Comment of Bilal Sayyed on the Federal Trade Commission's Proposed Policy Statement Concerning the Suppression of Accuracy In Artificial Intelligence Systems

July 31, 2026

I. Introduction and Summary

The Commission's *Proposed Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems* (July 1, 2026)[1] addresses a genuine consumer protection concern: consumers who rely on AI systems for consequential decisions deserve to know when those systems have been designed to pursue objectives materially different from the ones consumers reasonably expect. Several elements of the Proposed Statement rest on sound, well-established Section 5 principles and deserve support.

Other elements, however, depart significantly from the analytical framework the Commission announced in its 1983 Policy Statement on Deception[2] and, to the extent the Commission ever seeks to rest this theory on unfairness, from the 1980 Policy Statement on Unfairness.[3] The Proposed Statement infers a sweeping, industry-wide implied representation from marketing language much of which the Deception Statement would treat as puffery. It presumes consumer expectations and materiality without the evidence the Deception Statement contemplates for implied claims. It applies its disclosure-of-objectives principle selectively rather than neutrally. It rests on an undefined conception of "accuracy" that Section 5 does not supply. It announces a conflict-preemption conclusion that a nonbinding policy statement cannot deliver and that fails on the Statement's own terms. And it claims, for a nonbinding policy statement, binding and preemptive effects that only Magnuson-Moss rulemaking could supply. This comment identifies these departures and recommends revisions that would conform the Proposed Statement to the Commission's traditional frameworks.

II. The Proposed Statement Correctly Reaffirms Several Settled Section 5 Principles

First, the Proposed Statement correctly affirms that AI products and services enjoy no exemption from Section 5.[4] That proposition is consistent with decades of Commission practice applying deception principles to new and evolving technologies, and with recent enforcement actions addressing misrepresentations about AI performance and efficacy in matters such as *DoNotPay*, *IntelliVision*, *Evolv Technologies*, and *Workado*.[5] Where a company makes an express, falsifiable claim about what its AI

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[1] Fed. Trade Comm'n, Proposed Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems (July 1, 2026) [hereinafter Proposed Statement].

[2] FTC Policy Statement on Deception, 103 F.T.C. 174 (1984) (appended to In re Cliffdale Assocs., Inc., 103 F.T.C. 110 (1984)) [hereinafter Deception Statement].

[3] FTC Policy Statement on Unfairness (Dec. 17, 1980) (appended to In re Int'l Harvester Co., 104 F.T.C. 949, 1070 (1984)) [hereinafter Unfairness Statement]; see 15 U.S.C. § 45(n).

[4] 15 U.S.C. § 45(a)(1).

[5] Decision and Order, In re DoNotPay, Inc., FTC Docket No. C-4812 (Jan. 14, 2025); Decision and Order, In re IntelliVision Techs. Corp., FTC Docket No. C-4809 (Jan. 8, 2025); Stipulated Order for Permanent Injunction and Other Relief, FTC v. Evolv Techs. Holdings, Inc., No. 1:24-cv-12940 (D. Mass. filed Nov. 26, 2024); Decision and

system can do – that it replaces a lawyer, detects weapons, or matches clinical baselines – and lacks substantiation, traditional deception analysis applies without modification.[6] The reaffirmation of the substantiation doctrine is likewise sound.[7]

Second, the Proposed Statement correctly observes that a company's motive is irrelevant to deception liability.[8] That principle is well settled, and it appropriately forecloses the argument that steering outputs for reputational, political, or compliance reasons is benign, if it nonetheless misleads consumers.

Third, the Proposed Statement's treatment of disclosure adequacy is faithful to the Deception Statement. The propositions that a disclaimer buried in terms of service is inadequate, that fine print does not cure a prominent contrary impression, and that qualifying disclosures must be clear, conspicuous, and proportionate to the expectations they must dislodge all track the Deception Statement and cases such as *Litton*, *Giant Food*,[9] *Direct Marketing Concepts*, and *Removatron*.[10] The recognition that adequate disclosure can reshape consumer expectations, and thereby avert deception, is an important analytical concession, and, as discussed in Part VII, it undermines the Proposed Statement's preemption analysis.

Fourth, footnote 46's distinction between design-based steering and hallucinations arising from technological limitation is a sensible limiting principle that should be retained and expanded.[11]

III. The Implied-Representation Theory Departs from the Deception Statement

The core of the Proposed Statement is the claim that AI companies "have represented explicitly and implicitly that their systems aim to produce the best output possible given technological and resource constraints," and that consumers therefore reasonably expect outputs undistorted by undisclosed objectives.[12] The Proposed Statement goes beyond the Deception Statement in three respects.

