

Concurring Statement of Commissioner Christine S. Wilson
WealthPress Holdings, LLC

January 13, 2023

Today the Commission announces a complaint and stipulated order against WealthPress Holdings, LLC, InvestPub, LLC, Roger Scott, and Conor Lynch resolving allegations that they violated Section 5 of the FTC Act and the Restore Online Shoppers Confidence Act (“ROSCA”).¹ I support the complaint, which alleges that the defendants deceptively claim that their experts have years of experience successfully trading in financial markets and that they have developed complex algorithms, or other strategies, for picking successful trades that will generate highly lucrative returns. The complaint alleges that these earnings claims are false and unsubstantiated. I support the inclusion of a ROSCA count in this complaint under the highly specific circumstances presented here. And I also support the consent.

The complaint alleges that the defendants represent that they have a tested profitable system that is likely to make subscribers money (*see, e.g.*, Complaint Para. 37). For example, defendants tout earnings of “260% in two weeks, 316% in just over a week, 71% in over three weeks, and 51% in just days” and a return of \$7,300 and \$12,100 on a \$1,000 investment (Complaint Para. 31). Defendants’ promotional materials also include a statement from defendant Roger Scott, WealthPress’ most featured “trading expert” (also an owner and officer), claiming that he “used the service’s method to grow his account from a few thousand to tens of millions of dollars.” (Complaint Para. 39). The defendants offer their trading service through a negative option feature – an annual subscription that is renewed unless the consumer cancels.

ROSCA Section 8403 states that for goods or services sold through a negative option feature, the seller must “clearly and conspicuously disclose all material terms of the transaction before obtaining the consumer’s billing information.” The defendants here include a link to the terms and conditions of their trading services *below* the section where consumers provide their billing information. These terms are not set out in the order page. To find the terms, consumers must click on a link and read through a dense, multi-paragraph document. In these terms, defendants state that: “WealthPress does not represent that any account will or is likely to achieve profits or losses similar to those discussed on the Site. The past performance of any trading system or methodology is not necessarily indicative of future results.”

This information about the profitability of the system speaks to the core of why consumers would choose to purchase this system. Thus, I agree that the information is material. In evaluating this matter, though, I considered whether it is consistent with ROSCA to characterize this information as a “material term” of the transaction. I do not believe that all material information about goods or services necessarily constitutes a “material term” of a transaction. ROSCA was enacted because sellers were failing to disclose the terms of negative option features and to obtain consumers’ express, informed consent to the negative option.² It is not a

¹ The complaint further alleges that the defendants made the deceptive earnings claims despite being in receipt of the Commission’s Notice of Penalty Offenses Concerning Money-Making Opportunities.

² 15 U.S.C. § 8401.

statute generally prohibiting deceptive marketing claims. Therefore, it is important to assess whether information is a claim or a term when considering ROSCA's applicability.

Here, the defendants place this information in a document labeled "Terms and Conditions." Defendants then require consumers to click a check box on the order page, under the "complete order" button, that states "I agree to the Terms and Conditions." The defendants therefore have made this information regarding significant limitations to their services a part of the terms and conditions and require consumers to accept these terms to order the service. The terms are not disclosed before the defendants obtain consumers' billing information and the disclosure of the terms in the link is not clear and conspicuous.

In the Commission's MoviePass settlement in 2021, I supported the Commission's first allegation of a violation of ROSCA where the undisclosed material term did not relate specifically to the negative option feature but instead to the underlying good or service marketed through that feature.³ I noted then that the Supreme Court's decision in *AMG*⁴ that eliminated the FTC's ability to seek equitable monetary relief under Section 13(b) of the FTC Act to compensate consumers likely would create a temptation to test the limits of our remaining sources of authority. On numerous occasions, I have expressed concern about novel interpretations of our authority that exceed the boundaries of underlying statutes and corresponding Congressional grants of authority.⁵ I noted in MoviePass that I would scrutinize carefully any future attempts to expand ROSCA, or any other authority entrusted to the Commission, beyond the plain language.

In this case, I am satisfied that the challenged conduct falls within the statute because the defendants themselves have made the information part of the terms of sale. Information of this type that appears in another format, though, may more appropriately be viewed as a claim about the good or service and not a term of the transaction. Thus, my support for the use of ROSCA in this instance is based on the highly specific facts of this matter.

³ Concurring Statement of Commissioner Christine S. Wilson, In re Moviepass, Inc. (June 7, 2021), https://www.ftc.gov/system/files/documents/public_statements/1590708/commissioner_wilson_concur_moviepass_final.pdf

⁴ *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (2021).

⁵ Statement of Commissioner Christine S. Wilson Concurring in Part, Dissenting in Part, Notice of Proposed Rulemaking related to Made in USA Claims (June 22, 2020) (expressing concern that the proposed rule exceeds the scope of authority Congress granted the FTC), https://www.ftc.gov/system/files/documents/public_statements/1577099/p074204musawilsonstatementrev.pdf; Separate Statement of Commissioner Christine S. Wilson Concurring in Part, Dissenting in Part, *FTC v. Avant, LLC* (Apr. 15, 2019) (dissenting with respect to the maiden use of the Telemarketing Sales Rule (TSR) provision related to novel payments (specifically remotely created checks) in a non-fraud case), https://www.ftc.gov/system/files/documents/public_statements/1514073/avant_inc_1623090_separate_statement_of_christine_s_wilson_4-15-19.pdf. In the *Avant* matter, the Commission sought to impose liability under the TSR against a legitimate company, selling legitimate products, in circumstances not contemplated when the Rule was promulgated to address fraudulent businesses abusing these types of payments. *Id.*