

United States Senate

February 6, 2022

The Honorable Lina Khan
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairwoman Khan:

I write to you today concerning potential violations of the Federal Trade Commission Act (the “Act”) by GoFundMe Inc., a California-based corporation (hereinafter “GoFundMe”), specifically involving violations of the prohibition against “unfair or deceptive acts or practices.”¹

As you may know, GoFundMe is one of the largest online crowdfunding platforms in the world. GoFundMe’s Terms of Service (“terms”) describe the company’s services, stating: “GoFundMe Services are offered as a platform to allow an individual, entity or non-profit organization...to post a fundrais[ing campaign]...to the Platform to accept monetary donations...from donors...on behalf of [a beneficiary] of [a given campaign].”² These terms also state the “Platform is offered to help Organizers raise money.” Functionally, the way this works is that an organizer creates a fundraising page on GoFundMe’s platform and solicits donations from the public for the benefit of a stated cause or beneficiary. To increase interest, an organizer can promote the campaign-specific web link to direct prospective donors to the fundraising page on the GoFundMe website. Once there, a donor can, in only a few clicks, donate a selected dollar amount to support a specific cause. GoFundMe’s business model has, to date, allowed fundraisers to raise an estimated \$10 billion on the platform.

GoFundMe’s terms lead each donor to believe that any gift made will be received by the intended beneficiary. These terms contain statements which constitute implied representations. For example, GoFundMe’s terms state: “GoFundMe merely provides the technology to allow Fundraisers to connect with Donors”; “The Services are administrative platforms only”; and “[Donors] must make the final determination as to the value and appropriateness of contributing to any User or Fundraiser.” Further, GoFundMe has incorporated by reference its “GoFundMe Guarantee Policy” which includes statements suggesting that funds will be “delivered and used for their stated purpose...” but if that proves incorrect, the GoFundMe Guarantee will protect a donor, with potential remedies including a refund. Based on these statements, donors have been led to believe that GoFundMe is “merely” providing technology and its services constitute “only” a platform. With statements like this, GoFundMe has clearly disclaimed any right or authority to override a donor’s wishes or to participate in redirecting any donations made on the platform to alternative causes or beneficiaries.

¹ 15 U.S.C. Sec. 45(a)(1)

² <https://www.gofundme.com/o/terms>

Recent actions by GoFundMe have given rise to questions as to whether the company has violated Federal law. For example, on Friday, February 4, 2022, GoFundMe announced that it was removing from its platform the “Freedom Convoy 2022 Fundraiser,” a campaign to support the peaceful protest by truckers in Canada who oppose ongoing government lockdowns in response to COVID-19. In removing this fundraiser, GoFundMe also announced the company would “work with organizers to send all remaining funds to... charities chosen by the Freedom Convoy 2022 organizers and verified by GoFundMe.”³ GoFundMe claimed this was in response to allegations “from law enforcement that the previously peaceful demonstration has become an occupation, with police reports of violence and other unlawful activity.”⁴ Setting aside the inconsistency and arbitrariness with which GoFundMe has applied its terms, allowing fundraisers to continue in support of causes like the “Capitol Hill Occupied Protest” in Seattle during the Summer of 2020, which involved murder, four shootings, several alleged sexual assaults, untold amounts in property damage and the deprivation of property rights,⁵ GoFundMe’s decision to redirect donations made by any U.S.-based donors from the Freedom Convoy to an alternative cause, raises serious questions as to whether GoFundMe has violated its terms and, in turn, engaged in unfair and deceptive practices.

As you are no doubt aware, when examining whether something constitutes an unfair or deceptive act or practice the Commission has looked to three key elements:⁶

- 1) Whether there is a representation, omission or practice that is likely to mislead the consumer;
- 2) How a reasonable consumer would act in the situation; and
- 3) Whether the representation, omission, or practice is “material.”

Each of these elements appear to be present as to GoFundMe in the case of the “Freedom Convoy 2022 Fundraiser,” as well as in a number of other high-profile fundraisers.

When determining whether the first element identified above has been met, the issue is whether a representation, omission or practice is “likely to mislead, rather than whether it causes actual deception.”⁷ As noted above, when examining GoFundMe’s operation, it is clear that a donor, who is a consumer, would be likely to believe their donation was flowing to the selected beneficiary without disruption or interference. Although donors must agree with the GoFundMe terms and privacy policy to finalize any donation, as the Commission has noted in a number of cases previously, “fine print may be insufficient to correct a misleading representation.”⁸ Thus, the inclusion of a link to GoFundMe’s 12,000-plus word Terms of Service would not necessarily cure any of GoFundMe’s misleading representations. Additionally, it is questionable whether the Terms of Service, which GoFundMe clearly seeks to use as a qualifying disclosure, are written in a

