

Complaint

IN THE MATTER OF

**URTHBOX, INC.
AND
BENHAM BEHROUZI**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND SECTION 4 OF THE RESTORE ONLINE SHOPPERS CONFIDENCE ACT

*Docket No. C-4676; File No. 172 3028
Complaint, May 13, 2019 – Decision, May 13, 2019*

This consent order addresses UrthBox, Inc.’s endorsement and marketing practices relating to UrthBox’s snack box subscription service. The complaint alleges that respondents violated Section 5(a) of the Federal Trade Commission Act by misrepresenting that positive customer reviews of UrthBox and its snack boxes on the Better Business Bureau’s website and other third-party websites reflected the independent experiences or opinions of impartial customers, and by deceptively failing to disclose that some of those customers received compensation, including free snack boxes, to post those positive reviews. The complaint also alleges that respondents violated Section 5(a) of the Federal Trade Commission Act and Section 4 of the Restore Online Shoppers Confidence Act by failing to adequately disclose key terms of its “free” snack box offer to prospective customers. The consent order prohibits respondents from making misrepresentations in connection with the marketing or sale of any good or service with a negative option feature or that an endorser of any good or service is an independent user or ordinary consumer of the good or service. The order also requires respondents to provide consumers with a simple mechanism to avoid charges for a good or service with a negative option feature.

Participants

For the *Commission*: Sarah Schroeder and Roberta Tonelli.

For the *Respondents*: Kevin Woods, White & Woods PC; Karl Kronenberger, Kronenberger Rosenfeld LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that UrthBox, Inc., a corporation (“Corporate Respondent”), and Behnam Behrouzi, individually and as an officer of UrthBox, Inc. (collectively, “Respondents”), have violated the Federal Trade Commission Act, 15 U.S.C. § 45, and the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8403, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Corporate Respondent UrthBox, Inc., is a California corporation with its principal office or place of business at 535 Mission Street, Suite 1820, San Francisco, California 94105.
2. Respondent Behnam Behrouzi is an officer of Corporate Respondent. Individually or in concert with others, he controlled or had the authority to control the acts and practices alleged in this complaint. His principal office or place of business is the same as that of Corporate Respondent.

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3. Since 2014, Corporate Respondent has advertised, offered for sale, sold, and distributed snack boxes to consumers. Corporate Respondent has offered consumers one-, three-, and six-month subscriptions to receive its snack boxes. The monthly cost of its snack boxes has ranged from \$19.99 to \$199.00 depending on the box size. Corporate Respondent has required its customers to pre-pay the entire cost of the subscription term.

4. The acts and practices of Respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

Corporate Respondent’s Free Snack Box Offering

5. From October 2016 to November 2017, Corporate Respondent offered consumers a “free trial” of its snack boxes. As part of its free trial box offering, Corporate Respondent automatically enrolled consumers who ordered the free trial box in a six-month subscription of the same box, which typically cost \$77 to \$269 depending on the box size, unless they cancelled prior to the program’s subscription date.

6. Since the fall of 2016, Corporate Respondent disseminated, or has caused to be disseminated, advertisements for its free trial snack boxes, including but not necessarily limited to the attached Exhibits A-D. Those materials contain the following statements:

- a. “TASTY SNACK BOX FREE”

(Exhibit A, UrthBox banner ad) (in or after October 2016).

- b. “UrthBox Gives Away 5,000 Free Snack Boxes in April 2017 for Its ‘UrthDay’ Celebration in Observance of Earth Day

....

[H]ealth and earth conscious consumers nationwide will get a free UrthBox, valued at up to \$49 USD, by visiting www.urthbox.com/urthday and being one of 5,000 people to claim their free box.... Consumers will pay a \$2.99 shipping and handling fee for the free UrthDay box.”

(Exhibit B, www.prnewswire.com) (April 2017)

- c. “Enjoy a FREE TRIAL Box of Tasty #Snacks From UrthBox! Vegan & Gluten- Free Options! Ends Tdy!”

(Exhibit C, posting on UrthBox’s Twitter account) (January 2017).

- d. “Enjoy a FREE Trial of Tasty Snacks From UrthBox!
ENJOY A FREE FIRST BOX OF TASTY SNACKS!
Just Pay \$2.99 for Shipping & Handling

....

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GET YOUR FREE BOX
DISCOVER TASTY SNACKS EVERY MONTH

....

CLICK HERE TO GET YOUR FIRST BOX FREE!"

(Exhibit D, www.certifiKID.com) (April 2017).

Desktop Version of Website

7. Using a computer, consumers who clicked on links in Corporate Respondent's advertisements for a free snack box were directed to a version of Corporate Respondent's website that promoted the free snack box offer, including but not necessarily limited to the attached Exhibit E (June 2017). The landing page of the website stated "A MONTHLY BOX OF HEALTHY SNACKS! FIRST BOX FREE! JUST PAY SHIPPING," or similar language. (Exhibit E-1) The landing page also contained an image of Corporate Respondent's snack box and a large, bright green button stating "GET FREE TRIAL!," or similar language. Consumers who clicked the "GET FREE TRIAL!" or similar button on the landing page were sent to the bottom of the landing page where they were asked to choose the size of their free snack box, such as mini, small, medium, and large. (Exhibit E-2) For each snack box size, this section of the landing page reiterated the "FREE TRIAL!" offer and indicated the regular monthly price, which was crossed out (e.g., ~~\$29.99~~ for the small box). The page also stated that consumers would pay just \$2.99 to \$14.99 for shipping and handling, depending on the box size.

8. After selecting their box size, consumers were directed to a screen where they chose a box type, such as classic, gluten-free, vegan, or diet. (Exhibit E-3) The large header at the top of the page read: "GET YOUR FREE TRIAL."

9. After selecting their box type, consumers reached a checkout page. (Exhibit E-4 to E-5) The focal point of the checkout page was a form that consumers filled out with their name, shipping address, billing address, credit card information, and account information. The bright green header at the top of the form stated: "You're Getting A Free UrthBox!" After consumers completed the form, consumers reached a big green "CONTINUE" button.

10. Consumers who completed the form on the checkout page and clicked the large, bright green "CONTINUE" button were automatically enrolled in a six-month subscription for the box size and type that they selected for the free trial. Corporate Respondent charged consumers the total amount owed for six months of snack box shipments on the first of the month following shipment of the free box. Consumers had to cancel before the first of the month following shipment of the free box to avoid this six-month pre-payment charge.

