

GHOST JOBS

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A new specter is haunting job seekers in the post-COVID-19 economy: “ghost jobs,” which are job listings by real companies advertising positions that do not actually exist or for which there is no present intention to hire. Ghost jobs do not simply waste the time and money of job applicants. They also reflect a new evolution in the harvesting and misuse of sensitive personal data, which inflicts privacy wounds on individuals while breaching the modern social contract on which the digital economy runs. Ghost jobs also distort the economic data that inform critical nationwide policy decisions, such as the setting of federal interest rates. Nonetheless, the prevailing view is that ghost jobs, while regrettable, do not run afoul of any U.S. law.

This Piece challenges that notion, arguing that ghost jobs violate the consumer protection mandates of the Federal Trade Commission Act. The FTC should use its enforcement authority over unfair and deceptive consumer practices to exorcise ghost jobs from the online hiring landscape. This Piece offers a roadmap for doing so.

INTRODUCTION

A tight employment market, economic uncertainty, and the rising (and often clumsy) use of artificial intelligence in hiring have coagulated into a witches’ brew of turmoil for job seekers.¹ Recently, job applicants have been haunted by a new specter rising from the electrification of hiring: “ghost jobs,” or online job listings by real companies advertising

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1. See Jeffrey Bartash, *Bad, Terrible, Not-So-Good July Jobs Report. Here Are the Gory Details.*, MarketWatch, <https://www.marketwatch.com/livecoverage/july-2025-jobs-report-today/card/bad-terrible-not-so-good-july-jobs-report-here-are-the-gory-details-aabJOKRMMKEOC17ztBqO> (on file with the *Columbia Law Review*) (last updated Aug. 1, 2025) (discussing turmoil in the job market and observing a hiring stagnation across almost all industries); Lindsay Ellis & Katherine Bindley, *AI Is Wrecking an Already Fragile Job Market for College Graduates*, Wall St. J., <https://www.wsj.com/lifestyle/careers/ai-entry-level-jobs-graduates-b224d624> (on file with the *Columbia Law Review*) (last updated July 29, 2025) (discussing experts’ opinions that AI will lead to a reduction in the workforce, particularly for entry-level workers).

positions that do not actually exist or for which there is no present intention to hire.² Some ghost jobs are limited to passive résumé collection, while others truly commit to the ruse by staging fake screening calls and interviews.³

Ghost jobs are not simply apparitions conjured up by the collective angst of frustrated job applicants. There is mounting evidence that the use of ghost jobs is growing, in large part because of the low costs associated with creating online job advertisements.⁴ One employment research firm compared the number of job postings to hiring data and determined that “the rate of hires per job posting has essentially halved over the past five years,” dropping from eight to four hires for every ten job listings between 2019 and 2024.⁵ Another 2024 survey of hiring managers found that forty percent of their respective companies had advertised ghost jobs in the past

2. See, e.g., Lynn Cook, Fake Job Postings Are Becoming a Real Problem, *Wall St. J.* (Jan. 12, 2025), <https://www.wsj.com/lifestyle/careers/ghost-jobs-2c0dcd4e> (on file with the *Columbia Law Review*) (describing ghost jobs as “roles that companies advertise but have no intention of filling”); see also Ghost Jobs: Why Do 40% of Companies Advertise Positions that Don’t Exist?, *The Guardian* (Oct. 30, 2024), <https://www.theguardian.com/money/2024/oct/30/ghost-jobs-why-do-40-of-companies-advertise-positions-that-dont-exist> [<https://perma.cc/JW9T-X7UL>] [hereinafter Ghost Jobs] (describing ghost jobs as employment listings in which “a company advertises a job that isn’t real”); Grzegorz Kubera, Beware the Rise of ‘Ghost Jobs’—Fake Job Openings With No Intent to Hire, *CIO* (Nov. 25, 2024), <https://www.cio.com/article/3610861/beware-the-rise-of-ghost-jobs-fake-job-openings-with-no-intent-to-hire.html> [<https://perma.cc/R66D-74MB>] (“Ghost jobs are open positions published by companies with no intention of hiring for them.”); Darian Woods & Wailin Wong, What Are “Ghost Jobs”?, *NPR* (June 14, 2024), <https://www.npr.org/2024/06/14/nx-s1-5001857/> [<https://perma.cc/Y88C-FZ89>] (distinguishing ghost jobs from “scams” and explaining that ghost jobs are “job ads where the employer is real, but they might never fill the position”). The terms “ghost jobs” and “fake jobs” are often used interchangeably. See, e.g., Aliss Higham, ‘Ghost Jobs’ Are on the Rise, *Newsweek* (July 16, 2024), <https://www.newsweek.com/ghost-jobs-rise-1924351> [<https://perma.cc/T4KH-VAY7>].

3. See, e.g., Ghost Jobs, *supra* note 2 (discussing survey results showing that “85% of companies that contacted applicants regarding their fake jobs say they also fake-interviewed them”); Robin Ryan, Be Careful of Employers Posting Ghost Jobs, *Forbes* (Nov. 30, 2022), <https://www.forbes.com/sites/robinryan/2022/11/30/be-careful-of-employers-posting-ghost-jobs/> [<https://perma.cc/258V-T6LQ>] (providing an anecdote in which an apparent ghost-job advertisement resulted in a recruiter phone screening).

4. See Hunter Ng, Why Is It So Hard to Find a Job Now? Enter Ghost Jobs 7 (Oct. 29, 2024) (unpublished manuscript), <https://arxiv.org/pdf/2410.21771> [<https://perma.cc/RF9E-FMF5>] (“A salient reason driving the increase in ghost jobs is the minimal marginal cost to employers in posting a new job on top of existing job postings.” (citation omitted) (citing Manudeep Bhuller, Domenico Ferraro, Andreas R. Kostøl & Trond C. Vigtel, The Internet, Search Frictions and Aggregate Unemployment (Nat’l Bureau of Econ. Rsch., Working Paper No. 30911, 2023), https://www.nber.org/system/files/working_papers/w30911/w30911.pdf [<https://perma.cc/AFK9-UMTZ>])); see also Kubera, *supra* note 2 (describing how “the phenomenon of ‘ghost jobs’ is growing rapidly” and “becoming increasingly common”).

5. Anuz Thapa, Ghost Jobs: What the Rise in Fake Job Listings Says About the Current Job Market, *CNBC* (Aug. 22, 2024), <https://www.cnn.com/2024/08/22/ghost-jobs-why-fake-job-listings-are-on-the-rise.html> [<https://perma.cc/3FZQ-CRTD>] (last updated Sep. 19, 2025) (citing data from Revelio Labs).

year, and that three in ten companies had active ghost-job postings at the time of the survey.⁶ An additional study that applied large language models and artificial intelligence to data gleaned from the employment site Glassdoor concluded that “up to 21% of job postings” on the site could be ghost jobs.⁷ Yet another recent study that examined internal data by the Greenhouse jobs platform found that ghost jobs could amount to one in five active postings on its site.⁸ One company in the résumé-coaching business even claims to have recently identified 1.7 million “potential ghost job[s]” on LinkedIn.⁹

The use of ghost jobs is, at its core, unethical. Ghost jobs manipulate the emotions and waste the time and money of jobseekers, who may already be in vulnerable positions.¹⁰ Ghost jobs may reduce the ability of employers to fill real positions by injecting distrust into the hiring system and deterring talented candidates from applying to legitimate job listings.¹¹ They may magnify unemployment by so discouraging job seekers that they drop out of the labor market altogether.¹² Ghost jobs can even corrupt the economic data that inform critical nationwide policy decisions, such as the size and timing of federal interest rate cuts.¹³

6. 3 in 10 Companies Currently Have Fake Job Postings Listed, Resume Builder, <https://www.resumebuilder.com/3-in-10-companies-currently-have-fake-job-posting-listed/> [<https://perma.cc/LDB4-U9JM>] (last updated June 18, 2024) [hereinafter Fake Job Survey]. The survey covered 1,641 hiring managers. Id.

7. Ng, *supra* note 4, at 5.

8. Cook, *supra* note 2 (discussing a study of internal data by Greenhouse).

9. AJ Dellinger, Job Boards Are Still Rife With ‘Ghost Jobs’. What’s the Point?, BBC (Mar. 19, 2024), <https://www.bbc.com/worklife/article/20240315-ghost-jobs-digital-job-boards> [<https://perma.cc/J8J6-AUX3>] (internal quotation marks omitted) (quoting Geoffrey Scott, Senior Content Manager & Hiring Manager, Resume Genius).