The representation must be found, not assumed. The Deception Statement requires the Commission to find that a representation, omission, or practice occurred. For implied claims whose meaning is not evident from the representation itself, it requires extrinsic evidence that reasonable consumers actually reach the

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Order, In re Workado, LLC, FTC Docket No. C-4822 (Aug. 21, 2025); see Proposed Statement, supra note 1, at 5 nn.32–33.

[6] See Chiles v. Salazar, No. 24-539, slip op. at 11 (U.S. Mar. 31, 2026) (fraud remains among the "few historic and traditional categories of expression" in which content-based regulation does not automatically trigger strict scrutiny (quoting United States v. Alvarez, 567 U.S. 709, 717 (2012))).

[7] See POM Wonderful, LLC v. FTC, 777 F.3d 478, 490–91 (D.C. Cir. 2015); FTC v. Direct Mktg. Concepts, Inc., 624 F.3d 1, 8 (1st Cir. 2010).

[8] FTC v. Bay Area Bus. Council, 423 F.3d 627, 635 (7th Cir. 2005); In re Kraft, Inc., 114 F.T.C. 40, 122 (1991); Proposed Statement, supra note 1, at 8 & n.48.

[9] Deception Statement, supra note 2, at 180–81 & nn.33–38; In re Litton Indus., Inc., 97 F.T.C. 1, 71 n.6 (1981), aff'd as modified, 676 F.2d 364 (9th Cir. 1982); In re Giant Food Inc., 61 F.T.C. 326, 348 (1962).

[10] FTC v. Direct Mktg. Concepts, Inc., 624 F.3d 1, 12 (1st Cir. 2010); Removatron Int'l Corp. v. FTC, 884 F.2d 1489, 1497 (1st Cir. 1989); see Proposed Statement, supra note 1, at 9 & nn.50–51.

[11] Proposed Statement, supra note 1, at 8 n.46.

[12] Id. at 6.

implied claim.[13] *Kraft* teaches that the Commission may rely on facial analysis only where the implied claim is "reasonably clear from the face" of the representation; otherwise, extrinsic evidence of consumer interpretation is required – a framework the Commission has applied from *Thompson Medical* through *ECM BioFilms*.[14] The Proposed Statement instead derives a single, uniform, industry-wide implied representation of a best-possible-output fidelity to user objectives from a heterogeneous collection of marketing materials from different companies.[15]

Much of the quoted language ("Meet your thinking partner," "Like an expert in your pocket," "truth-seeking AI companion") is precisely the sort of aspirational, non-falsifiable language the Deception Statement classifies as puffery: obviously exaggerated claims that ordinary consumers do not take seriously.[16] A framework that converts taglines into binding warranties of objective-neutrality inverts the puffery doctrine. If the Commission believes reasonable consumers actually extract from this marketing the specific implied claim the Statement posits, the Deception Statement requires it to identify the extrinsic evidence – such as copy tests, surveys, consumer testimony – supporting that interpretation, on a company-by-company and representation-by-representation basis. Notably, the Statement itself acknowledges that these systems "purport to only strive for, rather than guarantee, complete accuracy," an acknowledgment that complicates any facial inference.[17]

Consumer expectations are asserted, not evidenced. The Deception Statement acknowledges that in omission cases the Commission may sometimes presume consumer beliefs, but at other times must require evidence of consumers' expectations.[18] The Proposed Statement's principal empirical support – that consumers accept AI outputs without fact-checking over 90% of the time – may establish reliance, but it does not establish consumer expectations about training objectives.[19] Reliance is equally consistent with consumers expecting systems that balance accuracy against safety, legality, tone, and other objectives, which the Proposed Statement itself concedes is the norm: AI systems "are likely to simultaneously pursue multiple objectives, some explicit and some implicit," and this "will often be consistent with consumers' reasonable expectations."[20] Having conceded that multi-objective design is expected, any final statement must explain which undisclosed objectives defeat expectations and which do not. The Proposed Statement

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[13] Deception Statement, supra note 2, at 176 ("the Commission must find that a representation, omission, or practice occurred"; for implied claims, "[i]n other situations, the Commission will require extrinsic evidence that reasonable consumers reach the implied claims").