11. On its website, Corporate Respondent did not clearly and conspicuously disclose, before obtaining the consumers' billing information: (1) the length of the subscription term (six months); and the amount that Corporate Respondent charges the consumer (the six-month pre-payment charge). When Corporate Respondent originally offered the free snack box offer on its

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website, it failed to adequately disclose these terms to consumers. On or around February 2017, Corporate Respondent added information about these terms on its “Terms & Conditions” and “FAQ” pages, which were accessible to consumers via hyperlinks. Consumers, however, were not required to click on these hyperlinks to obtain a free snack box. Moreover, consumers were unlikely to click on these hyperlinks because, as labeled, they failed to convey the importance, nature, or relevance of the information to which they lead. Moreover, when clicked, consumers would have had to scroll through lengthy pages with dense legalese to find the relevant information.

12. On or around February 2017, Corporate Respondent also added the following statement to the Checkout Page:

Free Trial Shipment

UrthBox is a members only snack club that delivers new products every month. After your free trial, you’ll get six months of regular monthly deliveries for just \$19.99 a month pre-paid. Please enjoy your free UrthBox on us!

This disclosure, however, was in relatively small font and was not in close proximity to the “CONTINUE” button. Moreover, it did not clearly disclose that Corporate Respondent would charge consumers for the entire six months (e.g., \$119.99) and the timing of the charge (the first of the month following shipment of the free box). For the reasons described in Paragraphs 11 and 12, consumers were unlikely to see and understand material terms of the free snack box offer before providing their billing information.

Mobile Version of Website

13. Using a mobile device, consumers who clicked on links in Corporate Respondent’s advertisements for a free snack box were directed to a mobile version of Corporate Respondent’s website that promoted the free box offer, including but not necessarily limited to the attached Exhibit F (July 2017). The landing page of the mobile website stated “A MONTHLY BOX OF TASTY SNACKS! ...FIRST BOX FREE! JUST PAY SHIPPING.” (Exhibit F-1) The landing page also contained an image of Corporate Respondent’s snack box and a large, bright green button stating “GET FREE BOX” or similar language. Consumers who clicked the “GET FREE BOX” or similar button on the landing page were sent to the bottom of the landing page where they were asked to select the size of their free snack box, such as mini, small, medium, and large. (Exhibit F-1) For each snack box size, this section of the landing page reiterated the “FREE TRIAL!” offer and indicated the regular monthly price, which was crossed out (e.g., \$29.99 for the small box). The page also stated that consumers would pay just \$2.99 to \$14.99 for shipping and handling, depending on the box size.

14. After selecting their box size, consumers were directed to a screen where they chose a box type, such as classic, gluten-free, vegan, or diet. (Exhibit F-2)

15. After selecting their box type, consumers reached a checkout page. (Exhibit F-3 to F-5) The focal point of the checkout page was a form that consumers filled out with their name,

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shipping address, billing address, credit card information, and account information. The bright green header at the top of the form stated: “Enjoy Your Free UrthBox!” After consumers completed the form, consumers reached a big green “FINISH” button.

16. Consumers who completed the form on the checkout page and clicked the “FINISH” button were automatically enrolled in a six-month subscription for the box size and type that they selected for the free trial. Corporate Respondent charged consumers the total amount owed for six months of snack box shipments on the first of the month following shipment of the free box. Consumers had to cancel before the first of the month following shipment of the free box to avoid this six-month pre-payment charge.

17. Similar to the desktop version of the website, to the extent Corporate Respondent’s mobile website relating to the free snack box offer contained purported disclosures about the terms of the free trial offer, any such disclosures were inadequate in terms of their content, presentation, proximity, prominence, or placement such that consumers were unlikely to see or understand such disclosures.

18. In numerous instances, consumers who had ordered a free snack box from Corporate Respondent via the desktop or mobile website did not know that Corporate Respondent had enrolled them in a six-month subscription plan until they discovered a charge on their credit card statement.

Corporate Respondent’s Advertising Through Customer Reviews and Endorsements

19. From January 2017 through November 2017, Corporate Respondent conducted an incentive program to induce customers to post positive reviews about its snack boxes on the Better Business Bureau (BBB) website. In numerous instances, when customers contacted Customer Service, Corporate Respondent’s representatives offered to send them a free snack box if they posted positive reviews on the BBB’s website. Corporate Respondent paid cash bonuses to its Customer Service representatives for each positive review they induced consumers to post on the BBB website. Corporate Respondent’s customer service representatives offered participation in the incentive program to hundreds of its customers, including some who called to cancel their snack box subscriptions.

20. To participate in the incentive program, Corporate Respondent’s Customer Service representatives instructed customers to click on a link directing them to the customer review portion of the BBB website; to post a positive review of Corporate Respondent; to verify the review with the BBB; and to send a screenshot of their review to Corporate Respondent by email. After customers sent proof that they had posted a positive, verified customer review on the BBB website, Corporate Respondent sent them a free snack box. The BBB requires customers to certify that they “have not been offered any incentive or payment originating from the business to write the review.” Without this certification, the BBB would not have posted the review.

21. In numerous instances in connection with the incentive program, Corporate Respondent’s customers posted positive reviews on the BBB website to qualify for a free snack

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box. These reviews appeared to be independent comments reflecting the opinions and experiences of ordinary consumers who had tried Corporate Respondent's products and services. These customers did not disclose that Corporate Respondent had offered them a free snack box in return for their positive customer reviews.

22. In 2017, after Corporate Respondent implemented its BBB incentive program, customer reviews of Corporate Respondent on the BBB website grew exponentially from 9 reviews in 2016, all negative, to 695 reviews for Corporate Respondent in 2017. Of these 695 customer reviews posted in 2017, 612 were positive, 15 were neutral, and 68 were negative. Consequently, the ratio of positive to negative reviews jumped from 100% negative to 88% positive after implementation of the incentive program. A vast majority of the customer reviews that resulted in this growth were submitted pursuant to Corporate Respondent's incentive program.

23. Because of its BBB incentive program, Corporate Respondent's BBB Business Review ratings improved significantly. Corporate Respondent received a much higher "Customer Review Rating" as well as a higher "Composite Rating" on its BBB Business Review page than it would have but for the incentive program. Millions of customers consult BBB Business Reports to make their purchasing decisions each month. Those consumers who accessed the Business Report for Corporate Respondent during 2017 would have seen hundreds of positive, "verified," customer reviews that should never have been posted to the BBB website because they were incentivized by the company being reviewed.

