Unpacking Notable Details From FTC's 'AI Washing' Cases

By **Michael Atleson** (August 5, 2025)

Futuristic technology isn't always going to be super reliable. Take the time machine. Popular culture suggests that, whether in the form of a DeLorean, a police box or a hot tub, these machines might not work as intended. Companies wishing to market such contraptions will need to avoid dubious advertising claims, lest users be misled and wind up in the wrong year.

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Based on recent enforcement activity, sellers of technology already here today — like generative artificial intelligence — should be exercising similar caution when advertising their wares. The U.S. Securities and Exchange Commission is continuing to focus on AI washing, and states may also be poised to do more in this area.[1]

But what of the Federal Trade Commission, which has brought many cases involving allegedly deceptive AI claims? Judging from its recent actions and statements, including a late April case[2] targeting Workado LLC's accuracy claims for its AI text detector, we'll likely see continued enforcement there, too.

Straightforward cases involving deceptive marketing claims are presumably outside the scope of the White House's July 23-issued AI Action Plan directing the FTC to get rid of investigations and orders that "advance theories of liability that unduly burden AI innovation."[3]

Further, on July 30, the agency announced a $15.7 million settlement of an AI-washing case from its 2024 enforcement sweep, Operation AI Comply. The case, FBA Machine, involved an alleged business opportunity scheme that enticed consumers with claims that they could make money operating online storefronts using AI-powered software.[4]

In this article, we'll note a few underappreciated aspects of the most recent FTC cases, along with a few types of AI marketing claims that may line up in regulatory crosshairs down the road.

Recent FTC Actions

The FTC has brought at least 13 cases since 2023 alleging deceptive claims about the use of AI or other automated tools. Let's focus on a few alliterating facets of four of the most recent ones: Evolv Technologies Holdings Inc., brought in November 2024;[5] Intellivision Technologies Corp., brought in December 2024;[6] accessiBe Inc., brought on Jan. 3;[7] and Workado, brought on April 28.[8]

Business-to-Business

All four of these cases involve the sale of products to businesses. It may surprise some people in the business world, but the FTC has often acted over the years to protect companies when they're in the position of consumers. The focus has tended to be on harm to medium or small businesses, rather than big firms that can presumably protect themselves.

The most recent AI-washing case of the four, Workado, is notable for apparently being the first federal action to go after claims about a tool's ability to detect whether a given output is AI-generated.

According to the FTC, Workado marketed its text detector to advertisers and others with deceptive claims that it could classify text as human-created or AI-generated with over 98% accuracy across all types of text. In fact, for nonacademic text, testing showed that the AI model powering the detector had only around 53% accuracy. Christopher Muffarige, director of the FTC's Bureau of Consumer Protection, said the product thus "did no better than a coin toss."

The proposed consent order contains relatively standard injunctive provisions about future product claims and requires the company to send a notice to customers.

Several straight cases of this sort might seem like a trend, or it could be happenstance, but the emphatic point is that B2B sellers of AI tools — or any other product — aren't immune from FTC scrutiny.

Bipartisan

These four cases — along with the FTC's other AI-washing cases in 2024 — were all effectively bipartisan. Indeed, with one minor exception, the votes of the commissioners were unanimous in all of these cases.

FTC Chairman Andrew Ferguson has supported all of them and has made strong statements, like this one from a September 2024 case involving DoNotPay Inc.: "Businesses that exploit media hype and consumer unfamiliarity with this new technology to cheat people out of their hard-earned money should expect a knock on the door from the Commission and other law-enforcement agencies."[9]

Complementing these actions is increased enforcement interest from the states, such as the Texas attorney general's September 2024 settlement with healthcare technology company Pieces Technologies[10] and its pending investigation of AI company DeepSeek.[11]

Broad

The four cases cut across different sectors and products — from physical security (Evolv), to web accessibility (accessiBe), to facial recognition (Intellivision), to automated text detection (Workado) — meaning that little is off limits, jurisdictionally speaking. All four of them also involve software or a mix of hardware and software.

Note also the FTC's July 2024 case against NGL Labs, which involved claims about its supposedly "world class AI content moderation."[12] What these matters reflect is that, unlike in product liability law,[13] where courts are only recently considering digital goods as products, consumer agencies have no problem considering digital items and services to be within the scope of their laws.

Possible Areas of Future Enforcement

Productivity Claims

Let's make a time jump to 350 B.C., when Aristotle mused about an "intelligent

anticipation" by which looms could weave on their own and harps could play by themselves. Instruments doing their own work, he said, would allow masters to get rid of servants.

Many centuries later, some companies are marketing a similar future in which AI tools are reliable and efficient enough for businesses to reduce their headcount, including artisans and artists. But productivity claims for these tools may lack support, and the more objective and specific those claims are, the more they may invite regulatory scrutiny.