[14] Kraft, Inc. v. FTC, 970 F.2d 311, 319–20 (7th Cir. 1992); In re Thompson Medical Co., 104 F.T.C. 648, 788–89 (1984), aff'd, 791 F.2d 189 (D.C. Cir. 1986); see also ECM BioFilms, Inc. v. FTC, 851 F.3d 599, 610–11 (6th Cir. 2017) (implied claim established through consumer surveys, "a valid form of extrinsic evidence"); In re Telebrands Corp., 140 F.T.C. 278, 291 (2005), aff'd, Telebrands Corp. v. FTC, 457 F.3d 354, 357–58 (4th Cir. 2006).

[15] Proposed Statement, supra note 1, at 6 nn.35–36 (quoting consumer-facing marketing materials of OpenAI, Anthropic, and X.ai).

[16] Deception Statement, supra note 2, at 181; In re Pfizer, Inc., 81 F.T.C. 23, 64 (1972); Heinz W. Kirchner, 63 F.T.C. 1282, 1290 (1963).

[17] Proposed Statement, supra note 1, at 7.

[18] Deception Statement, supra note 2, at 176 & n.13 (citing In re Leonard Porter, 88 F.T.C. 546, 626 n.5 (1976)).

[19] Proposed Statement, supra note 1, at 7 & n.39 (citing Ted Ladd, Anthropic: 91% of Users Do Not Fact-Check AI. Let's Fix That, Forbes (Mar. 5, 2026)).

[20] Proposed Statement, supra note 1, at 7.

offers no administrable line. Footnote 37 candidly admits the line is difficult to draw.[21] A policy statement whose purpose is certainty should not rest liability on a line its drafters acknowledge they cannot draw.

Materiality is presumed where the Deception Statement counsels caution. The Deception Statement presumes materiality for express claims but warns, in endnote 48, that because the presumption is absent for some implied claims, the Commission will take special caution to ensure materiality exists.[22] The Proposed Statement extends a materiality presumption to its inferred implied claim across an entire industry. Some categories of claims, such as intended claims, and claims going to central characteristics such as performance, efficacy, health, or safety, properly carry a presumption; the residual category of implied claims does not. Materiality may well be provable, as consumers may plausibly care whether a system is designed to answer their question or to advance an undisclosed agenda, but it should be established, in litigated cases, with the caution endnote 48 of the Deception Statement requires, particularly where the alleged distortion affects only a subset of outputs on contested topics. Further, the Deception Statement directs that where a product is inexpensive, frequently purchased, and easily evaluated, market incentives constrain deception and the Commission will examine the practice closely before issuing a complaint.[23] Many general-purpose AI services are inexpensive, repeatedly used, and subject to intense competitive scrutiny, side-by-side comparison, and near-instantaneous public benchmarking, although I recognize that the ease with which consumers can evaluate any particular output will vary. The Commission should address, rather than omit, this prosecutorial-discretion factor; the Proposed Statement nowhere engages it.

IV. The Selective Application of the Disclosure Principle Is Unprincipled

If undisclosed steering away from user objectives is deceptive, that principle must apply neutrally to all such steering. Yet the Proposed Statement's illustrations run in one direction (e.g., "equity," "historical injustices," avoidance of disparate impact, "left-wing ideology"[24]), while footnote 40 exempts, without any deception analysis, refusals to produce unprotected content and limits imposed for cybersecurity.[25] Those carve-outs may be sensible as policy, but they are not derivable from the deception framework the Proposed Statement invokes. A consumer whose stated objective is frustrated by an undisclosed safety refusal has been steered away from her objective in the same formal sense as one whose output was shaped by an undisclosed equity objective. The Deception Statement's reasonable-consumer test does not distinguish among the ideological valences of undisclosed design choices; either both patterns require disclosure or neither does, absent evidence that consumers expect one and not the other. The Commission should restate the principle neutrally: undisclosed design objectives are actionable only where a specific, evidenced consumer expectation exists and the divergence is material, whatever the objective's content.

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[21] Id. at 6 n.37 ("Though the exact line of what constitutes bias may be difficult to draw . . . .").

[22] Deception Statement, supra note 2, at 182 n.48 ("Because this presumption is absent for some implied claims, the Commission will take special caution to ensure materiality exists in such cases.").

[23] Id. at 181–82.

[24] Proposed Statement, supra note 1, at 7–8 & nn.41–44.

[25] Id. at 7 n.40.

V. The Statement Raises First Amendment Concerns

The selectivity described above is not merely an analytical inconsistency; it exposes the Proposed Statement to constitutional challenge in at least three ways.