24. As part of the incentive program described above, Corporate Respondent also offered free snack boxes to customers in exchange for posting positive reviews on TrustPilot.com, a third-party website that publishes customer reviews of online businesses. In numerous instances, customers took advantage of Corporate Respondent's offer by posting positive reviews in exchange for free snack boxes. In numerous instances, the resulting reviews appeared to be independent comments reflecting the opinions and experiences of ordinary consumers who had tried Corporate Respondent's service and did not disclose that Corporate Respondent had given these consumers free snack boxes for their reviews.

25. From 2014 to November 2017, Corporate Respondent offered its customers store credit and/or free snack boxes in exchange for posting about their snack boxes on their personal social media accounts, including Twitter, Instagram, Tumblr, and Facebook. In numerous instances, customers took advantage of Corporate Respondent's offers, without disclosing on their accounts that Corporate Respondent had promised store credit or free products in exchange for their posts. Throughout this period, Corporate Respondent had no procedures or policies in place to educate or monitor their endorsers' posts on social media or other third-party websites.

Restore Online Shoppers' Confidence Act

26. In 2010, Congress passed the Restore Online Shoppers' Confidence Act, 15 U.S.C. §§ 8401 et seq., which became effective on December 29, 2010. Congress passed ROSCA because "[c]onsumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear,

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accurate information and give sellers an opportunity to fairly compete with one another for consumers' business." Section 2 of ROSCA, 15 U.S.C. § 8401.

27. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as that term is defined in the Commission's Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.2(w), unless the seller (1) clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information, (2) obtains the consumer's express informed consent before making the charge, and (3) provides a simple mechanism to stop recurring charges. See 15 U.S.C. § 8403.

28. The TSR defines a negative option feature as: "in an offer or agreement to sell or provide any goods or services, a provision under which the consumer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer." 16 C.F.R. § 310.2(w).

29. As described in Paragraphs 5 to 18, above, Respondents have advertised and sold snack box subscriptions to consumers through a negative option feature as defined by the TSR. See 16 C.F.R. § 310.2(w).

30. Pursuant to Section 5 of ROSCA, 15 U.S.C. § 8404, a violation of ROSCA is a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a.

VIOLATIONS OF THE FTC ACT**Count I****Failure to Disclose Negative Option Terms – Free Trial**

31. Through the means described in Paragraphs 5 to 18, Respondents have represented, directly or indirectly, expressly or by implication, that consumers could obtain a free trial of a snack box for a nominal shipping and handling fee.

32. In numerous instances in which Respondents have made the representation set forth in Paragraph 31, Respondents have failed to disclose, or disclose adequately, material terms and conditions of the offer, including:

- a. That Corporate Respondent would automatically enroll consumers in a six-month subscription plan; and
- b. On the first of the month following shipment of their free snack box, Corporate Respondent would charge consumers the total amount for six months of shipments of snack boxes.

33. Respondents' failure to disclose or disclose adequately the material information described in Paragraph 32, in light of the representation set forth in Paragraph 31, is a deceptive act or practice.

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Count II**False Claim of Independent Reviews**

34. Through the means described in Paragraphs 19 to 25, Respondents have represented, directly or indirectly, expressly or by implication, that positive customer reviews of Corporate Respondent and its snack boxes on the Better Business Bureau's website and other third-party websites reflect the independent opinions or experiences of ordinary impartial customers.

35. In fact, in numerous instances, these customer reviews on the BBB website and other third-party websites did not reflect the independent opinions or experiences of ordinary impartial customers. In numerous instances, those customers received compensation, including free snack boxes, to post positive reviews on the Better Business Bureau's website and other third-party websites. Therefore, the representation set forth in Paragraph 34 is false or misleading.

Count III**Failure to Disclose Material Connections**

36. Through the means described in Paragraphs 19 to 25, Respondents have represented, directly or indirectly, expressly or by implication, that positive customer reviews or endorsements of Corporate Respondent and its snack boxes posted on the Better Business Bureau's website and other third-party websites reflected their customers' opinions or experiences.

37. In numerous instances in which Respondents have made the representation set forth in Paragraph 36, Respondents have failed to disclose, or disclose adequately, that some of those customers received compensation, including free snack boxes, to post those reviews on the Better Business Bureau's website and other third-party websites. This fact would be material to consumers in evaluating the reviews in connection with a purchase or use decision.

38. Respondents' failure to disclose or disclose adequately the material information described in Paragraph 37, in light of the representation set forth in Paragraph 36, is a deceptive act or practice.

VIOLATIONS OF ROSCA**Count IV****Illegal Negative Option Marketing**

39. Through the means described in Paragraphs 5 to 18, in connection with selling snack boxes on the Internet through a negative option feature, Respondents have failed to:

- a. clearly and conspicuously disclose all material terms of the negative option feature before obtaining the consumer's billing information, including (i) that Corporate Respondent would automatically enroll

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consumers in a six-month subscription plan; and (ii) on the first of the month following shipment of their free snack box, Corporate Respondent would charge consumers the total amount owed for six months of shipments of snack boxes; and

- b. obtain consumers' express informed consent to the negative option feature before charging the consumers' credit or debit card.

40. The acts and practices of Respondents as alleged in Paragraph 39, above, constitute acts or practices that violate Section 4 of the Restore Online Shopper's Confidence Act.

41. The acts and practices of Respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this thirteenth day of May, 2019, has issued this Complaint against Respondents.

By the Commission.

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Exhibit A



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Exhibit B

Starting at 4 AM Pacific Standard Time on Tuesday April 11th through to 11:59 PM Pacific Standard Time on Sunday April 30th, health and earth conscious consumers nationwide will get a free [UrthBox](#), valued at up to \$49 USD, by visiting www.urthbox.com/urthday and being one of 5,000 people to claim their free box. Each box will introduce a variety of ethically sourced, GMO-free and organic foods, snacks and beverages from innovative environmental and health conscious consumer brands. Consumers will pay a \$2.99 shipping and handling fee for the free UrthDay box.

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Exhibit C



UrthBox @UrthBox · Jan 30

Enjoy a FREE TRIAL Box of Tasty #Snacks From UrthBox! Vegan & Gluten-Free Options! Ends Tdy! goo.gl/nySb0j



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Exhibit D

CertifiKID
Where Families Explore, Play & Save™

Washington, DC | ALL DEALS | MOST POPULAR | SUMMER CAMP DIRECTORY

Enjoy a FREE Trial of Tasty Snacks From UrthBox!



The Deal is Over!