For example, the FTC Act's prohibition on deceptive conduct covers unsubstantiated claims, that is, claims made without the marketer having a reasonable basis to make them. This basic principle is reflected in the FTC's many cases involving companies that deceptively claim they'll help people make[14] or save[15] money, or start a successful business.[16]

Workplace productivity claims for AI are unsurprising given that the introduction of new technology is often accompanied by such assertions. The claim may be that a business can get by with fewer employees, get each one to do more work or cut the time it takes to do a task.

But adopting new tools can also result in more work and new kinds of work, so it's not always cost-effective to automate a given job. It may not always be entirely safe, either.

Consider an episode of "The Simpsons" featuring Mr. Burns, the power plant owner, whose fantasy that he could replace workers with "100% loyal" robots turned into a nightmare of false advertising when they tried to kill him. At the very least, note that the FTC in February finalized the case against DoNotPay,[17] alleging that a product billed as "the world's first robot lawyer" wasn't equal to the expertise of real, live attorneys.

As for generative AI, economists and others are debating whether or when we'll see signs of productivity gains. That debate isn't surprising, either, as people still don't even agree on whether the personal computer, mobile phone or internet has increased productivity.

The problem comes, then, when companies selling generative AI tools treat the potential for productivity gains not as an arguable future but as an assertion of fact. Broad, general claims that a product will increase productivity may be considered mere puffery and thus unactionable. But enforcers could well probe support for a specific claim about the extent of such productivity, such as an assertion that it will increase by a certain amount.

Agentic AI

Agentic AI has been defined in different ways, much like AI itself, but it generally refers to systems of AI agents that attempt to accomplish a specific goal with limited supervision.[18] Unlike simpler AI assistants that respond directly to user prompts, agentic AI is intended to reach its defined objectives by taking multiple actions without ongoing human prompting.

The agentic systems currently on the market have limited capabilities, but there is much excited talk about what they may be able to do in the future. The definitional haze around the term and the desire to bring agentic AI to market will likely lead enforcement agencies to focus on pitches made for these products, especially given the risks connected to their use.

Disclaimers

Are companies legally required to make a disclosure when they deploy a chatbot to interact with consumers? The answer is what every client wants to hear from their lawyers: it depends!

Utah has a fairly broad law with this requirement,[19] and some states require AI disclosures in narrower circumstances. For example, a Maine law passed in June requires that, when a person uses a chatbot to interact with a consumer in a commercial setting, the person must disclose, clearly and conspicuously, that the consumer isn't engaging with a human, when otherwise the consumer would be deceived into thinking so.[20]

As for the courts, few of them have wrestled with the issue to date. But in Walters v. OpenAI LLC, a prominent case involving allegedly defamatory output from ChatGPT, the Superior Court of Gwinnett County, Georgia, on May 19, found for the company in part because of its disclosures about the tool's potential limitations and because of the company's reasonable care and diligence.[21]

People often ask if broad consumer laws like the FTC Act may impose such an obligation. Guess what? It depends!

The FTC Act's bar on deception is limited to the commercial context, e.g., the sales of goods or services. It also applies only if the bot's presence would be unexpected and material, i.e., likely to affect a consumer's choice of or conduct regarding a product. Note that the new Maine law referenced above has a similar application but without this materiality requirement.

The best advice, especially under these fact-dependent circumstances, is to err on the side of transparency. Let consumers know when they're talking to a chatbot, and be sure that they'll see and understand that disclaimer.

Illusory or Deleted Features

Sometimes, in the rush to ship products, companies may release items that don't have the expected features or functionality, and buyers may hear that certain features or improvements are just around the corner.

In the AI space, examples of these failures have shown up in the press and have subjected some sellers to ridicule and private lawsuits. Consider, too, the flip side of this problem, which is when some kind of connected product does come with promised features, but later, and unexpectedly, the seller switches them off remotely or adds subscription fees.

Under the FTC Act and other consumer protection laws, there's no safe harbor for "fake it 'til you make it" claims about what a product will do someday. And "shill it then kill it" behavior is no better. In other words, companies can't mislead consumers whether they're talking about present or future performance.

Deceptive Demonstrations

The FTC has a long history of cases involving deceptive demonstrations.[22] The past few years have featured several reports of corporate demonstrations of new technology, including AI-enabled software and robots, which were misleading in some way.

In some cases, companies made it look like the automated tool they deployed is what was doing all the work, when, in reality, it was people hidden behind the scenes — artificial artificial intelligence — responsible for the tool being able to complete a task. Those companies may have thought that regulators won't pay attention to the folks behind the curtain, but consumer protection agencies may well be interested in taking a peek.

Conclusion

Hyped claims for AI tools remain enticing to deliver. Sellers are wise to keep their claims in check, though, because it doesn't appear that the FTC, the SEC and other enforcers are planning on going anywhere.

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Disclosure: Atleson served as lead counsel for the FTC in the Evolv case.

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