First, compelled disclosures in the commercial sphere must be limited to purely factual and uncontroversial information under *Zauderer*, and *NIFLA* confirms that this accommodation does not extend to compelled statements on contested matters.[26] The Proposed Statement conditions liability avoidance on "persistent and prominent" disclosure – the posture *Zauderer* governs.[27] Constitutional difficulty would arise to the extent the Commission demands more than a factual description of a system's operative objectives and limitations; that is, if it requires a company to adopt the government's contested characterization of its own design judgments as prioritizing "ideology" over user objectives. A safe harbor expressly limited to accurate, factual disclosure would avoid the problem; the Proposed Statement as drafted provides no such assurance.

Second, the design and training choices that shape a generative model's outputs may implicate protected editorial judgment, although that question remains application-specific. In *Moody v. NetChoice*, the Supreme Court reaffirmed that a private party's choices about how to select, order, moderate, and present expressive content are themselves expression, and that the government may not leverage regulatory power to rebalance private speech it considers skewed.[28] *Moody* did not decide the constitutional status of AI training and output-generation choices, and members of the Court have flagged that question as open.[29] But an enforcement program whose animating examples all involve one ideological direction, and whose exemptions all run the other way, invites the inference that the Commission is using deception law to superintend the viewpoint of model outputs. This mirrors the governmental rebalancing of private expression that the Statement condemns when states attempt it.[30]

Third, the asymmetry compounds the vagueness problem. A regime in which liability turns on whether an undisclosed objective is "ideological" (actionable) or "protective" (exempt), with no stated criterion for sorting them, fails to give the fair notice that both due process and the Deception Statement's certainty rationale demand.

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[26] Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 651 (1985); Nat'l Inst. of Fam. & Life Advocs. v. Becerra, 585 U.S. 755, 768–69 (2018).

[27] Proposed Statement, supra note 1, at 9 (disclaimers "must be similarly persistent and prominent").

[28] Moody v. NetChoice, LLC, 603 U.S. 707, 728–34 (2024).

[29] See Moody, 603 U.S. at 745–46 (Barrett, J., concurring) ("And what about AI, which is rapidly evolving?"; noting that where a model "relies on large language models" to make removal choices, whether "a human being with First Amendment rights" has made an inherently expressive choice is an open question).

[30] Cf. Chiles, slip op. at 9–13 (viewpoint-based regulation of speech is presumptively unconstitutional and subject to rigorous scrutiny even as applied to licensed professionals in one-on-one settings; a law's regulatory label does not control whether it "regulates speech in the case at hand").

VI. "Accuracy" and "User Objectives" Are Not Self-Defining

The Proposed Statement's operative concepts assume that every user request has an ascertainable objective and that every objective admits of a single "best" or "accurate" output from which distortion can be measured. Neither assumption holds across the range of actual AI use. The Proposed Statement's own account of usage – relationship navigation, personal development, spirituality – describes domains in which outputs are advisory, evaluative, or creative, and in which reasonable, well-designed systems can produce many defensible answers. For factual queries, accuracy is a meaningful benchmark; for a request for advice about a marriage, a draft of a persuasive essay, or a judgment on a contested historical question, "the best output" is not an objective fact the Commission can find, and deviation from it is not a falsifiable misrepresentation. The Deception Statement anticipated this problem: it disclaims enforcement against subjective claims and correctly stated opinions precisely because they are not susceptible of truth or falsity.[31] A conforming revision would confine the theory to objectively verifiable representations or omissions – whether a system followed a stated constraint, consulted identified sources, or avoided specified data – and decline to treat the subjective quality, viewpoint, or persuasiveness of advisory, creative, or evaluative outputs as independently true or false.

Relatedly, the Proposed Statement's central factual predicate for the proposition that companies are surreptitiously training models to distort facts is a single secondary news account characterizing an employee's remarks.[32] An agency that requires advertisers to possess a reasonable basis for their claims should hold the factual predicates of its own enforcement policy to at least a comparable evidentiary standard.[33] Before finalizing the Proposed Statement, the Commission could develop a record, through its Section 6(b) authority or the required process for a rulemaking, on what representations companies actually make, what consumers actually expect, and whether the hypothesized steering actually occurs.