Unlimited Time! Share This Deal

Follow Us

The Details

ENJOY A FREE FIRST BOX OF TASTY SNACKS!
Just Pay \$2.99 for Shipping & Handling



FREE BOX
DISCOVER TASTY SNACKS EVERY MONTH
CLASSIC * GLUTEN-FREE * VEGAN * DIET

Discover Awesome New Snacks Every Month!

UrthBox is the #1 Way to Enjoy Tasty New Snacks & to Discover Healthy Non-GMO, Organic and All Natural Foods Every Month.

Choose From Classic, Gluten-Free, Vegan & Diet Options.

Enjoy It Yourself Or Give It To Someone You Love. It's The Perfect Gift for Foodies, Snackers, College Students or Friends With Food Allergies.



CLICK HERE TO GET YOUR FIRST BOX FREE!

Most Popular:

Four Rounds of Glow-in-the-Dark Golf at Monster Mini Golf Columbia - BIRTHDAY PARTY OPTION
\$40 \$20 50% off

Sign up for Special Deals!

Give your family and friends the gift of choice! CertifiKID printable \$-Gift Cards now available.

CertifiKID Deals

The Washington Post
WASHINGTON
post-gazette.com

BUSINESS JOURNAL
business

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Exhibit E**UrthBox.com Desktop Landing Page: Screen Shot (1 of 2)**

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UrthBox.com Desktop Landing Page: Screen Shot (2 of 2)

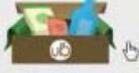
GET YOUR FREE TRIAL BOX! JUST PAY SHIPPING! FOR A LIMITED TIME ONLY!

THE BOX HOW IT WORKS PRODUCTS **urthBox** THE BUZZ EXAMPLES [GET FREE TRIAL](#)

GET YOUR FREE TRIAL

Enjoy your free trial of tasty snacks in classic, gluten-free, vegan or diet options.

CHOOSE A SIZE

MINI	SMALL	MEDIUM	LARGE
6+ Snacks <i>Casual Snacker</i>	12+ Snacks <i>Part Time Snacker</i>	18+ Snacks <i>Happy Snacker</i>	25+ Snacks <i>Pro Snacker</i>
			
\$19.99 FREE TRIAL! JUST \$2.99 S&H	\$29.99 FREE TRIAL! JUST \$3.99 S&H	\$39.99 FREE TRIAL! JUST \$9.99 S&H	\$49.99 FREE TRIAL! JUST \$14.99 S&H

Additional \$6.95 Shipping to Canada.
[See Example Box](#)

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UrthBox.com Desktop Choose Box Type Page: Screen Shot



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UrthBox.com Desktop Checkout Page: Screen Shot (1 of 3)

urthBox "Just got my UrthBox. And I love it!" "I haven't even opened it. Thank you UrthBox!" 888.959.8277

✓ Box Type ▶ ✓ Monthly Plan ▶ Checkout ▶ Confirmation

You're Getting A Free UrthBox!

Returning Customer?

SHIPPING

First Name Last Name

Address 1 Address 2

City State

Zipcode United States

BILLING

☐ Copy my shipping address as my billing address.

First Name Last Name

Address 1 Address 2

ORDER SUMMARY

SMALL CLASSIC - FIRST BOX FREE - JUST \$5.99	60% OFF
S+H	ONLY 7 LEFT! \$5.99
TOTAL	\$5.99

Have A Gift Code? APPLY

SECURED VISA MASTERCARD AMERICAN EXPRESS DISCOVER

International Shipping
UrthBox currently ships to all destinations in the U.S. and Canada. All international orders incur an additional international shipping surcharge per box.

Free Trial Shipment
UrthBox is a members only snazzy club that delivers new products every month. After your free trial, you'll get six months of regular monthly deliveries for just \$14.99 a month pre-paid. Please enjoy your free UrthBox on us!

Need Help?
We're here to help, call us anytime between 9am and 5pm Pacific Standard Time for customer support. 888-959-8277

UrthBox.com Desktop Checkout Page: Screen Shot (2 of 3)

urthBox "Just got my UrthBox. And I love it!" "I haven't even opened it. Thank you UrthBox!" 888.959.8277

✓ Box Type ▶ ✓ Monthly Plan ▶ Checkout ▶ Confirmation

BILLING

☐ Copy my shipping address as my billing address.

First Name Last Name

Address 1 Address 2

City State

Zipcode United States

CREDIT CARD

Card Number 01 JAN / 2018 CVV

ACCOUNT INFORMATION

Email Phone Number

Password Confirm Password

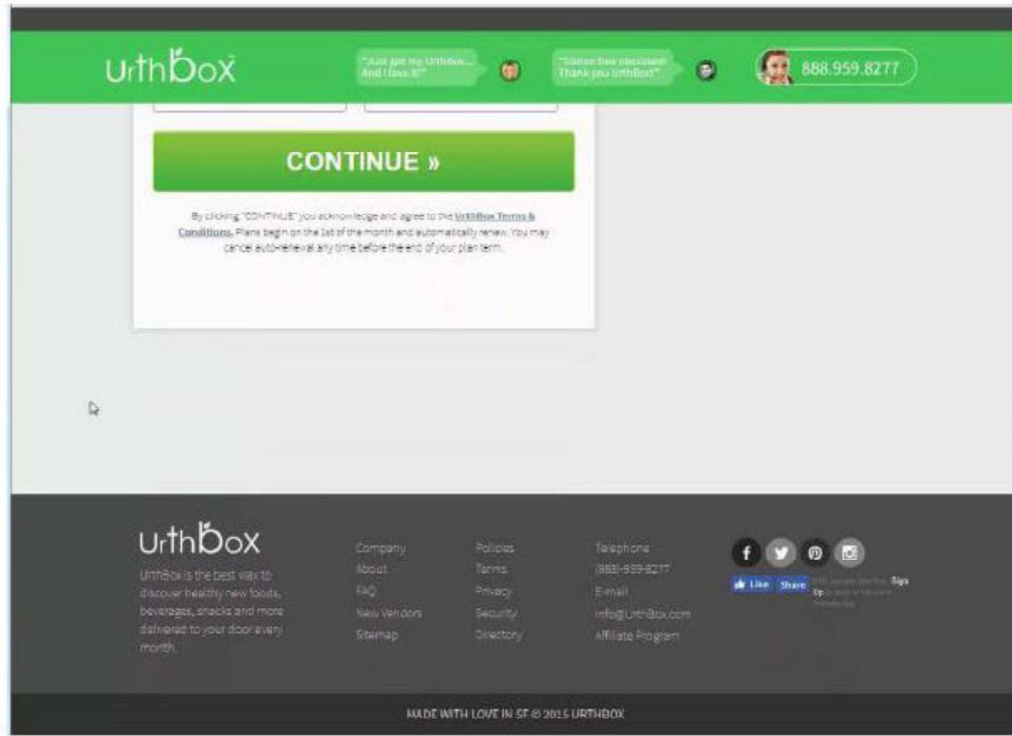
CONTINUE »

UrthBox is a members only snazzy club that delivers new products every month. After your free trial, you'll get six months of regular monthly deliveries for just \$14.99 a month pre-paid. Please enjoy your free UrthBox on us!

