UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Commissioner
Andrew N. Ferguson

Statement of Commissioner Andrew N. Ferguson
Concurring in Part and Dissenting in Part
FTC v. Handy Technologies, Inc.
Matter Number 2223038

January 7, 2025

Today, the Commission votes to approve a complaint and settlement, as co-plaintiff with the State of New York, with Handy Technologies, Inc., the operator of an eponymous online platform that matches workers with people requesting household labor. The complaint accuses Handy of misrepresenting in its advertisements how much workers can expect to make and how quickly they will be paid. It also accuses Handy of unfairly imposing fines on workers who are unable to complete jobs due to the actions of the customers who sought their labor, such as not being present at the time that the worker arrives to do the job. Handy imposes such fines unless workers follow an inadequately disclosed, multi-step "Customer No Show" protocol to avoid the fine. Handy has agreed to settle the claims for $2.95 million in monetary relief in addition to injunctive relief.

I concur in this complaint and settlement except for Count V, which accuses Handy of violating Section 5(m)(1)(B) of the Federal Trade Commission Act.[1] Section 5(m)(1)(B) provides for civil penalties against defendants for acts or practices that the Commission previously determined to be unfair or deceptive in litigated cease-and-desist orders against other parties.[2] To properly allege a Section 5(m)(1)(B) violation, the Commission must therefore identify a predicate cease-and-desist order in which the Commission previously determined that the same "such act or practice"[3] (as the one alleged against the current defendant) is unfair or deceptive.[4] But the complaint against Handy fails to identify such a predicate order, which renders Count V inadequate as a matter of law.[5]

I also write to ensure that my concurrence in Count I is not taken as my endorsement of any specific quantum of substantiation for "up to" claims. Count I accuses Handy of having misrepresented that workers could earn "up to" a certain amount for particular types of tasks.[6] The complaint varyingly states that, in many cases, "less than 10%", "approximately 10%," and "only 10% or less"[7] of workers in fact earned the amount that Handy promised they could earn "up to."

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[1] 15 U.S.C. § 45(m)(1)(B).
[2] Concurring and Dissenting Statement of Comm'r Andrew N. Ferguson, *United States v. Lyft*, Matter No. 2223028 ("Ferguson Lyft Statement"), at 13 (Oct. 25, 2024).
[3] 15 U.S.C. § 45(m)(1)(B).
[4] *Ibid*.
[5] *Ibid.*
[6] Complaint ¶¶ 23–28, 79.
[7] *Id.* ¶¶ 23, 25, 28.

I take no position on whether ten percent is sufficient substantiation to demonstrate that an "appreciable number" of consumers earned the "up to" amount.[8] I doubt that the substantiation of "up to" claims can be reduced to a single number applicable to all advertisements in all circumstances.[9] Rather, I concur in Count I because my review of the evidence, including evidence not alleged in the complaint, gives me "reason to believe"[10] that at least some of Handy's advertisements led reasonable consumers to believe that they were more likely to achieve the promised earnings than they actually were.

[8] See Ferguson Lyft Statement at 3–4.
[9] See Concurring Statement of Comm'r Andrew N. Ferguson, *In re Arise Virtual Solutions, Inc.*, Matter No. 2223046, at 4 (Jul. 1, 2024) ("Substantiation of 'up to' claims raises questions beyond the quantum of substantiation required to comply with Section 5.").
[10] 15 U.S.C. § 53(b).