VII. The Preemption Discussion Exceeds Both Policy Statements and the Commission's Role

The Proposed Statement's most significant overreach is its assertion that state laws requiring alterations to AI outputs are impliedly preempted because they conflict with Section 5.[34] Neither the Deception Statement nor the Unfairness Statement purports to adjudicate the validity of state law; both are frameworks for the Commission's own enforcement. Conflict preemption is ultimately a judicial question, subject to a presumption against preemption in fields of traditional state regulation such as consumer protection,[35] and an agency's litigation-position views on preemption – particularly views announced outside notice-and-comment procedures – receive limited weight under *Wyeth v. Levine*.[36]

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[31] Deception Statement, supra note 2, at 181–82 (subjective claims and "correctly stated opinion claims" generally not actionable).

[32] Leo Briceno, Anthropic's Moral Compass Architect Suggested AI Overcorrection Could Address Historical Injustices, Fox News (Apr. 22, 2026), cited in Proposed Statement, supra note 1, at 7 n.41.

[33] See POM Wonderful, 777 F.3d at 490–91 (reasonable-basis requirement).

[34] Proposed Statement, supra note 1, at 8–9 (citing Schneidewind v. ANR Pipeline Co., 485 U.S. 293, 300 (1988)).

[35] Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

[36] Wyeth v. Levine, 555 U.S. 555, 576–81 (2009) (agency views on preemption expressed outside notice-and-comment procedures receive limited weight).

More fundamentally, the claimed conflict fails on the Statement's own logic. Deception liability attaches to the mismatch between representations and reality, not to the underlying design choice. A company subject to a state law such as Colorado's[37] can – assuming the state law's validity, a question for the courts – comply with both regimes simultaneously. It can conform its system to state requirements and make the adequate disclosure that the Proposed Statement itself says shifts consumer expectations.

Nothing in Part V changes this conclusion: a company remains free to describe its design objectives voluntarily and in its own words, which is all dual compliance requires; the constitutional difficulty identified above arises only when the Commission dictates the characterization a company must adopt. Where compliance with both state and federal law is possible, there is no impossibility conflict, and obstacle preemption cannot rest on the premise that disclosure is burdensome. And if a state mandate compelling alterations to expressive outputs is constitutionally infirm, the remedy lies in a First Amendment challenge – as *Chiles v. Salazar* illustrates[38] -- not in a preemption theory announced in a nonbinding enforcement document. The state-law discussion should be removed or recast as the accurate and sufficient proposition that state-law compliance is not a defense to independently deceptive representations.[39]

VIII. A Policy Statement Cannot Deliver the Binding, Preemptive Effect the Proposed Statement Claims

The Proposed Statement was directed by Executive Order 14365[40] and functions, in substance, as an attempt to establish a new, generally applicable category of deceptive practice with nationwide, preemptive effect. The Commission may, of course, announce a tentative enforcement interpretation in a policy statement and test that interpretation through case-specific adjudication. But if it intends to establish a binding, generally applicable obligation, particularly one claimed to carry nationwide preemptive consequences, it must proceed through the rulemaking procedures Congress prescribed in Section 18 of the FTC Act, with their heightened requirements of advance notice, informal hearings, and judicial review.[41] A nonbinding policy statement cannot itself create such obligations or preempt state law.

The mismatch has practical consequences. Post-*Loper Bright*, a reviewing court will independently interpret Section 5 without deference to the Commission's policy views,[42] and the assertion that a non-legislative guidance document displaces the AI-governance choices of the several states presents the kind of question of vast economic and political significance that gives courts additional reason for skepticism

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[37] Colo. Sen. Bill 26-189 (2026); see Proposed Statement, supra note 1, at 7–8 & nn.42–43.

[38] Chiles, slip op. at 7–23 (Colorado statute restricting the content of licensed counselors' talk therapy regulates speech based on viewpoint; reversing for application of sufficiently rigorous First Amendment scrutiny).

[39] Cf. Spiegel, Inc. v. FTC, 540 F.2d 287, 292–93 (7th Cir. 1976) (Commission may find a Section 5 violation even "[a]ssuming arguendo that [the] conduct was proper under Illinois law"); Am. Fin. Servs. Ass'n v. FTC, 767 F.2d 957 (D.C. Cir. 1985) (upholding rule prohibiting creditor remedies permitted by state law); cf. Proposed Statement, supra note 1, at 3 ("Congress did not provide state-law safe harbors").

[40] Exec. Order No. 14365, Ensuring a National Policy Framework for Artificial Intelligence, 90 Fed. Reg. 58499 (Dec. 11, 2025).

[41] 15 U.S.C. § 57a(a)(1)(B), (b)–(d) (Magnuson-Moss procedures for rules "which define with specificity acts or practices which are unfair or deceptive").