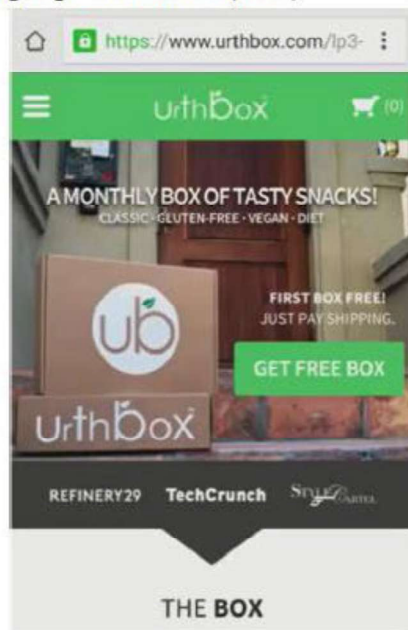
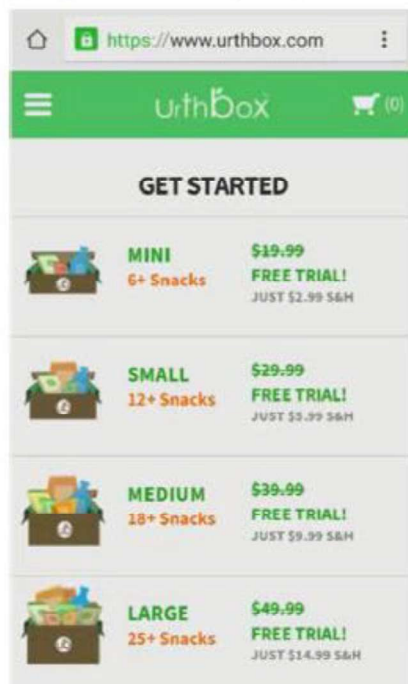
Need Help?
We're here to help, call us anytime between 9am and 5pm Pacific Standard Time for customer support. 888-959-8277

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UrthBox.com Desktop Checkout Page: Screen Shot (3 of 3)



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Exhibit F**UrthBox.com Mobile Landing Page: Screen Shot (1 of 2)****UrthBox.com Mobile Landing Page: Screen Shot (2 of 2)**

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UrthBox.com Mobile Select Box Type Page: Screen Shot



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UrthBox.com Mobile Checkout Page: Screen Shot (1 of 5)

https://www.urthbox.com/checko

urthBox

CHECKOUT

Enjoy Your Free UrthBox!

urthBox

SHIPPING

SSL SECURED

First Name

Last Name

Address 1

Address 2

UrthBox.com Mobile Checkout Page: Screen Shot (2 of 5)

https://www.urthbox.com

urthBox

City

State

Zipcode

United States

BILLING

☐ Copy my shipping address.

First Name

Last Name

Address 1

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UrthBox.com Mobile Checkout Page: Screen Shot (3 of 5)

https://www.urthbox.com

ub

Address 2

City

State

Zipcode

United States

CREDIT CARD

Card Number

01 (JAN) 2018 CVV

UrthBox.com Mobile Checkout Page: Screen Shot (4 of 5)

https://www.urthbox.com

ub

ACCOUNT INFORMATION

Email

Phone Number

Password

Confirm Password

FINISH »

By clicking "FINISH" you acknowledge and agree to the UrthBox Terms & Conditions. Plans begin on the 1st of the month and automatically renew, you may cancel at anytime before your renewal.

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UrthBox.com Mobile Checkout Page: Screen Shot (5 of 5)

The screenshot displays the mobile checkout page for UrthBox.com. At the top, the browser address bar shows the URL <https://www.urthbox.com>. Below the address bar is a green header with the UrthBox logo. The main content area is titled "ORDER SUMMARY". It lists the item "MINI CLASSIC - FIRST BOX" with a price of ~~\$19.99~~ and a note "ONLY 7 LEFT!". Below this, it states "FREE - JUST \$2.99 S+H" with a price of \$2.99. The total is listed as \$2.99. There is a section for "Have A Gift Code?" with an "APPLY" button. Below that, there is a section for "International Shipping" and a section for "Free Trial Shipment".

ORDER SUMMARY	
MINI CLASSIC - FIRST BOX	\$19.99
FREE - JUST \$2.99 S+H	ONLY 7 LEFT!
	\$2.99
TOTAL	\$2.99

Have A Gift Code?

International Shipping:
UrthBox currently ships to all destinations in the U.S. and Canada. All international orders incur an additional international shipping surcharge per box.

Free Trial Shipment
UrthBox is a members only snack club that delivers new products every month. After your free trial, you'll get six months of regular monthly deliveries for just \$14.99 a month pre-paid. Please enjoy your free UrthBox on us!

Decision and Order

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondents named herein. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondents a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondents with violations of the Federal Trade Commission Act, 15 U.S.C. § 45, and the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8403.

Respondents and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondents that they neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, they admit the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said acts, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondents are:
 - a. Respondent UrthBox, Inc., a California corporation with its principal office or place of business at 535 Mission Street, Suite 1820, San Francisco, California 94105.
 - b. Respondent Behnam Behrouzi, an officer of the Proposed Corporate Respondent, UrthBox, Inc. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of UrthBox, Inc. His principal office or place of business is the same as that of UrthBox, Inc.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

Decision and Order

ORDER**Definitions**

For purposes of this Order, the following definitions apply:

- A. “Billing Information” means any data that enables any person to access a customer’s account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.
- B. “Charge,” “Charged,” or “Charging” means any attempt to collect money or other consideration from a consumer, including but not limited to causing Billing Information to be submitted for payment, including against the consumer’s credit card, debit card, bank account, telephone bill, or other account.
- C. “Clearly and Conspicuously” means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 - 1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure (“triggering representation”) is made through only one means.
 - 2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 - 3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 - 4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
 - 5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.
 - 6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

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7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
 8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
- D. “Negative Option Feature” means, in an offer or agreement to sell or provide any good or service, a provision under which the consumer’s silence or failure to take affirmative action to reject a good or service or to cancel the agreement is interpreted by the seller or provider as acceptance or continuing acceptance of the offer.
- E. “Respondents” means the Corporate Respondent and the Individual Respondent, individually, collectively, or in any combination.
1. “Corporate Respondent” means UrthBox, Inc., a corporation, and its successors and assigns.
 2. “Individual Respondent” means Behnam Behrouzi.
- F. “Telemarketing” means any plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310.
- G. “Unexpected Material Connection” means any relationship that might materially affect the weight or credibility of a testimonial or endorsement and that would not reasonably be expected by consumers.