10. See, e.g., Eira May, The Ghost Jobs Haunting Your Career Search, Stack Overflow Blog (Dec. 26, 2024), <https://stackoverflow.blog/2024/12/26/the-ghost-jobs-haunting-your-career-search/> [<https://perma.cc/26Z5-MHQ3>] (“People waste energy and time applying for [ghost jobs], following up with hiring managers who aren’t actually hiring, and preparing for interviews that aren’t going to happen. That’s exhausting and demoralizing.”).

11. See Tom Starner, Why It Might Be Time to Reassess Using ‘Ghost Jobs’, HR Exec. (Aug. 26, 2024), <https://hrexecutive.com/why-it-might-be-time-to-reassess-using-ghost-jobs/> [<https://perma.cc/MPJ9-A87V>] (arguing that the use of ghost jobs produces distrust, which can “backfire” for recruiters and “do more harm than good for employers’ chances of capturing top candidates”).

12. See Ng, *supra* note 4, at 17 (explaining that “ghost jobs contribute to job search fatigue, increased application costs, and potentially longer periods of unemployment”); see also Kevin Jiang, Can’t Find Work Despite the So-Called Labour Shortage? You Might Be Applying for ‘Ghost Jobs’, *Toro. Star* (Dec. 20, 2023), https://www.thestar.com/business/cant-find-work-despite-the-so-called-labour-shortage-you-might-be-applying-for-ghost/article_fddc8be8-9e95-11ee-b725-53206ac285b4.html (on file with the *Columbia Law Review*) (last updated Feb. 7, 2025) (“In some cases, [ghost jobs] can cause [candidates] to pause their job search or stop looking for work altogether.” (internal quotation marks omitted) (quoting Tony Abbis, Lab. Mkt. Specialist, WorkLink Emp. Soc’y)).

13. See Ng, *supra* note 4, at 17 (“The distortion caused by ghost jobs can lead to inaccurate labor market indicators, affecting empirical studies and policy decisions based

Why do companies advertise ghost jobs? While doing so would seem to waste everyone's time, companies that post ghost jobs are driven by a variety of incentives. Perhaps the most benign is the desire to build a talent pipeline that can be drawn on in times of need.¹⁴ A less savory motivation for posting ghost jobs is to project growth and strength to investors and the market.¹⁵ One survey of hiring managers revealed that some companies "believe advertising nonexistent [job] openings has a positive impact on their revenue by making it appear like their company is growing faster than it is."¹⁶ Companies may also use ghost jobs to manipulate existing staff both to create the perception that help is coming to overworked employees and to compel higher performance by reminding them that they are replaceable.¹⁷ Ghost jobs can also allow companies to gain market insight and competitive intelligence by reaping information from résumés and sham interviews.¹⁸ More nefarious data-mining operations that target sensitive consumer data may also be afoot.¹⁹

on these metrics."); see also May, *supra* note 10 (explaining the view that ghost jobs can distort the data underlying the Job Openings and Labor Turnover Survey published by the U.S. Bureau of Labor Statistics); Thapa, *supra* note 5 ("The rise of ghost jobs is muddying the jobs report . . . [and] making it harder for the Fed to make decisions and understand what the labor market looks like[]" (internal quotation marks omitted) (quoting Dan Kaplan, Senior Partner, Korn Ferry)); Darian Woods, Wailin Wong, Julia Ritchey & Kate Concannon, *Ghost Jobs*, NPR (June 7, 2024), <https://www.npr.org/2024/06/07/1197965117/ghost-jobs> [<https://perma.cc/EQ89-DBPW>] ("[Ghost jobs are] also a problem for the Federal Reserve when it tries to figure out how much slack there is in the labor market, and whether to raise or lower interest rates.").

14. See, e.g., Kubera, *supra* note 2 ("A job listing alone can help a company build a potential talent base to draw on for the future . . .").

15. See Jack Kelly, *If You Thought the Job Search Was Rigged Against You, Here's Why You're Not Wrong*, *Forbes* (Feb. 13, 2024), <https://www.forbes.com/sites/jackkelly/2024/02/13/if-you-thought-the-job-search-was-rigged-against-you-heres-why-youre-not-wrong/> [<https://perma.cc/M7W2-UNLW>] (explaining that companies may post ghost jobs to "create the illusion that the company is doing well and growing"); Rachelle Winter, *The Rise of Ghost Jobs: Ethical and Legal Considerations for Employers*, *Harv. Res. Sols.* (July 7, 2025), <https://www.hrsus.com/2025/07/07/the-rise-of-ghost-jobs-ethical-and-legal-considerations-for-employers/> [<https://perma.cc/RTY2-3G5P>] (noting a desire to project growth and boost company reputation as an incentive to post ghost jobs).

16. Jennifer Liu, *4 in 10 Companies Say They've Posted a Fake Job This Year—What That Actually Means*, *CNBC* (June 27, 2024), <https://www.cnn.com/2024/06/27/4-in-10-companies-say-theyve-posted-a-fake-job-this-year-what-that-means.html> [<https://perma.cc/L8MU-FN8Z>] (describing the results of a survey by Resume Builder).

17. See *Fake Job Survey*, *supra* note 6 (finding that, among other reasons, "[c]ompanies posted fake job listings . . . to make employees believe their workload would be alleviated by new workers" and "to have employees feel replaceable").

18. See, e.g., Kelly, *supra* note 15 ("Companies can gain a sense of the marketplace by posting phantom jobs. By the responses, they can determine how much money their competitors offer . . .").

19. See Jair Abrego Cubilla, *The Hidden Dangers of Ghost Job Positions: A Data Privacy and InfoSec Specialist's Perspective*, *Medium* (Sep. 27, 2024), <https://medium.com/@jairabregoc/the-hidden-dangers-of-ghost-job-positions-a-data-privacy-and-infosec-specialists-perspective-ae4fb1fa3462> [<https://perma.cc/5XXJ-8H7A>] ("Ghost job postings . . . are . . .

Legislatures in New Jersey,²⁰ California,²¹ and the province of Ontario, Canada,²² have made some initial progress toward combating ghost jobs. But these are exceptions,²³ and the U.S. Congress has not taken any action to address ghost jobs as of this writing. Indeed, it is a common refrain that advertising ghost jobs is not prohibited in the United States.²⁴ This Piece challenges that notion, arguing that while federal legislation may not be on the horizon, the FTC’s consumer protection enforcement powers offer an existing, ready, and potent measure to combat ghost jobs.²⁵

This Piece has three Parts. Part I describes the modern social contract as a system of bargains in which personal data is knowingly exchanged for

use[d] for unethical practices like data mining. These positions collect resumes, gather data, and use the information to build databases, without any intention of hiring.”).

20. See Assemb. B. 4625, 221st Leg., Reg. Sess. (N.J. 2024). Among other things, the New Jersey bill provides, “An employer who publicly advertises a job posting shall include in the posting . . . a statement disclosing whether the posting is for an existing vacancy or not” Id. § 1(a). The bill would also require job postings to be removed from the internet once the advertised position is filled. Id. § 1(b)(1).

21. Pending legislation introduced in California in February 2025 would require employers to disclose whether a job listing is for a vacancy. Assemb. B. 1251, 2025–2026 Leg., Reg. Sess. (Cal. 2025).

22. In May 2024, the Ontario government announced a host of employment market reforms, including a proposal to “require larger employers to disclose in publicly advertised job advertisements whether a job vacancy exists or not.” Press Release, Ministry of Lab., Immigr., Training & Skills Dev., Ont. Gov’t, Ontario Helping Jobseekers and Cracking Down on Exploitative Employers (May 3, 2024), <https://news.ontario.ca/en/release/1004527/ontario-helping-jobseekers-and-cracking-down-on-exploitative-employers> [<https://perma.cc/2XAD-FYL8>]. This disclosure provision and other amendments to the Employment Standards Act are scheduled to take effect on January 1, 2026. See Employment Standards Act, S.O. 2000, c. 41 (Can.).

23. Legislation addressing ghost jobs, even when introduced by state legislatures, has not always been successful. In January 2025, the Kentucky legislature introduced a bill that would have banned employers from advertising ghost jobs in the state. The bill failed to progress. See H.B. 57, 2025 Leg., Reg. Sess. (Ky. 2025).