³ <https://medium.com/gofundme-stories/update-gofundme-statement-on-the-freedom-convoy-2022-fundraiser-4ca7e9714e82>

⁴ <https://medium.com/gofundme-stories/update-gofundme-statement-on-the-freedom-convoy-2022-fundraiser-4ca7e9714e82>

⁵ <https://www.vox.com/policy-and-politics/2020/7/2/21310109/chop-chaz-cleared-violence-explained>

⁶ https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf

⁷ https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf

⁸ https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf

“legible and understandable” way.⁹ In short, it appears GoFundMe has engaged in a pattern of behavior which would likely mislead a reasonable consumer into believing their donation is going directly to the selected beneficiary when, in fact, GoFundMe has sought to prevent the disbursement of funds to the intended beneficiaries and, at least in the case of the “Freedom Convoy 2022 Fundraiser,” initially announced it would redirect those donations to beneficiaries other than those selected by the donors.¹⁰

Finally, there is the question of whether the representation, omission, or practice is “material.” As the Commission has noted previously, “a ‘material’ misrepresentation or practice is one which is likely to affect a consumer's choice of or conduct regarding a product.”¹¹ It stands to reason that, had consumers known at the time of making a donation that their donation could be routed to a beneficiary other than the one they intended, it would have affected their choice to use GoFundMe’s services.

In the case of the “Freedom Convoy 2022 Fundraiser,” GoFundMe initially announced the company would be redirecting the nearly \$10 million in donations collected on its platform to other causes. GoFundMe ultimately relented after significant public outcry, instead announcing donations would be returned to the donors. While GoFundMe may have bowed to public pressure in this case to do the right thing, the swiftness with which GoFundMe announced its original intentions to redirect funds strongly suggests that the company may have previously engaged in such a practice in contravention of donor intent and despite the implied representations of GoFundMe’s terms. Whether GoFundMe has previously redirected funds and engaged in a pattern of false and deceptive practices is a matter that must be investigated.

Additionally, while the “Freedom Convoy 2022 Fundraiser” is a particularly egregious example, GoFundMe also has a long history of penalizing and removing fundraisers for conservative causes or individuals associated with conservative beliefs or movements, often in stark contrast to how GoFundMe has treated fundraisers, causes or beneficiaries that are liberal or left-leaning. These include the treatment of the fundraiser for Arizona State University students¹², for Loudon County, Virginia parents fighting the teaching of a racist curriculum in public schools¹³, and the legal defense fund of Kyle Rittenhouse.¹⁴ This despite the fact that GoFundMe has allowed fundraisers for Black Lives Matter¹⁵, despite the groups association with riots that caused billions of dollars in damage, fundraisers for so-called “anti-racist” groups¹⁶ despite their pushing of messages that would seemingly violate GoFundMe’s Terms of Service, and fundraisers for ‘bail funds’ which have the explicit goal of getting individuals arrested for crimes, many of them riot-related, out of jail.¹⁷ Although not directly related to the question of whether GoFundMe

⁹ https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf

¹⁰ Organizations like the Association of Fundraising Professionals (“AFP”) have adopted fundraising standards, such as the “Donor’s Bill of Rights,” which include statements such as donors have the right “to be assured their gifts will be used for the purposes for which they were given. See, ”<https://afpglobal.org/donor-bill-rights>

¹¹ https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf

¹² <https://dailycaller.com/2021/09/24/gofundme-removes-fundraiser-conservative-students-harassed-arizona-state-university/>

¹³ <https://freebeacon.com/campus/gofundme-deactivates-page-run-by-virginia-parents-fighting-woke-curriculum/>

¹⁴ <https://www.wfla.com/news/national/gofundme-explains-why-it-removed-fundraisers-before-kyle-rittenhouse-trial/>

¹⁵ <https://www.gofundme.com/f/h2tqv-black-lives-matter-los-angeles?qid=82e04f8cdc0ecad7734432ab5a701084>

¹⁶ <https://www.gofundme.com/f/supporting-antiracism-fund?qid=346ab09518863bbcd0b2276316b0ada>

¹⁷ <https://www.gofundme.com/f/in-solidarity-with-Protestors?qid=37d23b64e8545cf134e71ab3d20da390>

has engaged in unfair or deceptive acts or practices, it does call into question whether GoFundMe uses its Terms of Service not to provide important disclosures of information to consumers of its services, but rather as a pretext to remove fundraisers with politics different from those the organization supports.

Accordingly, I am requesting that the Commission immediately open an investigation into the practices of GoFundMe and whether those practices constitute a violation of the statutory prohibition against “unfair or deceptive acts or practices.” Should you have any questions, please do not hesitate to contact my staff.

Sincerely,



Ted Cruz

United States Senator