Provisions**I. Prohibited Misrepresentations Regarding Endorsements**

IT IS ORDERED that Respondents, and Respondents’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any good or service, must not misrepresent, or assist others in misrepresenting, expressly or by implication, that an endorser of such good or service is an independent user or ordinary consumer of the good or service.

Compliance with this Provision is separate from, and in addition to, the disclosures required by Provisions III, VI, and VII, *infra*.

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II. Prohibited Misrepresentations of Good or Service with Negative Option Feature

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any good or service with a Negative Option Feature, must not misrepresent, or assist others in misrepresenting, expressly or by implication:

- A. Any cost to the consumer to purchase, receive, use, or return the initial good or service;
- B. That the consumer will not be Charged for any good or service;
- C. That a good or service is offered on a "free," "trial," "sample," "bonus," "gift," "no obligation," "discounted" basis, or words of similar import, denoting or implying the absence of an obligation on the part of the recipient of the offer to affirmatively act in order to avoid Charges, including where a Charge will be assessed pursuant to the offer unless the consumer takes affirmative steps to prevent or stop such a Charge;
- D. That the consumer can obtain a good or service for a processing, service, shipping, handling, or administrative fee with no further obligation;
- E. The purpose(s) for which the consumer's Billing Information will be used;
- F. The date, timing, or manner by which the consumer will incur any obligation or be charged unless the consumer takes an affirmative action on the Negative Option Feature;
- G. That a transaction has been authorized by the consumer; or
- H. Any other fact material to the consumer concerning any good or service, such as any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the good or service.

Compliance with this Provision is separate from, and in addition to, the disclosures required by Provisions III, VI, and VII, *infra*.

III. Required Disclosures Relating to Unexpected Material Connections

IT IS FURTHER ORDERED that Respondents and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any good or service, must not make any representation, expressly or by implication, about any consumer, reviewer, or other endorser

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of such good or service without disclosing, Clearly and Conspicuously, and in close proximity to that representation, any Unexpected Material Connection between such endorser and (1) any Respondent; (2) any other individual or entity affiliated with the good or service; or (3) the good or service.

IV. Required Removal of Demonstrations, Reviews, and Endorsements

IT IS FURTHER ORDERED that Respondents must, within thirty days of the date of service of this order, take all reasonable steps to remove any demonstration, review, or endorsement, by an endorser with a Material Connection to any Respondent, of any good or service currently viewable by the public that does not comply with Provisions I and III.

V. Required Monitoring of Endorsers

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any good or service by means of an endorsement by an endorser with a Material Connection to (1) any Respondent; (2) any other individual or entity affiliated with the good or service; or (3) the good or service, must take steps sufficient to ensure compliance with Provisions I and III. Such steps shall include, at a minimum:

- A. Providing each such endorser with a clear statement of his or her responsibilities to disclose Clearly and Conspicuously, and in close proximity to the endorsement, in any review, online video, social media posting, or other communication endorsing the good or service, the endorser's Unexpected Material Connection to any Respondent, any other individual or entity affiliated with the good or service, or the good or service; and obtaining from each such endorser a signed and dated statement acknowledging receipt of that statement and expressly agreeing to comply with it. For the purpose of this subsection, the term "signed" may include a verifiable electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law;
- B. Establishing, implementing, and thereafter maintaining a system to monitor and review the representations and disclosures of endorsers with any Material Connection to any Respondent, any other individual or entity affiliated with the good or service, or the good or service, to ensure compliance with Provisions I and III. The system shall include, at a minimum, monitoring and reviewing the endorsers' reviews, online videos and social media postings; and
- C. Creating reports showing the results of the monitoring required by Provision V.B.

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VI. Required Disclosures Relating To Negative Option Features

IT IS FURTHER ORDERED that Respondents and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any good or service with a Negative Option Feature, must not:

- A. Represent, expressly or by implication, that any good or service that includes a Negative Option Feature is being offered on a free, trial, no obligation, reduced, or discounted basis, without disclosing Clearly and Conspicuously, and immediately adjacent to, any such representation:
 - 1. The extent to which the consumer must take affirmative action(s) to avoid any Charges: a) for the offered good or service, b) of an increased amount after the trial or promotional period ends, and c) on a recurring basis;
 - 2. The total cost (or range of costs) the consumer will be Charged and, if applicable, the frequency of such Charges unless the consumer timely takes steps to prevent or stop such Charges; and
 - 3. The deadline(s) (by date or frequency) by which the consumer must affirmatively act in order to stop all recurring Charges.
- B. Obtain Billing Information from a consumer for any transaction involving a good or service that includes a Negative Option Feature, without first disclosing Clearly and Conspicuously, and immediately adjacent to where a consumer provides Billing Information:
 - 1. The extent to which the consumer must take affirmative action(s) to avoid any Charges: a) for the offered good or service, b) of an increased amount after the trial or promotional period ends, and c) on a recurring basis;
 - 2. The total cost (or range of costs) the consumer will be Charged, the date the initial Charge will be submitted for payment, and, if applicable, the frequency of such Charges unless the consumer timely takes affirmative steps to prevent or stop such Charges;
 - 3. The deadline(s) (by date or frequency) by which the consumer must affirmatively act in order to stop all recurring Charges;
 - 4. The name of the seller or provider of the good or service and, if the name of the seller or provider will not appear on billing statements, the billing descriptor that will appear on such statements;
 - 5. A description of the good or service;

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6. Any Charge or cost for which the consumer is responsible in connection with the cancellation of an order or the return of a good; and
 7. The simple cancellation mechanism to stop any recurring Charges, as required by Provision VIII.
- C. Fail to send the consumer:
1. Immediately after the consumer's submission of an online order, written confirmation of the transaction by email. The email must Clearly and Conspicuously disclose all the information required by Provision VI.B, and contain a subject line reading "Order Confirmation" along with the name of the good or service, and no additional information; or
 2. Within two (2) days after receipt of the consumer's order by mail or telephone, a written confirmation of the transaction, either by email or first class mail. The email or letter must Clearly and Conspicuously disclose all the information required by Provision VI.B. The subject line of the email must Clearly and Conspicuously state "Order Confirmation" along with the name of the good or service, and nothing else. The outside of the envelope must Clearly and Conspicuously state "Order Confirmation" along with the name of the good or service, and no additional information other than the consumer's address, the Respondent's return address, and postage.

VII. Obtaining Express Informed Consent

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any good or service with a Negative Option Feature, must not use, or assist others in using, Billing Information to obtain payment from a consumer, unless Respondents first obtain the express informed consent of the consumer to do so. To obtain express informed consent, Respondents must:

- A. For all written offers (including over the Internet or other web-based applications or services), obtain consent through a check box, signature, or other substantially similar method, which the consumer must affirmatively select or sign to accept the Negative Option Feature, and no other portion of the offer. Respondents shall disclose Clearly and Conspicuously, and immediately adjacent to such check box, signature, or substantially similar method of affirmative consent, only the following, with no additional information:
1. The extent to which the consumer must take affirmative action(s) to avoid any Charges: a) for the offered good or service, b) of an increased amount after the trial or promotional period ends, and c) on a recurring basis;

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2. The total cost (or range of costs) the consumer will be Charged and, if applicable, the frequency of such Charges unless the consumer timely takes affirmative steps to prevent or stop such Charges; and
 3. The deadline(s) (by date or frequency) by which the consumer must affirmatively act in order to stop all recurring Charges.
- B. For all oral offers, prior to obtaining any Billing Information from the consumer:
1. Clearly and Conspicuously disclose the information contained in Provision VI.B; and
 2. Obtain affirmative unambiguous express oral confirmation that the consumer: a) consents to being Charged for any good or service, including providing, at a minimum, the last four (4) digits of the consumer's account number to be Charged, b) understands that the transaction includes a Negative Option Feature, and c) understands the specific affirmative steps the consumer must take to prevent or stop further Charges.

For transactions conducted through Telemarketing, Respondents shall maintain for three (3) years from the date of each transaction an unedited voice recording of the entire transaction, including the prescribed statements set out in Provision VII.B. Each recording must be retrievable by date and by the consumer's name, telephone number, or Billing Information, and must be provided upon request to the consumer, the consumer's bank, or any law enforcement entity.

VIII. Simple Mechanism To Cancel Negative Option Feature

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any good or service with a Negative Option Feature, must provide a simple mechanism for the consumer to: (1) avoid being Charged, or Charged an increased amount, for the good or service and (2) immediately stop any recurring Charges. Such mechanism must not be difficult, costly, confusing, or time consuming, and must be at least as simple as the mechanism the consumer used to initiate the Charge(s). In addition:

- A. For consumers who entered into the agreement to purchase a good or service including a Negative Option Feature over the Internet or through other web-based applications or services, Respondents must provide a mechanism, accessible over the Internet or through such other web-based application or service that consumers can easily use to cancel the good or service and to immediately stop all further Charges.

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- B. For consumers who entered into the agreement to purchase a good or service including a Negative Option Feature through an oral offer and acceptance, Respondents must maintain a telephone number and a postal address that consumers can easily use to cancel the good or service and to immediately stop all further Charges. Respondents must assure that all calls to this telephone number shall be answered during normal business hours and that mail to the postal address is retrieved regularly.

IX. Monetary Relief

IT IS FURTHER ORDERED that:

- A. Respondent UrthBox, Inc. must pay to the Commission \$100,000, which Respondent UrthBox, Inc. stipulates its undersigned counsel holds in escrow for no purpose other than payment to the Commission.
- B. Such payment must be made within 8 days of the effective date of this Order by electronic fund transfer in accordance with instructions provided by a representative of the Commission.

X. Additional Monetary Provisions

IT IS FURTHER ORDERED that:

- A. Respondents relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission to enforce its rights to any payment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- C. The facts alleged in the Complaint establish all elements necessary to sustain an action by or on behalf of the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- D. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other relief (including consumer information remedies) as it determines to be

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reasonably related to Respondents' practices alleged in the Complaint. Any money not used is to be deposited to the U.S. Treasury.

Respondents have no right to challenge any activities pursuant to this Provision.

- E. In the event of default on any obligation to make payment under this Order, interest, computed as if pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for 10 days beyond the date that payment is due, the entire amount will immediately become due and payable.
- F. Each day of nonpayment is a violation through continuing failure to obey or neglect to obey a final order of the Commission and thus will be deemed a separate offense and violation for which a civil penalty shall accrue.
- G. Respondents acknowledge that their Taxpayer Identification Numbers (Social Security or Employer Identification Numbers), which Respondents have previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

XI. Customer Information

IT IS FURTHER ORDERED that Respondents must directly or indirectly provide sufficient customer information to enable the Commission to efficiently administer consumer redress. Respondents represent that they have provided this redress information to the Commission. If a representative of the Commission requests in writing any information related to redress, Respondents must provide it, in the form prescribed by the Commission representative, within 14 days.

XII. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondents obtain acknowledgments of receipt of this Order:

- A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 3 years after the issuance date of this Order, the Individual Respondent for any business that he, individually or collectively with any other Respondents, is the majority owner or controls directly or indirectly, and the Corporate Respondent, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter

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of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which a Respondent delivered a copy of this Order, that Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

XIII. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondents make timely submissions to the Commission:

- A. One year after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, in which:
1. Each Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (b) identify all of that Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Respondent (which Individual Respondent must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
 2. Additionally, the Individual Respondent must: (a) identify all his telephone numbers and all his physical, postal, email and Internet addresses, including all residences; (b) identify all his business activities, including any business for which such Respondent performs services whether as an employee or otherwise and any entity in which such Respondent has any ownership interest; and (c) describe in detail such Respondent's involvement in each such business activity, including title, role, responsibilities, participation, authority, control, and any ownership.
- B. For 10 years after the issuance date of this Order, each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

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1. Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of the Corporate Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
 2. Additionally, the Individual Respondent must submit notice of any change in: (a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which such Respondent performs services whether as an employee or otherwise and (ii) any entity in which such Respondent has any ownership interest and over which Respondents have direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.
- C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re UrthBox, Inc.