[42] Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024).

absent clear congressional authorization.[43] If the Commission intends binding, industry-wide obligations with preemptive force, the lawful path is a Magnuson-Moss proceeding built on a developed evidentiary record and not an enforcement policy statement.

IX. Relationship to the Unfairness Statement

The Proposed Statement takes no position on unfairness.[44] This is eminently sensible. Any future unfairness theory would face the Unfairness Statement's three-part injury test, as codified at Section 5(n): substantial injury, not outweighed by countervailing benefits, not reasonably avoidable.[45] Receipt of outputs a consumer finds ideologically uncongenial is closer to the emotional and subjective harms the Unfairness Statement excludes than to substantial injury.[46] Countervailing benefits would include legal compliance, cybersecurity, safety, and innovation. And reasonable avoidability requires a fact-specific inquiry: competitive alternatives may make injury avoidable where consumers receive adequate information about material design objectives, but the mere existence of alternatives does not suffice if the relevant practice is undisclosed and difficult to detect.

The Unfairness Statement requires that public policy invoked to support liability be clear, well-established, and widely shared; it does not reach the isolated decision of a single state or a single court.[47] Reliance on recent executive orders as the animating public policy would sit uncomfortably with that standard: the same criticism the Proposed Statement levels at individual state legislatures.

X. Recommended Revisions

The existing Deception and Unfairness Statements already supply the necessary legal framework and are sufficiently flexible to address any genuine consumer-protection issues the Proposed Statement identifies.

However, if the Commission wishes to proceed to a final statement, to conform it to the Deception and Unfairness Statements, the Commission should: (1) replace the categorical, industry-wide implied representation with a case-specific inquiry into each company's actual representations, applying the puffery doctrine and requiring extrinsic evidence of consumer interpretation where the implied claim is not facially evident; (2) commit to establishing consumer expectations with evidence, and to establishing materiality where it cannot properly be inferred under the Deception Statement's recognized categories, applying the special caution the Deception Statement's endnote 48 prescribes for other implied claims; (3) restate the disclosure principle neutrally as to all undisclosed design objectives, or articulate an evidenced basis for distinguishing among them; (4) confine the theory to objectively verifiable representations or omissions,

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[43] West Virginia v. EPA, 597 U.S. 697, 721–24 (2022).

[44] Proposed Statement, supra note 1, at 8 n.45.

[45] Unfairness Statement, supra note 3; see FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244–45 n.5 (1972); 15 U.S.C. § 45(n).

[46] Unfairness Statement, supra note 3 ("Emotional impact and other more subjective types of harm . . . will not ordinarily make a practice unfair.").

[47] Id. (public policy must be "clear and well-established" and "widely shared, and not the isolated decision of a single state or a single court").

and decline to treat the subjective quality, viewpoint, or persuasiveness of advisory, creative, or evaluative outputs as independently true or false, consistent with the Deception Statement's treatment of subjective and opinion claims; (5) delete the preemption analysis and substitute a statement that state-law compliance is not a defense to deception; (6) preserve and expand the Proposed Statement's footnote 46, clarifying that ordinary multi-objective optimization, safety training, and refusal behavior consistent with disclosed policies do not violate Section 5; (7) acknowledge the market-incentive discretion factor for inexpensive, frequently used, easily compared services; and (8) make explicit that any future unfairness theory will be evaluated under the three-part test codified at Section 5(n), including its substantial-injury, countervailing-benefits, and reasonable-avoidability requirements.

If the Commission intends to promulgate binding, industry-wide obligations, it must proceed through Magnuson-Moss rulemaking on a developed evidentiary record. A nonbinding policy statement may announce an enforcement interpretation, but it cannot itself create binding duties or preempt state law.

XI. Conclusion

The Commission is correct that AI systems are covered by Section 5 and correct that undisclosed, material divergence between what companies represent and what their systems are designed to do can deceive consumers. But the Proposed Statement reaches that sound destination by unsound means: presumed representations, presumed expectations, presumed materiality, selective application, an undefined accuracy baseline, a nonbinding and insufficiently supported preemption conclusion, and a procedural instrument that cannot bear the weight placed on it. Conforming any final statement to the Deception Statement's evidentiary discipline and reserving unfairness for the rigorous injury analysis the Unfairness Statement demands would produce guidance that protects consumers, respects the First Amendment and the federal structure, and preserves the certainty both foundational statements were written to provide.

Respectfully Submitted,

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[48] This comment is submitted in the author's personal capacity. No position taken in the comment should be attributed to other persons or organizations. The author was Director of the FTC's Office of Policy Planning from May 2018 through January 2021.