24. See, e.g., Steven Chung, Should Governments Crack Down on Fake Job Postings?, Above the L. (May 22, 2024), <https://abovethelaw.com/2024/05/should-governments-crack-down-on-fake-job-postings/> [<https://perma.cc/SAV4-LDMH>] (“Currently, no laws ban or regulate the use of ghost jobs.”); see also Patricia Parnet, Ghost Jobs: The Mystery of Fake Job Ads, Medium (Feb. 21, 2024), <https://patriciaparnet.medium.com/ghost-jobs-the-mystery-of-fake-job-ads-571f5e270d55> [<https://perma.cc/C52Y-QYGC>] (writing that the ghost-jobs phenomenon “almost seems like fraud or deception,” but is “often simply accepted and not questioned”).

25. The author is aware of one source suggesting that ghost jobs “may violate federal consumer protection law” as enforced by the FTC. See Elizabeth Weber Handwerker & Alexander H. Pepper, Cong. Rsch. Serv., IF12977, “Ghost” Job Postings (2025), https://www.congress.gov/crs_external_products/IF/PDF/IF12977/IF12977.2.pdf [<https://perma.cc/DW7B-23QA>]. Labor economist Elizabeth Handwerker and attorney Alexander Pepper claim that “[t]he harms to consumers from ghost job postings, while real, are less direct and quantifiable than when an applicant is defrauded or deceptively induced to work.” Id. This Piece argues, instead, that ghost jobs can facilitate severe pecuniary harms (including identity theft–based fraud), infringe on personal privacy and dignity, and distort the financial metrics on which nationwide economic policies rely. See *infra* section III.A; see also *supra* note 13 and accompanying text.

a particular benefit. Ghost jobs breach this arrangement by violating consumers' reasonable expectations of what they will receive in exchange for their personal data. Part II outlines the FTC's enforcement powers over unfair and deceptive consumer practices. Part III identifies three enforcement theories that the FTC could (and should) draw upon to oust ghost jobs from the online hiring market: deceptive object fraud, false impressions, and uninformed consent.

I. CONTRACT AND CONSENT

The wrongfulness of ghost jobs is not (entirely) due to the false hope they inflict on job seekers. Rather, ghost jobs are an ethical affront because they reflect a new evolution in the use of deceit to erode individual privacy. The deception runs deep, making ghost jobs difficult to avoid or prove: They tend to prey on vulnerability through trickery and insinuation, rather than direct misrepresentation. The range of sensitive information that ghost jobs can obtain through sleight of hand is vast, as job applications often request personal data concerning "gender, sexual orientation, ethnicity, veteran status, physical disabilities and other sensitive topics."²⁶

Such data extraction, of course, typically happens only after a job applicant has clicked through a thicket of ubiquitous "privacy contracts," online terms of service, and data-collection notices that clot the firmament of our digital world. These devices are not written to be read,²⁷ but rather to obtain consent, that modern talisman against privacy torts and regulatory violations.²⁸ While not all ghost jobs rely on standard privacy agreements, most do.²⁹

26. Mary J. Hildebrand, *Job Applicants, Diversity Data, and Privacy Compliance Under the GDPR: What You Need to Know*, Lowenstein Sandler LLP (May 13, 2022), <https://www.lowenstein.com/news-insights/publications/articles/job-applicants-diversity-data-and-privacy-compliance-under-the-gdpr-what-you-need-to-know> [https://perma.cc/M8KR-BFCN].

27. See, e.g., Ari Ezra Waldman, *Privacy, Notice, and Design*, 21 *Stan. Tech. L. Rev.* 74, 83 (2018) ("[I]t seems that today's privacy policies are not designed with readability, comprehension, and access in mind.").

28. See, e.g., Daniel J. Solove, *Murky Consent: An Approach to the Fictions of Consent in Privacy Law*, 104 *B.U. L. Rev.* 593, 596 (2024) ("Consent is a golden ticket: it provides tremendous power to collect, use, and disclose data. . . . Consent legitimizes activities that would otherwise be illegitimate, immoral, or illegal."); see also Gary Burkhardt, Frederic Boy, Daniele Doneddu & Nick Hajli, *Privacy Behaviour: A Model for Online Informed Consent*, 186 *J. Bus. Ethics* 237, 238 (2023) ("Consent . . . possesses 'moral force': it can transform a wrong into a right and it has the ethical power to recast the normative expectations that exist between individuals." (citation omitted) (citing Heidi M. Hurd, *The Moral Magic of Consent*, 2 *Legal Theory* 121 (1996))); Daniel J. Solove, *Introduction: Privacy Self-Management and the Consent Dilemma*, 126 *Harv. L. Rev.* 1880, 1880 (2013) [hereinafter Solove, *Consent Dilemma*] ("Consent legitimizes nearly any form of collection, use, or disclosure of personal data.").

29. It is important to remember that ghost jobs are posted by real companies and, in that sense, are distinct from scams. See Woods & Wong, *supra* note 2. Just like

The prevalence of privacy contracts speaks not just to our litigious nature but to a recognition, glowing like a faint ember beneath the ash of daily “clickwrap” agreements,³⁰ that personal data is valuable and should be handled with care. Clicking through a privacy contract before selecting “agree” on a credit card offer, a new social media account, or a job application can force a reminder that something of value—indeed, “we are our data”³¹—is being given in trade.³² This arrangement has become a critical norm underlying the digital economy: A company “provides something of value . . . in exchange for something from a consumer that is also of value, namely personal data.”³³

While internet users may not read the terms of a privacy notice before granting their consent to proceed,³⁴ they certainly believe that performing this ritual is a condition precedent to receiving some benefit. Job applicants share personal information with employment sites because they reasonably believe that a deal is being made: some slice of personal privacy in exchange for the possibility, however remote, of obtaining employment.³⁵ As in numerous other contexts, this exchange of personal data for other forms of value has become a bedrock of the modern social contract.³⁶

As ghost jobs fail to confer any benefit in return for applicants’ personal data, job seekers unknowingly part with their data without a reciprocal gain. Indeed, they incur a *loss*, measured not in dollars but in their control over, and the privacy of, their personal data. Job seekers would

advertisements for real jobs, ghost jobs tend to come with standard-issue privacy contracts, data-use notices, and the like.

30. Jonathan A. Obar & Anne Oeldorf-Hirsch, *The Clickwrap: A Political Economic Mechanism for Manufacturing Consent on Social Media*, Soc. Media & Soc’y, July–Sep. 2018, at 1, 1 (“The clickwrap is a digital prompt that facilitates consent processes by affording users the opportunity to quickly accept or reject digital media policies.”).

31. Kristene Unsworth, *The Social Contract and Big Data*, 25 J. Informational Ethics 83, 85 (2016); see also Neil Richards & Woodrow Hartzog, *Taking Trust Seriously in Privacy Law*, 19 Stan. Tech. L. Rev. 431, 434 (2016) (“[T]he exploitation of personal data is an enormous source of value . . .”).

32. As one account provides, “Real people don’t read standard form contracts. Reading is boring, incomprehensible, alienating, time consuming, but most of all pointless. We want the product, not the contract.” Omri Ben-Shahar, *The Myth of the ‘Opportunity to Read’ in Contract Law*, 5 Eur. Rev. Cont. L. 1, 2 (2009).

33. Paul M. Schwartz, *Property, Privacy, and Personal Data*, 117 Harv. L. Rev. 2055, 2071 (2004) (emphasizing the commodification of personal information in the context of software contracts).

34. See Ben-Shahar, *supra* note 32, at 2.

35. See Kirsten Martin, *Understanding Privacy Online: Development of a Social Contract Approach to Privacy*, 137 J. Bus. Ethics 551, 562 (2016) (describing “a social contract approach to privacy” in which “rules around discriminately sharing information take into consideration the possible benefits to the individual []such as . . . employment”).

36. This situation should not be viewed as wholly negative. See, e.g., Kevin E. Davis & Florencia Marotta-Wurgler, *Contracting for Personal Data*, 94 N.Y.U. L. Rev. 662, 672 (2019) (“The benefits and costs of data transfers do not only accrue to the transferor and the transferee. For instance, society clearly benefits if the transferee will use the data to generate innovations that will be widely disseminated at relatively low charge.”).

almost surely not consent to such disclosures had they not been deceptively induced by the prospect of a chance at employment.³⁷ While “[c]onsent is the master concept that defines the law of contracts in the United States,” it “must be informed or knowledgeable in some meaningful sense if we are to accord it legal or moral significance.”³⁸ Since ghost jobs offer no possibility of employment, whatever use is actually made of applicant data is beyond job seekers’ reasonable expectations and outside the modern social contract for digital life.³⁹ No privacy notice can cure this dynamic.

