should never have been posted to the BBB website because they were incentivized by the company being reviewed.

24. As part of the incentive program described above, Corporate Respondent also offered free snack boxes to customers in exchange for posting positive reviews on TrustPilot.com, a third-party website that publishes customer reviews of online businesses. In numerous instances, customers took advantage of Corporate Respondent's offer by posting positive reviews in exchange for free snack boxes. In numerous instances, the resulting reviews appeared to be independent comments reflecting the opinions and experiences of ordinary consumers who had tried Corporate Respondent's service and did not disclose that Corporate Respondent had given these consumers free snack boxes for their reviews.

25. From 2014 to November 2017, Corporate Respondent offered its customers store credit and/or free snack boxes in exchange for posting about their snack boxes on their personal social media accounts, including Twitter, Instagram, Tumblr, and Facebook. In numerous instances, customers took advantage of Corporate Respondent's offers, without disclosing on their accounts that Corporate Respondent had promised store credit or free products in exchange for their posts. Throughout this period, Corporate Respondent had no procedures or policies in place to educate or monitor their endorsers' posts on social media or other third-party websites.

### **Restore Online Shoppers' Confidence Act**

26. In 2010, Congress passed the Restore Online Shoppers' Confidence Act, 15 U.S.C. §§ 8401 et seq., which became effective on December 29, 2010. Congress passed ROSCA because "[c]onsumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business." Section 2 of ROSCA, 15 U.S.C. § 8401.

27. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as that term is defined in the Commission’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310.2(w), unless the seller (1) clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer’s billing information, (2) obtains the consumer’s express informed consent before making the charge, and (3) provides a simple mechanism to stop recurring charges. See 15 U.S.C. § 8403.

28. The TSR defines a negative option feature as: “in an offer or agreement to sell or provide any goods or services, a provision under which the consumer’s silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.” 16 C.F.R. § 310.2(w).

29. As described in Paragraphs 5 to 18, above, Respondents have advertised and sold snack box subscriptions to consumers through a negative option feature as defined by the TSR. See 16 C.F.R. § 310.2(w).

30. Pursuant to Section 5 of ROSCA, 15 U.S.C. § 8404, a violation of ROSCA is a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a.

## **VIOLATIONS OF THE FTC ACT**

### **Count I**

#### **Failure to Disclose Negative Option Terms – Free Trial**

31. Through the means described in Paragraphs 5 to 18, Respondents have represented, directly or indirectly, expressly or by implication, that consumers could obtain a free trial of a snack box for a nominal shipping and handling fee.

32. In numerous instances in which Respondents have made the representation set forth in Paragraph 31, Respondents have failed to disclose, or disclose adequately, material terms and conditions of the offer, including:

- A. That Corporate Respondent would automatically enroll consumers in a six-month subscription plan; and
- B. On the first of the month following shipment of their free snack box, Corporate Respondent would charge consumers the total amount for six months of shipments of snack boxes.

33. Respondents’ failure to disclose or disclose adequately the material information described in Paragraph 32, in light of the representation set forth in Paragraph 31, is a deceptive act or practice.

**Count II**  
**False Claim of Independent Reviews**

34. Through the means described in Paragraphs 19 to 25, Respondents have represented, directly or indirectly, expressly or by implication, that positive customer reviews of Corporate Respondent and its snack boxes on the Better Business Bureau's website and other third-party websites reflect the independent opinions or experiences of ordinary impartial customers.

35. In fact, in numerous instances, these customer reviews on the BBB website and other third-party websites did not reflect the independent opinions or experiences of ordinary impartial customers. In numerous instances, those customers received compensation, including free snack boxes, to post positive reviews on the Better Business Bureau's website and other third-party websites. Therefore, the representation set forth in Paragraph 34 is false or misleading.

**Count III**  
**Failure to Disclose Material Connections**

36. Through the means described in Paragraphs 19 to 25, Respondents have represented, directly or indirectly, expressly or by implication, that positive customer reviews or endorsements of Corporate Respondent and its snack boxes posted on the Better Business Bureau's website and other third-party websites reflected their customers' opinions or experiences.

37. In numerous instances in which Respondents have made the representation set forth in Paragraph 36, Respondents have failed to disclose, or disclose adequately, that some of those customers received compensation, including free snack boxes, to post those reviews on the Better Business Bureau's website and other third-party websites. This fact would be material to consumers in evaluating the reviews in connection with a purchase or use decision.

38. Respondents' failure to disclose or disclose adequately the material information described in Paragraph 37, in light of the representation set forth in Paragraph 36, is a deceptive act or practice.

**VIOLATIONS OF ROSCA**

**Count IV**  
**Illegal Negative Option Marketing**

39. Through the means described in Paragraphs 5 to 18, in connection with selling snack boxes on the Internet through a negative option feature, Respondents have failed to:

- A. clearly and conspicuously disclose all material terms of the negative option feature before obtaining the consumer's billing information, including (i) that Corporate Respondent would automatically enroll consumers in a six-month subscription plan; and (ii) on the first of the month following shipment of their free snack box, Corporate Respondent would charge consumers the total amount owed for six months of shipments of snack boxes; and

B. obtain consumers' express informed consent to the negative option feature before charging the consumers' credit or debit card.

40. The acts and practices of Respondents as alleged in Paragraph 39, above, constitute acts or practices that violate Section 4 of the Restore Online Shopper's Confidence Act.

41. The acts and practices of Respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this \_\_\_\_\_ day of \_\_\_\_\_, 20., has issued this Complaint against Respondents.

By the Commission.

April J. Tabor  
Acting Secretary

SEAL: