New FTC Chair Likely to Keep Up Enforcement on Auto-Renewals

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Businesses face a new regulatory landscape under the Trump administration, with continued robust enforcement expected by the Federal Trade Commission relating to marketing activities.

An ever-expanding matrix of state laws, some complemented by recent federal rulemaking, will further impact businesses with important marketing practices, particularly around privacy, transparent pricing, subscription, and continuity marketing.

Although President Donald Trump has presented his White House as anti-regulation, that position didn't translate to a lack of federal regulatory enforcement in his first administration. The agency then focused on a wide array of unfair or deceptive business practices, including financial-related services, most notably those affecting debt-saddled consumers and small businesses.

Newly minted FTC Chair Andrew Ferguson has strongly advocated FTC enforcement against businesses. A prolific dissenter to actions under outgoing Chair Lina Kahn, Ferguson also made clear the FTC should stay in its lane and confine its actions to be consistent with its congressional mandates.

Last December, Ferguson made his priorities for the agency clear: "The Commission under President Trump will focus primarily on our traditional role as a cop on the beat. We will vigorously and faithfully enforce the laws that Congress has passed, rather than writing them."

Ferguson frequently spoke out against violations of FTC-enforced laws, whether they involve traditional marketing practices or new technologies such as artificial intelligence. However, he broke from Kahn's earlier attempts to bolster the agency's ability to obtain monetary relief by promulgating expansive regulatory standards to counter the US Supreme Court's *AMG Capital Management v. FTC*decision, which struck down the FTC's ability to obtain monetary relief under the equitable powers granted under Section 5 of the FTC Act.

Ferguson's dissents portend a greater acceptance of innovative technology, focusing on enforcing existing regulatory standards rather than issuing blanket bans on certain innovative technologies on the grounds they may not be used for bona fide business purposes. In one of the last acts of the Kahn commission, the FTC referred a legal complaint it made against Snap Inc. to the Department of Justice, alleging that Snapchat's artificial AI chatbot poses "risks and harms to young users of the application" and that "Snap" "is violating or is about to violate the law."

On Jan. 16, Ferguson said "the complaint's application of Section 5 of the Federal Trade Commission Act is not only wrong as a matter of statutory interpretation, but is also in direct conflict with the guarantees of the First Amendment."

In addition to a focus on traditional consumer fraud, one of the key areas of regulatory enforcement at the federal and state levels will continue to be subscription and automatic renewal marketing practices, particularly given their increasing prevalence in e-commerce.

Several states—including California, Illinois, Minnesota, South Carolina, Tennessee, Utah, and Virginia—have new laws or updated ones to include a range of different requirements, including those related to automatic renewal enrollment and cancellation pathways.

These new and updated state laws, some of which go into effect in 2025, have added to the ever-evolving web of state laws governing automatic renewals for residents of those specific states.

In late 2024, the FTC finalized its negative option rule. Many of its provisions are consistent with or similar to existing obligations that apply on certain state-wide bases. The rule, however, goes beyond the state laws, with a provision effective Jan. 15. It imposes civil penalty liability for any misrepresentation of material fact made in connection with the marketing of a product or service that has a negative option feature—and isn't limited to misrepresentations regarding the negative option feature.

Similarly, businesses can expect more enforcement combating false or manipulated consumer reviews. The recently enacted final rule on use of consumer reviews and testimonials, focuses heavily on fake reviews, such as AI-generated reviews, and negative review suppression.

The rule explicitly bans publishing reviews and testimonials from someone who doesn't actually exist, such as AI-generated reviews, fictional people, and those with no actual experience with a business's products or services. It also bars businesses from suppressing negative reviews or misrepresenting that the reviews represent all or even most of the reviews submitted if negative reviews have been suppressed.

FTC enforcement tactics regarding review manipulation will likely differ under the new administration. A recent enforcement action against a seller of AI-generated testimonials and review technology was challenged for providing the means for marketers to publish false reviews. Rather than establish guardrails limiting the technology's use for bona fide purposes, the settlement of the action included a ban on advertising, promoting, marketing, or selling any service promoted as generating consumer reviews or testimonials—not just restrictions on its use.

As Commissioner, Ferguson dissented to the FTC's actions on the grounds that the settlement "[t]reat[ed] as categorically illegal a generative AI tool merely because of the possibility that someone might use it for fraud is inconsistent with our precedents and common sense." With Ferguson at the helm during Trump's second administration, such outright bans may be less common when settling FTC enforcement actions.

Privacy will likely remain a priority at both the federal and state levels. Because of Congress' continued failure to pass comprehensive privacy legislation, the states have continued to pass their own laws, with a patchwork effect across the country and more laws going into effect in 2026. Many laws apply to businesses that collect personal information from consumers in those states, regardless where the business itself is located.

Lack of uniformity across states can create compliance challenges for businesses. Regardless, all the laws require businesses to take certain actions when collecting and using personal information, including requiring transparency regarding the use of consumer data and offering a wide array of opt-out options. Transparency and consumer choice will also likely be a strong emphasis at the FTC.

Businesses can expect the executive branch will combat those who make false and unsubstantiated advertising claims, fail to provide reasonable disclosures, and neglect to afford informed consumer choice. Because of a growing body of state laws, marketers must stay abreast of not just actions by the FTC but also track pending and enacted state legislation that can impact their business practices.

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