As of this writing, Congress has not addressed ghost jobs, and the prospect of successful litigation by job applicants is remote.⁴⁰ This leaves redress in the hands of the regulatory system, specifically the FTC, which has long functioned as “the nation’s chief federal privacy and information security enforcer.”⁴¹ As two leading privacy scholars wrote a decade ago, “In the future, the FTC can be . . . bolder,” drawing upon its privacy jurisprudence, to “push more toward focusing on consumer expectations than on broken promises[] [by] mov[ing] beyond the four corners of privacy policies [and] into design elements and other facets of a company’s relationships with consumers.”⁴² Ghost jobs offer the FTC an ideal opportunity to realize this potential.

II. UNFAIRNESS AND DECEPTION

Section 5(a)(1) of the Federal Trade Commission Act (FTC Act) provides that “unfair or deceptive acts or practices in or affecting commerce[] are . . . unlawful.”⁴³ The FTC Act empowers the FTC “to prevent” the use of such devices.⁴⁴ The Agency’s jurisdiction to do so is expansive, with a recent Director of Consumer Protection remarking that the FTC’s “consumer protection mission . . . covers almost the entire economy.”⁴⁵ In

37. This blunt statement captures the reality well: “Workers who apply for jobs assume that employers are looking to fill the jobs.” Ng, *supra* note 4, at 2.

38. Peter H. Schuck, *Rethinking Informed Consent*, 103 *Yale L.J.* 899, 900 (1994).

39. See Martin, *supra* note 35, at 559 (claiming that the use of personal data for a purpose that is not reasonably expected can “breach the terms of use within the social contract”).

40. See, e.g., Danielle Keats Citron & Daniel J. Solove, *Privacy Harms*, 102 *B.U. L. Rev.* 793, 816–17 (2022) (noting that “when it comes to private litigation, for each individual, bringing a lawsuit for a small harm is not worth the time or resources” and arguing that “[c]lass actions . . . are an imperfect vehicle to address privacy problems”).

41. Terrell McSweeney, *FTC 2.0: Keeping Pace With Online Platforms*, 32 *Berkeley Tech. L.J.* 1027, 1037 (2017).

42. Daniel J. Solove & Woodrow Hartzog, *The FTC and the New Common Law of Privacy*, 114 *Colum. L. Rev.* 583, 676 (2014).

43. 15 U.S.C. § 45(a)(1) (2018).

44. *Id.* § 45(a)(2).

45. Samuel Levine, *Dir., Bureau of Consumer Prot., FTC, Believing in the FTC, Remarks at the Harvard Journal of Law & Technology Symposium: Beyond the FTC: The*

crafting the FTC Act's unfairness and deception provisions, Congress intended to provide the FTC with "the authority to determine what practices stand out as unfair or deceptive, even as those practices evolve over time."⁴⁶

Of the FTC Act's two consumer-protection theories, deception has played the leading role in FTC enforcement actions.⁴⁷ The FTC may bring a claim under the deception prong of section 5(a) "if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment."⁴⁸ Inherent in these elements are the concepts of materiality and injury, which the FTC has described as functionally the same for purposes of section 5(a).⁴⁹ As the FTC has explained, "Injury exists if consumers would have chosen differently but for the deception. If different choices are likely, the claim is material, and injury is likely as well. Thus, injury and materiality are different names for the same concept."⁵⁰

Unfairness, the other consumer-protection prong of section 5(a), resists "precise definition" and reflects "an evolutionary process" designed to avoid the need to "draft[] a complete list of unfair trade practices that would . . . quickly become outdated or leave loopholes for easy evasion."⁵¹ The FTC can declare a practice to be unfair if it "is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition."⁵² This formula reflects an expectation that markets are normally "self-correcting" but that "regulatory intervention" is necessary

Future of Privacy Enforcement 1, 2 (Apr. 1, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/Remarks-to-JOLT-4-1-2023.pdf [<https://perma.cc/ZWE2-EQKM>].

46. Andrew D. Selbst & Solon Barocas, *Unfair Artificial Intelligence: How FTC Intervention Can Overcome the Limitations of Discrimination Law*, 171 U. Pa. L. Rev. 1023, 1049 (2023).

47. *Id.* at 1049–50 (explaining that in the wake of amendments to the FTC Act in 1994 that limited the Agency's authority to bring unfairness actions, "the FTC has focused much more on deception than on unfairness"). But note that unfairness and deception are interlinked such that "it is not always possible to 'completely disentangle the two theories.'" Daniel J. Grimm, *The Dark Data Quandary*, 68 Am. U. L. Rev. 761, 797 (2019) (quoting *Fed. Trade Comm'n v. Wyndham Worldwide Corp.*, 799 F.3d 236, 245 (3d Cir. 2015)).

48. Letter from James C. Miller III, Chairman, FTC, to John D. Dingell, Chairman, Comm. on Energy & Com., U.S. House of Representatives (Oct. 14, 1983) [hereinafter *FTC Policy Statement on Deception*], reprinted in *Cliffdale Assocs., Inc.*, 103 F.T.C. 110 app. at 176 (1984) (decision and order).

49. *Id.* at 183.

50. *Id.*

51. Letter from Michael Pertshuck, Chairman, FTC, Paul Rand Dixon, Comm'r, FTC, David A. Clanton, Comm'r, FTC, Robert Pitofsky, Comm'r, FTC & Patricia P. Bailey, Comm'r, FTC, to Wendell H. Ford, Chairman, Consumer Subcomm., Comm. on Com., Sci., & Transp., U.S. Senate, & John C. Danforth, Ranking Minority Member, Consumer Subcomm., Comm. on Com., Sci., & Transp., U.S. Senate (Dec. 17, 1980) [hereinafter *FTC Policy Statement on Unfairness*] (quoting *Fed. Trade Comm'n v. Raladam Co.*, 283 U.S. 643, 648 (1931)), reprinted in *Int'l Harvester Co.*, 104 F.T.C. 949 app. at 1072 (1984) (decision and order).

52. 15 U.S.C. § 45(n) (2018).

when consumers are prevented “from effectively making their own decisions.”⁵³

Ghost jobs fall squarely within the FTC’s authority to civilly prosecute deceptive and unfair consumer practices. Past enforcement actions offer guidance for invoking section 5(a) of the FTC Act to address the ghost-jobs phenomenon. The following Part draws on past FTC jurisprudence to identify three enforcement theories that can be directed at ghost jobs: deceptive object fraud, false impressions, and uninformed consent.

III. FTC ENFORCEMENT

A. *Deceptive Object Fraud*

A group of FTC enforcement actions addressing what this Piece calls “deceptive object fraud” offers an approach that could be readily applied to ghost jobs. Deceptive object fraud involves schemes in which the object of consumer inducement is not just misleadingly characterized but often entirely illusory. The FTC has in several cases charged companies with deceptive acts or practices in violation of section 5(a) of the FTC Act for using a deceptive object to separate consumers from their money. Ghost jobs are just a new iteration of this same scheme, in which companies dangle the deceptive object—a chance, however small, to obtain employment—before jobseekers to induce them to disclose their personal data, instead of deceiving them into opening their wallets.

In 2019, the FTC sued a group of purported employment-search firms and their common owner for misconduct that closely resembles the modern ghost-job phenomenon. In *FTC v. Worldwide Executive Job Search Solutions*, the FTC alleged that a group of companies and its owner engaged in deceptive acts or practices in violation of section 5(a) of the FTC Act by marketing “bogus job placement and resume repair services, duping consumers out of millions of dollars.”⁵⁴

To execute their fraud, the defendants in *Worldwide Executive* “use[d] social media platforms like LinkedIn to identify consumers with marketing, business, or management experience.”⁵⁵ Defendants then sent them solicitations about prospective job openings, “represent[ing] that the consumer’s work experience qualifies the consumer for an unadvertised executive or managerial job that pays a substantial salary.”⁵⁶ Then, after

53. FTC Policy Statement on Unfairness, *supra* note 51, app. at 1074.

54. Complaint for Permanent Injunction and Other Equitable Relief at 4–5, Fed. Trade Comm’n v. Worldwide Exec. Job Search Sols., LLC, No. 4:19-cv-495 (S.D. Tex. Oct. 8, 2019), https://www.ftc.gov/system/files/documents/cases/craig_chrest_complaint_2-25-19.pdf [<https://perma.cc/9ZQZ-EV4N>] [hereinafter *Worldwide Executive Complaint*]. In addition to asserting charges for deceptive consumer acts or practices under section 5(a) of the Act, the FTC alleged that the defendants violated the Telemarketing Act, 15 U.S.C. §§ 6101–6108. *Id.* at 13–14.

55. *Id.* at 5.

56. *Id.*

suggesting that the consumer was “a top candidate” for the job, defendants required payment of “an advance recruiting fee” to proceed with an interview.⁵⁷

After the fee was paid, defendants conducted sham telephone interviews and thereafter told the candidates “that the employer had a change of business plans and opted not to hire” for the role.⁵⁸ In some cases, the *Worldwide Executive* defendants established “a shell entity” to pose as an actual business seeking employees.⁵⁹ In other cases, the defendants advertised jobs with “a real company,” but for which “the purported job and the alleged hiring partner do not exist.”⁶⁰ In nearly all cases, the FTC alleged, “[T]here is no potential job, the job interview is a charade, and Defendants have not been engaged by an employer to fill job openings that match consumers’ experiences or resumes.”⁶¹

The FTC charged the *Worldwide Executive* defendants with, among other things, engaging in deceptive acts or practices in violation of section 5(a) of the FTC Act.⁶² The core of the FTC’s deception charge was that the defendants falsely “represented, directly or indirectly, expressly or by implication,” that they were recruiting for real employment openings and that applicants who paid defendants’ fees were “likely to obtain a highly paid executive position.”⁶³ These representations were false, defrauding victims of the money they spent on defendants’ purported recruiting and résumé-repair services.⁶⁴ In the end, the defendants settled the case by agreeing to pay a \$1.7 million fine and being permanently enjoined from selling employment-related services to consumers.⁶⁵

The FTC has brought other cases involving deceptive objective fraud that can help chart a path toward wielding the FTC Act against ghost jobs. In 2017, the FTC charged Credit Bureau Center, LLC, its principal, and others with deceptive acts and practices under section 5(a) of the FTC Act for a scheme that used fake online rental property listings to induce consumers into signing up for recurring credit-monitoring fees.⁶⁶ Similar

57. Id. at 9. The defendants also sold fraudulent job-placement services. Id.

58. Id. at 10.

59. Id.

60. Id.

61. Id.

62. Id. at 12–13.

63. Id. at 12.

64. Id. at 4–5, 10–11.

65. Press Release, FTC, FTC Puts an End to Bogus Job Placement and Resume Repair Scheme (Oct. 8, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/10/ftc-puts-end-bogus-job-placement-resume-repair-scheme> [<https://perma.cc/W8GY-V53A>]. All but eighteen thousand dollars of the judgment was suspended due to defendants’ inability to pay. Id.

66. See Complaint for Permanent Injunction and Other Equitable Relief at 4, Fed. Trade Comm’n v. Credit Bureau Ctr., LLC, No. 17-cv-00194 (N.D. Ill. Aug. 30, 2023), https://www.ftc.gov/system/files/documents/cases/170118myscore_complaint_filed.pdf [<https://perma.cc/4DPW-58JE>] [hereinafter *Credit Bureau* Complaint].

to *Worldwide Executive*, the object of inducement in *FTC v. Credit Bureau* was illusory, as “[t]he advertised properties either do not exist, or are properties that Defendants have no authority to offer for rent.”⁶⁷

To ensnare victims, the *Credit Bureau* defendants posted false rental properties online and then responded to inquiries from would-be tenants with emails from purported landlords that instructed applicants to obtain free credit scores and reports from defendants’ websites before touring properties.⁶⁸ Once consumers obtained their credit information, they would “find it impossible to schedule the promised tour of the rental property . . . because the original rental ad and the landlord email are fake.”⁶⁹ What consumers did not know was that in obtaining their “free” credit information from defendants, they were “automatically signed up for a negative option seven-day trial of the Credit Bureau Center Defendants’ credit monitoring service,” which, “unless consumers discover[ed] and [took] affirmative steps to cancel,” charged consumers \$29.94 each month.⁷⁰

Misrepresentations were central to the FTC’s deception charges against the *Credit Bureau* defendants. Most significant were the defendants’ false statements that “a residential property described in an online ad is currently available for rent from someone consumers can contact through that ad.”⁷¹ Following litigation, the defendants were ordered to pay \$1.9 million in fines, which the FTC distributed to injured consumers.⁷²

A final case relevant to the deceptive-object theory discussed here is *FTC v. Roomster Corp.*⁷³ In *Roomster*, the FTC, along with California, Colorado, Florida, Illinois, Massachusetts, and New York, charged Roomster and its executives with operating a rental-property scam that resembled the facts of *Credit Bureau*. The *Roomster* scheme revolved around “an internet-based room and roommate finder platform.”⁷⁴ To generate interest in their listings, the defendants were alleged to have “inundated the internet with tens of thousands of fake positive reviews to bolster their false claims that properties listed on their Roomster platform are real,

67. *Id.* at 5.

68. *Id.* at 6–7.

69. *Id.* at 13.

70. *Id.* at 12–13.

71. *Id.* at 14–15.

72. Press Release, FTC, FTC Sends Refunds to Consumers Harmed by Credit Bureau Center’s Fake Rental Property Ads and Deceptive Promises of “Free” Credit Reports (Nov. 21, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/11/ftc-sends-refunds-consumers-harmed-credit-bureau-centers-fake-rental-property-ads-deceptive-promises> [<https://perma.cc/SZP3-DX7F>].

73. Complaint for Permanent Injunction, Monetary Relief, and Other Relief at 2–3, *Fed. Trade Comm’n v. Roomster Corp.*, No. 1:22-cv-7389 (S.D.N.Y. Aug. 28, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/Roomster%20Complaint.pdf [<https://perma.cc/4JF8-BEUF>] [hereinafter *Roomster* Complaint].

74. *Id.* at 2.

available, and verified.”⁷⁵ In reality, advertisements on the platform were often “fake” and designed to induce customers to “pay for access to rental information that is unverified and, in many instances, does not exist.”⁷⁶ After paying defendants’ fees, consumers would “soon learn that the listings that drove them to the Roomster Defendants’ platform do not exist.”⁷⁷

The FTC charged the *Roomster* defendants with performing a deceptive act or practice under section 5(a) of the FTC Act based on allegations that they “represented, directly or indirectly, expressly or by implication, that the listings on their Roomster platform are verified, authentic, or available.”⁷⁸ In addition to other federal claims under the FTC Act, the state plaintiffs added thirteen charges based on state consumer-protection and antifraud laws.⁷⁹ When the dust settled, the defendants had entered into a global settlement that included more than \$36 million in equitable relief and \$10.9 million in civil penalties payable to the state plaintiffs.⁸⁰

Ghost jobs reflect a new link in the chain of deceptive conduct that previously manifested in *Worldwide Executive*, *Credit Bureau*, and *Roomster*. The schemes are largely identical: In each case, a deceptive object—be it an illusory job or a place to live that is not actually available—is dangled before consumers to induce them to part with something of value. The tools used to execute the deception are also similar. Ghost jobs, for instance, are known to reside in suspended animation on employment websites, never to be filled, just as the fake rental listings in *Roomster* never seemed to result in occupancy.⁸¹ Fake phone screens and interviews of the sort alleged in *Worldwide Executive* are also common fare in contemporary ghost jobs.⁸²

Yet despite the commonality with prior deceptive object frauds, ghost jobs reveal two evolutions in digital skullduggery. First, many ghost jobs naturally possess credibility, which the defendants in *Worldwide Executive*, *Credit Bureau*, and *Roomster* connived to manufacture, using devices such

75. *Id.*

76. *Id.* at 3.

77. *Id.* at 16.

78. *Id.* at 18.

79. *Id.* at 18–28.

80. Press Release, FTC, FTC, State Partners Secure Proposed Order Banning Roomster and Owners From Using Deceptive Reviews (Aug. 28, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/08/ftc-state-partners-secure-proposed-order-banning-roomster-owners-using-deceptive-reviews> [<https://perma.cc/F2ST-XQF7>]. The settlement provided that the monetary relief would be deemed satisfied by a payment of \$1.6 million in light of the defendants’ inability to pay the full amount. *Id.*

81. See *Roomster* Complaint, *supra* note 73, at 9–10 (explaining that an “undercover investigation” found that a “fake listing” on the platform “remained active for several months”); see also May, *supra* note 10 (“Legitimate job postings appear and disappear when they’re filled, but ghost jobs . . . just keep hanging around.”).

82. See *Worldwide Executive* Complaint, *supra* note 54, at 10.

as shell companies that masqueraded as real employers,⁸³ fake landlords,⁸⁴ and false rental listing reviews.⁸⁵ While the conduct at issue in the three FTC cases reflects scams, ghost jobs are promoted by real, known companies that also engage in bona fide hiring. This makes ghost jobs difficult to identify and hard to avoid because they often emerge from a place of credibility: well-known employers that serious job applicants would consider.⁸⁶ The inherent credibility and consumer trust that naturally attaches to many companies that advertise ghost jobs arguably makes such activity *more* pernicious than the scams at issue in *Worldwide Executive*, *Credit Bureau*, and *Roomster*. Job seekers who may be unlikely to fall for the brand of common scams at issue in the three FTC cases may nonetheless fail to suspect known, legitimate employers of “breaking bad”⁸⁷ by advertising jobs that do not actually exist.

Ghost jobs possess an additional feature that distinguishes them from prior FTC enforcement actions. While the defendants in *Worldwide Executive*, *Credit Bureau*, and *Roomster* sought to extract money from consumers, ghost jobs are often designed to syphon up consumers’ personal data.⁸⁸ Ghost jobs thus reflect an evolution in grift that reflects the shifting value propositions of the digital age. Rather than obtain money directly, ghost jobs target personal data, which “have value in an economically meaningful sense.”⁸⁹ The value of personal data is amplified in the big data era, which offers an ever-growing array of tools to extract “unascertained patterns, links, behaviors, trends, identities, and practical knowledge” from data.⁹⁰ The acquisition of personal data can also produce risks of

83. *Id.*

84. *Credit Bureau* Complaint, *supra* note 66, at 13.

85. *Roomster* Complaint, *supra* note 73, at 2.

86. See Woods & Wong, *supra* note 2 (explaining that ghost jobs are posted by real companies).

87. This reference, of course, is a nod to the AMC television series of the same name, which showcased the character of Walter White, a “mild-mannered high school chemistry teacher” who became “the much-feared king of meth production in the Southwest and ultimately the world.” Paul A. Cantor, *Pop Culture and the Dark Side of the American Dream: Con Men, Gangsters, Drug Lords, and Zombies* 90 (2019). *Breaking Bad* supplies an apt metaphor for companies that offer legitimate employment opportunities while at the same time deceptively promoting ghost jobs.

88. See Cubilla, *supra* note 19 (“Ghost job postings aren’t just an inconvenience for job seekers; they are part of a deeper issue that many companies use for unethical practices like data mining.”).

89. Diane Coyle & Annabel Manley, *What Is the Value of Data? A Review of Empirical Methods*, 38 J. Econ. Survs. 1317, 1318 (2024); see also Schwartz, *supra* note 33, at 2056 (“Personal information is an important currency in the new millennium. The monetary value of personal data is large and still growing, and corporate America is moving quickly to profit from this trend.”).

90. Anita L. Allen, *Protecting One’s Own Privacy in a Big Data Economy*, 130 Harv. L. Rev. Forum 71, 71 (2016), <https://harvardlawreview.org/forum/vol-130/protecting-ones-own-privacy-in-a-big-data-economy/> [<https://perma.cc/G3FC-XHJ3>]. Professor Anita Allen also writes, “Individuals invisibly contribute to Big Data whenever they live digital

unpredictable scope, as cybersecurity and hacking events create the potential for identity theft and other follow-on harms that are distinct from the initial data harvesting.⁹¹ Identity theft, in turn, can “profoundly affect individual well-being and access to opportunity,” including by producing financial insecurity.⁹²

More importantly, the illegitimate acquisition and use of personal data can wound privacy and personal dignity, which can far exceed the impact of traditional monetary scams. Personal privacy supports “the promotion of liberty, autonomy, selfhood, and human relations,” and it advances “the existence of a free society.”⁹³ Privacy has also been described as “fundamental to the maintenance of human dignity” and as “the boundary to one’s personhood.”⁹⁴ It is “the last defense against the examination of the intimate details of self by the external world.”⁹⁵ The FTC, with jurisprudence that “has become the broadest and most influential regulating force on informational privacy in the United States,”⁹⁶ is called to defend these virtues by directing its section 5(a) enforcement authority toward ghost jobs.

B. *False Impressions*

Government inaction on the ghost-jobs phenomenon—and the popular perception that no laws prohibit ghost jobs—may be fueled by a cloak of ambiguity that can make it difficult to identify a particular job listing as a ghost job. Recognizing a ghost job can be particularly difficult because affirmative misrepresentations are unlikely to appear in the job advertisement. Rather, ghost jobs trick through omission, failing to disclose that no job vacancy is available and that the purpose of collecting applicant data is for some reason other than assessing suitability for employment. But the absence of an affirmative misrepresentation is no armor against legal liability, and the FTC has brought many section 5(a) cases against deceptive or unfair consumer practices without relying on misstatements.⁹⁷

lifestyles or otherwise participate in the digital economy, such as when they . . . apply for a job online . . .” *Id.*

91. See, e.g., Jordan Brensinger, Identity Theft, Trust Breaches, and the Production of Economic Insecurity, 88 Am. Socio. Rev. 844, 859 (2023) (discussing the Equifax data breach of 2017 and the resulting exposure of personal information).

92. *Id.* at 845, 853.

93. Ruth Gavison, Privacy and the Limits of Law, 89 Yale L.J. 421, 423 (1980).

94. William S. Brown, Technology, Workplace Privacy and Personhood, 15 J. Bus. Ethics 1237, 1243 (1996).

95. *Id.* at 1244.

96. Solove & Hartzog, *supra* note 42, at 585–86.

97. See, e.g., Complaint for Permanent Injunction and Other Equitable Relief at 1, 5, Fed. Trade Comm’n v. Forms Direct, Inc., No. 3:18-cv-06294 (N.D. Cal. Dec. 7, 2018), https://www.ftc.gov/system/files/documents/cases/aic_complaint_10-16-18.pdf [[https://](https://www.ftc.gov/system/files/documents/cases/aic_complaint_10-16-18.pdf)

As the FTC staff recently explained, “[W]hat a company *fails* to disclose . . . may be just as significant as what it promises.”⁹⁸ The FTC “can and does bring actions against companies that omit material facts that would affect whether customers buy a particular product—for example, how a company collects and uses data from customers.”⁹⁹ Ghost jobs—which use material omissions to induce consumers into providing their personal data—neatly fall into this paradigm.

In *FTC v. Forms Direct, Inc.*, the FTC sued a group of companies and their owner for a “deceptive scheme” to induce consumers to purchase immigration and naturalization form services “from websites that falsely create the impression of an affiliation with the U.S. government.”¹⁰⁰ The FTC’s Complaint alleged that it was the presentation of defendants’ website and advertisements—rather than any affirmative misrepresentation—that “tricked consumers into believing” that defendants’ websites were official government sites, and that the fees paid to defendants were actually government filing fees for immigration and naturalization services.¹⁰¹

The FTC alleged in *Forms Direct* that defendants’ website “designs have implied” and “conveyed the impression” that they were government affiliated.¹⁰² The crux of the FTC’s case was that the defendants deliberately failed to correct “the false impression” that their websites were affiliated with the government.¹⁰³ The FTC focused on the sites’ visual display, alleging that they “used images and color schemes”—such as pictures of the Statue of Liberty, the American flag, and the U.S. Capitol, as well as a red, white, and blue palette—to “contribute to the net impression” that the sites were government affiliated.¹⁰⁴

While the defendants did in fact disclose that their websites were privately owned by identifying their corporate owner, they did so “in small font within the circle of the government-like seal” near the title of the sales page.¹⁰⁵ The FTC further alleged that the defendants “placed their purported disclosures on the Sales Websites such that consumers have stated

perma.cc/3ZKU-FUNQ] [hereinafter *Forms Direct* Complaint] (bringing a section 5(a) action against a deceptive website that did not commit an affirmative misrepresentation).

98. Staff in the Off. of Tech., AI Companies: Uphold Your Privacy and Confidentiality Commitments, FTC: Tech. Blog (Jan. 9, 2024), <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/01/ai-companies-uphold-your-privacy-confidentiality-commitments> [<https://perma.cc/P8BL-N77G>].

99. *Id.*

100. *Forms Direct* Complaint, *supra* note 97, at 1.

101. *Id.* at 1, 5.

102. *Id.* at 7–8.

103. See *id.* at 7, 20–21.

104. *Id.* at 9.

105. *Id.*

they do not see them.”¹⁰⁶ Viewing the disclosures was not intuitive and required consumers to “scroll down the webpage.”¹⁰⁷

The FTC charged the *Forms Direct* defendants with two violations of section 5(a) of the FTC Act’s prohibition on deceptive consumer practices.¹⁰⁸ The first charge was based on deceptive marketing, in that the defendants’ websites were not affiliated with the U.S. government despite conveying the false impression that they were.¹⁰⁹ The second claim was that the defendants violated section 5(a) by failing to disclose, or to disclose adequately, material terms.¹¹⁰ The FTC focused on the facts that consumers who purchased the defendants’ services were still required to submit their immigration applications to the U.S. government and that they were still required to pay applicable fees to the government.¹¹¹ The defendants ultimately settled the action, agreeing to a permanent injunction against unlawful conduct and a \$2.2 million penalty, which was used to repay victims of the scheme.¹¹²

Like the facts of *Forms Direct*, ghost jobs typically do not include affirmative misstatements. Instead, they exploit the naturally occurring and reasonable belief among job seekers that job advertisements—especially by real, known companies—are intended to fill employment vacancies.¹¹³ Moreover, job seekers hold the reasonable belief that personal data they share with purported employers will be used to assess their qualifications and suitability for employment.¹¹⁴ Nothing on the face of the ghost-job listing will tip off the ruse; indeed, ghost jobs are usually identical to legitimate job advertisements.

Ghost jobs are thus *more* deceptive than defendants’ misleading websites in *Forms Direct*, as there is no discernible difference between a ghost job and a real job listing. In *Forms Direct*, the FTC faulted the defendants for including on their websites difficult-to-find and hard-to-read disclosures that the sites were privately owned rather than affiliated with the government. Ghost jobs, in contrast, offer nothing to alert applicants that

106. Id. at 15.

107. Id.

108. Id. at 21.

109. Id. at 21–22.

110. Id. at 22.

111. Id.

112. Press Release, FTC, FTC Sending Refunds Totaling Over \$2 Million to Consumers Harmed by Alleged Government Imposter Scheme (Mar. 2, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/03/ftc-sending-refunds-totaling-over-2-million-consumers-harmed-alleged-government-imposter-scheme> [<https://perma.cc/SF7C-VCEP>].

113. See Ng, *supra* note 4, at 2.

114. See Kayla Bushey & Saz Kanthasamy, Ghost Jobs: The Phantom Hiring Trend With Data Privacy Implications, IAPP (Dec. 5, 2024), <https://iapp.org/news/a/ghost-jobs-the-phantom-hiring-trend-with-startling-data-privacy-implications> [<https://perma.cc/6GR2-MUTH>] (“[I]t is unlikely job applicants have the reasonable expectation their personal data will be processed for any purpose other than consideration for the job listed in the description.”).

a job is not actually available, or that applicants' personal data will be used for purposes other than assessing their qualifications for an open position. These are material terms that would sway applicants' decisions to apply to a particular job listing, producing injury when undisclosed.¹¹⁵ While creating false associations with the federal government may have been of special concern to the FTC, consumers have less protection from ghost jobs than from deceptive websites like those in *Forms Direct*.

C. *Uninformed Consent*

A trio of FTC enforcement actions targeting the “pervasive extraction and mishandling of consumers’ sensitive personal data” offers further insight into how the FTC could pursue ghost jobs.¹¹⁶ This section will focus on *X-Mode Social, Inc.*, which addressed the activity of a data broker engaged in the business of selling sensitive consumer location data.¹¹⁷ X-Mode primarily obtained location data by paying application developers to include X-Mode’s software in mobile applications that consumers installed on their devices.¹¹⁸

While X-Mode “disclosed certain commercial uses of consumer location data” that it collected, it nevertheless “failed to inform consumers that it would [also] be selling data to government contractors for national

115. See *Forms Direct* Complaint, *supra* note 97, at 22; see also FTC Policy Statement on Deception, *supra* note 48, app. at 183 (finding materiality and consumer injury if a consumer “would have chosen differently but for the deception”).

116. FTC Cracks Down on Mass Data Collectors: A Closer Look at Avast, X-Mode, and InMarket, FTC: Tech. Blog (Mar. 4, 2024), <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/03/ftc-cracks-down-mass-data-collectors-closer-look-avast-x-mode-inmarket> [<https://perma.cc/W2FZ-ZWLJ>]; see also Complaint at 2, Avast Ltd., FTC File No. 2023033, No. C-4805 (F.T.C. June 26, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint-Avast.pdf [<https://perma.cc/3UN2-A8C8>] (alleging that Avast Limited violated consumer privacy by collecting and selling browsing data without consent); Complaint at 7, InMarket Media, LLC, FTC File No. 2023088, No. C-4803 (F.T.C. Apr. 29, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/InMarketMedia-Complaint.pdf [<https://perma.cc/LPE4-ZEK9>] (alleging that InMarket collected and retained consumer location data without notifying users, subjecting them to a likelihood of substantial injury); Complaint at 3–11, X-Mode Soc., Inc., FTC File No. 2123038, No. C-4802 (F.T.C. Apr. 11, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/X-ModeSocialComplaint.pdf [<https://perma.cc/RJN9-SQG3>] [hereinafter *X-Mode Social* Complaint] (alleging that X-Mode Social’s business practices exposed consumers to substantial injury caused by the collection, transfer, and use of their location data from visits to sensitive locations). In 2025, the FTC brought a similar action against General Motors involving the use and disclosure of geolocation and other sensitive driver data. See Complaint at 1–10, Gen. Motors LLC, FTC File No. 2423052 (F.T.C. Jan. 16, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/242_3052_-_general_motors_complaint.pdf [<https://perma.cc/8JNJ-B2DE>].

117. See *X-Mode Social* Complaint, *supra* note 116. Note that there are two respondents in *X-Mode*: X-Mode and Outlogic, LLC. Outlogic became the successor in interest to X-Mode. As the FTC complaint refers to both entities together as “X-Mode,” so too does this Piece. See *id.* at 1.

118. See *id.* at 2 (alleging that X-Mode obtains consumer location data by incentivizing third-party developers to incorporate X-Mode’s software development kit into their apps).

security purposes.”¹¹⁹ The FTC thus alleged that X-Mode “failed to fully disclose the purposes for which consumers’ location data would be used.”¹²⁰ The omitted information was highly sensitive¹²¹ and thus “material to consumers,” and by failing to disclose the full spectrum of data use, X-Mode “did not obtain informed consent from consumers to collect and use their location data.”¹²² Based on these facts, the FTC charged X-Mode with violating both the deception and unfairness strands of section 5(a) of the FTC Act,¹²³ resulting in an order prohibiting it from disclosing or selling sensitive geolocation data and requiring compliance measures involving data-handling and disclosure.¹²⁴

When compared to the facts of *Forms Direct*, the allegations in *X-Mode* put a finer point on the various shades of deception. While in both cases the FTC’s deception claims turn on disclosure failures, the FTC in *X-Mode* expressly framed the situation in the language of informed consent.¹²⁵ This is a subtle but important distinction. As Daniel Solove explains, “[T]he law refrains from restricting transactions that appear on the surface to be consensual, and the law will tolerate a substantial amount of manipulation and even coercion before it deems a transaction to be nonconsensual.”¹²⁶

If, as Solove argues, some level of badness is tolerated when consent appears to exist,¹²⁷ the FTC may have attempted to foreclose this risk to its case in *X-Mode* by alleging that respondents’ disclosure failures were significant enough to prevent consent from arising in the first place. While con-

119. *Id.* at 5.

120. *Id.* at 4.

121. See *id.* at 3 (alleging that personal location data “could be used to track consumers to sensitive locations, including medical facilities, places of religious worship, places that may be used to infer an LGBTQ+ identification, domestic abuse centers, and welfare and homeless shelters”).

122. *Id.* at 5.

123. See *id.* at 9–11 (detailing the violations of the FTC Act).

124. See Press Release, FTC, FTC Finalizes Order With X-Mode and Successor Outlogic Prohibiting It From Sharing or Selling Sensitive Location Data (Apr. 12, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-finalizes-order-x-mode-successor-outlogic-prohibiting-it-sharing-or-selling-sensitive-location> [<https://perma.cc/A9BR-6SC7>] (“In addition to the ban on selling or sharing sensitive location data, the order also imposes several other requirements on X-Mode/Outlogic including . . . delet[ing] or destroy[ing] all the location data it previously collected . . . unless it obtains consumer consent or ensures the data has been . . . rendered non-sensitive . . .”).

