

1 to cause substantial injury to consumers if the
2 injury or harm resulting from such act or prac-
3 tice is trivial or merely speculative. An injury
4 may be sufficiently substantial if the injury
5 does a small harm to a large number of people.
6 An act or practice may be likely to cause a sub-
7 stantial injury if the act or practice raises a sig-
8 nificant risk of concrete harm.

9 “(C) CONSIDERATIONS REQUIRED.—In de-
10 termining whether an act or practice causes or
11 is likely to cause substantial injury to con-
12 sumers under this subsection, the Commission
13 shall consider the following:

14 “(i) Whether the act or practice re-
15 sults in monetary harm.

16 “(ii) Whether the act or practice re-
17 sults in unwarranted health or safety risk.

18 “(iii) Whether the act or practice re-
19 sults only in emotional or other more sub-
20 jective harm.

21 “(2) NET EFFECTS OF INJURY REQUIRED.—

22 “(A) CONSIDERATIONS REQUIRED.—An
23 act or practice is not unfair unless the act or
24 practice is injurious in its net effects. In deter-
25 mining whether an act or practice is injurious

1 in its net effects, the Commission shall consider
2 the following:

3 “(i) The various costs for a remedy,
4 including the costs to the parties directly
5 before the Commission.

6 “(ii) The burdens on society in gen-
7 eral in the form of increased paperwork,
8 increased regulatory burdens on the flow of
9 information, reduced incentives to innova-
10 tion and capital formation, and other simi-
11 lar matters.

12 “(B) CONSUMER DECISIONS.—The Com-
13 mission may not second-guess the wisdom of
14 particular consumer decisions, but may consider
15 whether the act or practice unreasonably cre-
16 ates or takes advantage of an obstacle to the
17 free exercise of consumer decisionmaking.

18 “(3) PUBLIC POLICY CONSIDERATIONS.—In de-
19 termining whether an act or practice is unfair, the
20 Commission may consider established public policies
21 as evidence to be considered with all other evidence.
22 Such public policy considerations may not serve as
23 a primary basis for such determination.

24 “(4) ECONOMIC ANALYSIS.—In determining
25 whether an act or practice is unfair, the Commission

1 shall consider an economic analysis from the Bureau
2 of Economics of the Commission with respect to the
3 act or practice.”.

