

January 12, 2024

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Mail Stop H-144 (Annex J)
Washington, DC 20580

Submitted electronically via www.regulations.gov

RE: Unfair or Deceptive Fees NPRM, R207011

The National Automatic Merchandising Association (NAMA) appreciates the opportunity to comment on the Federal Trade Commission's notice of proposed rulemaking on unfair or deceptive fees (NPRM, R207011).

Founded in 1936, NAMA is the association representing the U.S. convenience services industry, with its core membership comprised of owners and operators of vending machines, micro markets, office coffee, tea, water, and pantry services. With nearly 1,000 member companies, including many of the world's most recognized brands, NAMA provides advocacy, education, and research for its membership. The convenience services industry employs nearly 160,000 Americans – the majority employed by small businesses – contributing a total economic impact of \$34.9 billion to the U.S. economy annually.¹

Unattended retail and vending machines have been integral to the retail landscape for decades, providing a convenient 24/7 solution in locations across the country. Whether it's a student in need of a quick and nutritious breakfast, an office worker craving coffee or a snack, or a delivery driver seeking refreshments on a hot summer day, our industry is poised to meet these demands.

Electronic payment option availability on vending machines has increased in recent years. According to the NAMA 2023 Industry Census, 95 percent of machines accept standard debit/credit cards, and 87 percent offer contactless payments. Offering a variety of payment options – cash, coin, electronic, and mobile – has given consumers more flexibility in utilizing our members' services. However, the adoption of electronic payments comes with additional service and interchange fees imposed by payment networks, fees absent in cash transactions.

Vending machine operators typically operate on very narrow profit margins, occasionally rendering fees associated with electronic payments impractical. To offer the best possible pricing to customers and maintain suitable business operations, operators may offer a discounted price for cash purchases.

The limited space on traditional vending machines poses a challenge in displaying multiple prices for a single product, which could lead to consumer confusion. To address this, operators opt for a more practical approach by affixing labels near the payment panel, clearly advertising the cash discount. These labels feature transparent language such as:

¹ <https://namanow.org/voice/economic-research/>
HEADQUARTERS

“Posted cash price reflects a \$0.10 discount from the credit/debit card price.”

“The credit/debit price will be \$.10 higher than the displayed discounted cash price.”

“Posted price reflects a 10-cent discount for using cash.”

The consumer is also given the accurate purchase price by the machine before the transaction is completed. If paying by credit or debit card, the machine will inform the consumer after the selections are made of the price that does not include the cash discount. No high-pressure gimmicks or sales tricks are being employed to deceive the customer.

However, **§464.2(b)** of the proposed rule potentially presents an issue for vending machine operators to continue to advertise and/or offer cash discounts to consumers. The total price of a good or goods purchased from a vending machine can depend on the form of payment the consumer chooses. As stated above, the physical limitations of price display on vending machines mean that the operator must usually only display one price (cash *or* card). However, offering a cash discount means the display price may be different from what is ultimately charged depending on the method of payment used by the consumer.

NAMA is concerned that as currently written, the proposed rule will effectively ban the practice of offering and/or advertising a cash discount. After reviewing the supporting documentation of the NPRM, we assert that the industry-standard practice of offering and/or advertising a cash discount price on vending machines falls outside the scope or intent of the Commission’s work on unfair or deceptive fees. This is further evidenced by the lack of any mention of vending machines or our industry’s use of a cash discount in the nearly 12,000 comments the Commission received in response to its advanced notice of proposed rulemaking (ANPR, R207011).

Relatedly, several jurisdictions throughout the country have instituted “cashless retail” bans mandating businesses, including vending and unattended retail locations, to accept cash payments. These laws aim to enhance access for the unbanked and underbanked by requiring businesses to accept cash as one form of payment. While other payment methods may still be allowed in such cases, operators are obligated to provide a cash payment option alongside card or electronic payments and cannot exclusively offer non-cash options.

As highlighted above, the Commission’s proposed rule on deceptive or unfair fees will result in operators needing to advertise one price. This will end up being the higher, card price to account for the payment network fees charged to the operator. But by also complying with the local cashless retail bans, operators will end up charging customers paying in cash – including the unbanked and underbanked – an artificially higher price than they would have otherwise offered.

When finalizing this rule, we request the Commission make clear that the vending and unattended retail industry is specifically exempt from this rule, and further that this rule does not apply to the advertising or offering of cash discounts at vending machines.

Thank you for the opportunity to comment on the NPRM on unfair or deceptive fees. If you have any additional questions, please contact me at mbisenius@namanow.org or 571-257-4123.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matt Bisenius", with a large, sweeping flourish at the end.

Matt Bisenius
Vice President, External Affairs