125. See *Forms Direct* Complaint, *supra* note 97, at 1 (alleging that Forms Direct failed to adequately disclose that its website was not affiliated with the U.S. government, thus deceptively inducing consumers into purchasing its services); see also *X-Mode Social* Complaint, *supra* note 116, at 5 (alleging that X-Mode’s failure to disclose important information about data collection and distribution resulted in a failure to obtain informed consent from consumers).

126. Solove, Consent Dilemma, *supra* note 28, at 1897.

127. See *id.* (explaining that, generally, the law does not override consensual activities that may be dangerous).

sumers agreed to share some data with defendants, they were unaware of the scope of what they were actually giving up and thus could not knowingly consent to it.¹²⁸ As the FTC has explained in the unfair sales context, there are “certain . . . techniques [that] may prevent consumers from effectively making their own decisions” that justify “corrective action” through the FTC’s authority to bring enforcement actions targeting unfair consumer acts or practices.¹²⁹

In *X-Mode*, the respondents simply “failed to inform” users of the full extent of how their personal data would be used.¹³⁰ This differs from the situation in *Forms Direct*, in which the defendants provided disclosures, albeit weak and obscure, that their immigration-related websites were not actually associated with the U.S. government.¹³¹ The presence of disclosures in *Forms Direct* could have made it difficult to establish that consumers who interacted with defendants’ websites did so without informed consent. *Forms Direct*, unlike *X-Mode*, may thus reflect a situation in which the law permits some level of badness in the name of protecting consumer choice and consent,¹³² which limited the FTC to a deception claim without the additional unfairness charge.

The distinct charging decisions in *X-Mode* versus *Forms Direct* can be explained by considering the value of individual autonomy under the law. Informed consent is concerned with “the primacy of human autonomy: people have the right to make decisions for themselves.”¹³³ Similarly, a section 5(a) unfairness claim requires that the activity at issue be not “reasonably avoidable by consumers.”¹³⁴ Unfairness claims are “brought, not to second-guess the wisdom of particular consumer decisions, but rather to halt some form of seller behavior that unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking.”¹³⁵ The FTC Act thus protects consumer choice when relevant information is presented, even to the extent that consumers may make suboptimal decisions or ignore the information they receive. Section 5(a)

128. See *X-Mode Social* Complaint, *supra* note 116, at 4–5 (“While X-Mode’s consumer notices disclosed certain commercial uses of consumer location data, X-Mode failed to inform consumers that it would be selling data to government contractors for national security purposes.”).

129. FTC Policy Statement on Unfairness, *supra* note 51, app. at 1074.

130. See *X-Mode Social* Complaint, *supra* note 116, at 5.

131. See *Forms Direct* Complaint, *supra* note 97, at 20.

132. See Solove, Consent Dilemma, *supra* note 28, at 1897 (discussing courts’ tendency to allow a substantial amount of manipulation or coercion before invalidating an agreement on the grounds that it is nonconsensual).

133. Burkhardt et al., *supra* note 28, at 237.

134. 15 U.S.C. § 45(n) (2018).

135. FTC Policy Statement on Unfairness, *supra* note 51, app. at 1074; see also J. Howard Beales, The FTC’s Use of Unfairness Authority: Its Rise, Fall, and Resurrection, FTC (May 30, 2003), <https://www.ftc.gov/news-events/news/speeches/ftcs-use-unfairness-authority-its-rise-fall-resurrection> [<https://perma.cc/R7FS-3DKG>] (“If consumers could have made a different choice, but did not, the Commission should respect that choice.”).

unfairness claims are brought when that choice is removed or unreasonably inhibited. In contrast, deception claims may be brought when the exercise of consumer choice is impaired, but not foreclosed.

Last, a finding of unfairness under section 5(a) requires an assessment of any countervailing benefits to consumers or competition.¹³⁶ In making this determination, the FTC considers “tradeoffs and will not find that a practice unfairly injures consumers unless it is injurious in its net effects.”¹³⁷ The Agency also considers “the various costs that a remedy would entail,” both to the parties directly involved in the matter as well as “the burdens on society in general.”¹³⁸ In *X-Mode*, the FTC found that the “harms” produced by defendants’ data-collection activity “are not outweighed by any countervailing benefits to consumers or competition,” and further that “X-Mode could implement certain safeguards [for consumer privacy] at a reasonable cost and expenditure of resources.”¹³⁹

In returning the analysis to ghost jobs, it is clear that they are closer to the situation in *X-Mode* than that in *Forms Direct*. Ghost jobs are, on the surface, indistinguishable from legitimate job postings, such that they rarely, if ever, provide the information necessary for consumers to give informed consent for the collection and use of their data.¹⁴⁰ Informed consumer choice is thus foreclosed, as in *X-Mode*, rather than merely impaired, as in *Forms Direct*. In addition, there is an argument that ghost jobs prey on the vulnerable,¹⁴¹ particularly during dire economic times or periods of high unemployment. This aspect of ghost jobs provides another potential inroad into section 5(a) unfairness claims.¹⁴²

Finally, like the data-collection activity in *X-Mode*, ghost jobs offer no countervailing benefit to consumers or competition to balance against the

136. 15 U.S.C. § 45(n).

137. FTC Policy Statement on Unfairness, *supra* note 51, app. at 1073.

138. *Id.*

139. *X-Mode Social Complaint*, *supra* note 116, at 8.

140. While there are certain indicia that a job listing *might* be a ghost job, these tells are unlikely to be sufficiently dispositive or recognizable to preserve the exercise of informed consent consistent with prior FTC enforcement actions. See, e.g., May, *supra* note 10 (explaining that job postings that remain online far longer than would be expected to fill a role could be ghost jobs).

141. See Thomas Leary, Unfairness and the Internet, FTC (Apr. 13, 2000), <https://www.ftc.gov/news-events/news/speeches/unfairness-internet> [<https://perma.cc/JPM9-RDNY>] (explaining that FTC unfairness cases “often involve practices that prey on particularly vulnerable consumers”). One scholar has recently argued that FTC enforcement in the unfairness context has been evolving to, among other things, “eliminate practices that result in unfair treatment of vulnerable groups or protected classes” by “improving the overall option set rather than attempting to make consumers better at choosing from existing options.” Luke Herrine, Unfairness, Reconstructed, 42 Yale J. on Regul. 95, 128–29 (2025). While this observation is significant, the “shift” Professor Luke Herrine identifies “is still in its early stages and will likely not be much in evidence during the Trump administration.” *Id.* at 176. Unfairness actions based on impaired consumer choice are likely to remain the coin of the realm for the foreseeable future.

142. See Leary, *supra* note 141.

ills they create. Rather, the harm that results from ghost jobs radiates far beyond individual job seekers by corrupting economic data that influences interest rate decisions and other nationwide policy efforts.¹⁴³ Companies that advertise ghost jobs are thus ideal candidates not just for section 5(a) deception claims but for unfairness charges as well.

CONCLUSION

Ghost jobs need not be a modern-day Charon's obol that must be paid to interact with online job listings. Rather, ghost jobs rely on deceptive and unfair consumer practices that have long been prohibited by section 5(a) of the FTC Act. The time to respond to the ghost jobs "horror show"¹⁴⁴ is now: Doing so will improve an increasingly bleak employment process while counteracting a new threat to consumer privacy.

Ghost jobs have become the scourge of job seekers, and the FTC should take swift action to exorcise them from online hiring platforms. A more enduring solution, however, will integrate private sector efforts with government enforcement. This is an area in which the interests of private sector "good actors" overlap with the FTC's consumer protection mandate. Already, some online job platforms have made initial forays into identifying and addressing likely ghost jobs on their platforms.¹⁴⁵ Additional private sector efforts—perhaps motivated by protecting corporate reputations and the need to attract and retain talented personnel¹⁴⁶—can join the FTC in improving the online hiring landscape.

143. See *supra* note 13 and accompanying text.

144. Cook, *supra* note 2 (internal quotation marks omitted) (quoting Jon Stross, President & Co-Founder, Greenhouse).

145. See *id.* ("Greenhouse and LinkedIn recently have begun tagging job listings as verified to give workers better information amid the rash of ghost listings.").

146. See, e.g., Ana Junça Silva & Herminia Dias, *The Relationship Between Employer Branding, Corporate Reputation and Intention to Apply to a Job Offer*, *Int'l J. Org. Analysis*, Dec. 18, 2023, at 1, 2 (explaining that "employer branding and corporate reputation are key elements in attracting and retaining the best employees").