



FTC Says These 'Free' Offers Were Anything But Free

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Last month, the Federal Trade Commission filed a lawsuit against a Canadian entrepreneur and a group of web-based businesses that promised “free” offers that were far from free. In its lawsuit, the FTC charges the online marketers with scamming consumers in the United States, the United Kingdom, Canada, Australia, and New Zealand out of more than \$450 million by charging them for products and services that the customers did not purchase. The lawsuit is the latest federal action targeting companies involved in what is known as the upsell industry and comes as a warning to online marketers to be careful in wording their advertisements.

Among those targeted in the FTC action is 24-year-old Jesse Willms, the owner of ten web-based businesses that touted free trials or risk-free offers on several products, including acai berry weight-loss pills, teeth whiteners, health supplements, work-at-home opportunities, access to government grants, free credit reports, and penny auctions. The lawsuit alleges that Willms obtained customers' credit or debit card information through the promise of free or risk-free trial offers. Willms and other defendants allegedly contracted with affiliate marketers that used banner ads, pop-ups, sponsored search terms, and unsolicited email to lead consumers to the defendant's websites. Once there, customers would be unknowingly charged for trial products or extra bonus products, plus a monthly recurring fee of typically \$79.95.

The FTC alleges that the defendants provided banks with false or misleading information, in order to acquire and maintain credit and debit card processing services from the banks in the face of mounting charge-back rates and consumer claims. Thus, in addition to the FTC violations, Willms and his companies also face charges of violating the Electronic Funds Transfer Act and other U.S. regulations by debiting consumers' bank accounts without their signed, written consent and without providing consumers with a copy of the written authorization.

Willms and his companies are not the first to engage in this type of sales strategy. Online marketers often engage in a technique commonly referred to as upselling, whereby the seller provides opportunities to the customer to purchase related products or services for the purpose of making a larger sale. In this case, however, the customers had no reason to believe that other products or services were being sold to them because the defendants “buried” important terms and conditions in fine print, the FTC alleged. According to David Vladeck, the director of the FTC's Bureau of Consumer Protection, “The defendants used the lure of a ‘free’ offer to open an illegal



pipeline to consumers' credit card and bank accounts 'Free' must really mean 'free' no matter where the offer is made."

The defendants' sites also made penny auction offers that promised free bonus bids, but the FTC alleged that customers were hit with unexpected charges, including \$150 for introductory bonus bids and \$11.95 a month for ongoing bonus bids. Willms and his companies also allegedly made false weight loss and cancer cure claims for their products.

Interestingly, Willms, an avid blogger, talked about companies that make false claims online in a September blog post. "I know it's tempting to make false or borderline claims," the blog said. "We get excited about products and services and want to yell from the rooftops about how great they are. But, you need to keep it realistic." In another blog post, Willms wrote that he never uses the word "free" to promote products because customers will assume the free products are useless.

For online marketers, this lawsuit is just another reminder that the FTC requires advertisers to substantiate all claims made in their ads. Put simply, under the FTC Guidelines, you cannot make claims about a product or service that require proof you do not have. This lawsuit should come as a warning to those who run penny auction sites as well: No online marketer is exempt from the FTC Guidelines.

FTC Beat is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

The commentary and cases included in this blog are contributed by Jeff Ifrah and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. We look forward to hearing your thoughts and comments!