XIV. Recordkeeping

IT IS FURTHER ORDERED that Respondents must create certain records for 10 years after the issuance date of the Order, and retain each such record for 5 years, unless otherwise specified below. Specifically, Corporate Respondent and Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;

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- B. personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. copies or records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. a copy of each unique advertisement or other marketing material making a representation subject to this Order.

XV. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondents' compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondents or any individual or entity affiliated with Respondents, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XVI. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

Analysis to Aid Public Comment

- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Provision as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a consent order as to UrthBox, Inc. ("UrthBox") and Benham Behrouzi ("respondents").

The proposed consent order ("order") has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves respondents' endorsement and marketing practices relating to UrthBox's snack box subscription service. UrthBox has offered consumers monthly subscriptions (one-, three-, and six-month subscriptions) to receive its snack boxes. Urthbox has required its customer to pre-pay the entire cost of the subscription term.

The complaint alleges that respondents violated Section 5(a) of the FTC Act by misrepresenting that positive customer reviews of UrthBox and its snack boxes on the Better Business Bureau's website and other third-party websites reflected the independent experiences or opinions of impartial customers, and by deceptively failing to disclose that some of those customers received compensation, including free snack boxes, to post those positive reviews. The complaint also alleges that respondents violated Section 5(a) of the FTC Act and Section 4 of the Restore Online Shoppers Confidence Act ("ROSCA") by failing to adequately disclose key terms of its "free" snack box offer to prospective customers. Specifically, when the free trial

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period expired, UrthBox would automatically enroll consumers in a six-month subscription plan and would charge them the total amount owed for six months of shipments of snack boxes. The complaint also alleges that respondents violated ROSCA by failing to obtain consumers' express informed consent prior to charging them for that ongoing subscription.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct.

Part I prohibits misrepresenting an endorser of any good or service is an independent user or ordinary consumer of the good or service.

Part II prohibits respondents from making misrepresentations in connection with the marketing or sale of any good or service with a negative option feature. The order defines the term "Negative Option Feature."

Part III prohibits any representation about any consumer, reviewer, or other endorser of any good or service without disclosing, clearly and conspicuously, and in close proximity to that representation, any unexpected material connection between such endorser and (1) any respondent, (2) any other individual or entity affiliated with the good or service, or (3) the good or service. The order defines the terms "Clearly and Conspicuously" and "Unexpected Material Connection."

Part IV requires respondents to take all reasonable steps to remove any demonstration, review, or endorsement, by any endorser with a material connection to any respondent, of any good or service currently viewable by the public that does not comply with Provisions I and III.

Part V requires respondents, when they use endorsers to advertise or sell a good or service, to take certain steps to make sure the endorsements comply with Parts I and III of the order. Such steps include clearly notifying endorsers of their representation and disclosure responsibilities and creating a monitoring system to review endorsements and disclosures.

Part VI requires respondents to make certain disclosures when they market or sell any good or service with a negative option feature.

Part VII prohibits respondents from using billing information to obtain payment for a good or service with a negative option feature without first obtaining the consumer's express informed consent to do so. The order describes the steps respondents must take to obtain that expressed informed consent and also defines the term "Billing Information."

Part VIII requires respondents to provide consumers with a simple mechanism to avoid charges for a good or service with a negative option feature. The order describes what constitutes a simple mechanism, including that such mechanism must not be difficult, costly, confusing, or time consuming, and must be at least as simple as the mechanism the consumer used to initiate the charge.

Analysis to Aid Public Comment

Parts IX and X require the corporate respondent, UrthBox, Inc., to pay \$100,000 to the Commission, which the Commission will use to administer a fund for relief, including consumer redress unless direct redress to consumers is impracticable.

Part XI requires respondents to provide customer information to the Commission so that it may efficiently administer consumer redress.

Parts XII to XVI are reporting and compliance provisions. **Part XII** requires respondents to distribute the order to certain persons and submit signed acknowledgments of order receipt. **Part XIII** requires respondents to file compliance reports with the Commission, and to notify the Commission of bankruptcy filings or changes in corporate structure that might affect compliance obligations. **Part XIV** contains recordkeeping requirements for personnel records, advertising and marketing materials, and all records necessary to demonstrate compliance with the order. **Part XV** contains other requirements related to the Commission's monitoring of the respondents' order compliance. **Part XVI** provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order's terms in any way.

Order to Maintain Assets

IN THE MATTER OF

TRONOX LIMITED,

NATIONAL INDUSTRIALIZATION COMPANY (TASNEE),

NATIONAL TITANIUM DIOXIDE COMPANY LIMITED (CRISTAL),

AND

CRISTAL USA INC.

DECISION AND ORDER IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. 9377; File No. 171 0085

Order to Maintain Assets, April 10, 2019 - Decision and Order, May 28, 2019

This case addresses the \$1.325 billion acquisition by Tronox Limited of Cristal, which is the titanium dioxide business of Saudi Arabia based National Industrialization Company. The complaint, 166 F.T.C. 544, alleges that the acquisition would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act by significantly reducing competition in the market for titanium dioxide in North America. In his Initial Decision, 166 F.T.C. 564, the Administrative Law Judge (“ALJ”) concluded that Complaint Counsel established a presumption of liability by showing that the acquisition will lead to undo concentration in the relevant market and provided substantial evidence demonstrating that the North American chloride TiO₂ market is vulnerable to coordinated conduct, which would be enhanced by the acquisition. The ALJ also found that Respondents’ arguments regarding entry and efficiencies were unsupported by the evidence and ordered Respondents to terminate the Acquisition Agreement and cease and desist from taking any actions to consummate the Acquisition Agreement. 166 F.T.C. 717. The Respondents appealed the Initial Decision. On a joint motion from the parties, the Commission withdrew the matter from adjudication for the purpose of considering a consent proposal. The Commission issued an Order to Maintain Assets and, after considering the public comments, ordered Respondents to divest the TiO₂ Assets to Ineos.

Participants

For the *Commission*: Cem Akleman, Steven Dahm, Eric Elmore, Sean Hughto, Joonsuk Lee, Meredith Levert, Victoria Lippincott, Jon Nathan, Blake Risenmay, Kristian Rogers, Lily Rudy, Robert Tovsky, and Cecelia Waldeck.

For the *Respondents*: Matt Reilly, Kirkland & Ellis; Pete Levitas, Arnold & Porter Kaye Scholer.

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having issued its administrative Complaint charging Tronox Limited, National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited (Cristal), and Cristal USA Inc. (each a “Respondent,” and collectively “Respondents”) with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45,