

Wiley Consumer Protection Download (April 16, 2024)

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Welcome to Wiley's update on recent developments and what's next in consumer protection at the Consumer Financial Protection Bureau (CFPB) and Federal Trade Commission (FTC). In this newsletter, we analyze recent regulatory announcements, recap select enforcement actions, and preview upcoming deadlines and events. We also include links to our articles, blogs, and webinars with more analysis in these areas. We understand that keeping on top of the rapidly evolving regulatory landscape is more important than ever for businesses seeking to offer new and groundbreaking technologies. Please reach out if there are other topics you'd like to see us cover or for any additional information.

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Regulatory Announcements

CFPB Reports on Financial and Privacy Risks in Video Gaming

Marketplaces. On April 4, the CFPB issued a Report examining financial transactions in online video games and virtual worlds. In describing the agency's interest in monitoring virtual reality and gaming platforms, CFPB Director Rohit Chopra stated, "Americans of all ages are converting billions of dollars into currencies used on virtual reality and gaming platforms. As more banking and payments activity takes place in video games and virtual worlds, the CFPB is looking at ways to protect consumers from fraud and scams." The

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Practice Areas

Cyber and Privacy Investigations, Incidents & Enforcement

FTC and Consumer Protection

Privacy, Cyber & Data Governance

Telecom, Media & Technology

Report identified several trends and risks that the CFPB asserted were associated with gaming assets, including (1) gaming products and services allegedly resembling conventional financial products, (2) alleged difficulties in customer support when consumers experience financial harm, and (3) alleged collection and use of gamers' personal and behavioral data. According to the CFPB, the agency has received complaints about hacking attempts, account theft, and lost access to gaming.

CFPB Finds Alleged Credit Reporting Violations of Consumer Reporting Companies and Furnishers. On **April 8**, the CFPB published its Spring 2024 Supervisory Highlights, covering select credit reporting and furnishing examinations that were completed from April 1, 2023, through December 31, 2023 under the CFPB's Fair Credit Reporting Act (FCRA) authority. The CFPB alleged that several consumer reporting agencies (CRAs) failed to ensure the accuracy of credit reports, and certain furnishers failed to correct false or fraudulent information sent to CRAs, as required by the FCRA. The Report specifically alleged that some CRAs (1) failed to block or remove information related to identity theft and human trafficking, and (2) accepted information from unreliable furnishers. The Report also asserted that some furnishers (3) provided information to CRAs that they knew was false, and (4) did not follow requirements for dispute investigations and identity theft. In response to the CFPB's findings, according to the report, CRAs have taken actions to revise their compliance processes and furnishers have conducted lookbacks to ensure they deleted all accounts that were fraudulently opened.

FTC Announces Voice Cloning Challenge Winners. On **April 8**, the FTC announced the four winning submissions for its Voice Cloning Challenge. The Challenge, which we discussed in detail here, sought proposals to protect consumers from the misuse of artificial intelligence-enabled voice cloning for fraud and other harms. The winners of the challenge include AI Detect, DeFake, OriginStory, and Pindrop Security.

FTC Releases Study on Collaboration with State Attorneys General. On **April 10**, the FTC submitted a Report to Congress detailing its collaboration with State Attorneys General nationwide. The Report was published under the FTC Collaboration Act of 2021, and makes several recommendations to enhance collaboration, including providing the FTC authority to seek money in federal court for injured consumers, providing the agency with independent authority to seek civil penalties, and providing it with clear legal authority to challenge practices that violate the FTC Act similar to the statutory safeguards of the Telemarketing and Consumer Fraud and Abuse Prevention Act. The Report was approved to Congress by a vote of 3-0-2, with Commissioners Melissa Holyoak and Andrew N. Ferguson not participating.

FTC Issues Report on E-Cigarette Advertising and Sales. On **April 3**, the FTC released its third report on e-cigarette sales and advertising in the United States. The Report showed that between 2020 and 2021, sales of e-cigarettes by the nine leading manufacturers increased by approximately \$370 million and that e-cigarette companies spent \$90.6 million more on advertising and promotion. According to the FTC, the three largest spending categories for promotion in 2021 were price discounts, promotional allowances paid to wholesalers, and point of sale advertising, accounting for almost two-thirds of expenditures. The Report also discussed steps that e-cigarette companies took in 2021 to deter or prevent underage consumers from visiting their websites or buying e-cigarette products online, including any use of online self-certification to verify age and compliance with state laws that require an adult signature upon delivery of e-cigarette products.

Select Enforcement Actions

FTC Settles with Alcohol Addiction Treatment Service for Allegedly Misrepresenting its Data Privacy

Practices. On **April 11**, the FTC filed a complaint and proposed stipulated order in the U.S. District Court for the District of Columbia against an alcohol addiction treatment service for alleged violations of the FTC Act and Opioid Addiction Recovery Fraud Prevention Act (OARFPA). In the complaint, the FTC alleges that the company's website utilized tracking technologies that logged consumer interactions with its website and provided the information and consumer email addresses to third-party advertisers despite telling consumers that the information they provided was "100% confidential." The company agreed to pay a \$2.5 million civil penalty in addition to other data privacy provisions.

Upcoming Comment Deadlines and Events

FTC Seeks Comment on Energy Labeling Rule NPRM. Comments are due **April 19, 2024** (extended from April 2) on the FTC's Notice of Proposed Rulemaking (NPRM) seeking comment on proposed revisions to the agency's Energy Labeling Rule. As described by the FTC, the Energy Labeling Rule requires, for certain products, "the familiar yellow Energy Guide labels stating a product's estimated annual operating cost and energy consumption, and a range for comparing the highest and lowest energy cost for similar models." The NPRM seeks comment on four broad issue areas related to the Energy Labeling Rule: (1) proposed new labels for previously unlabeled air cleaners, clothes dryers, miscellaneous refrigerator products, and portable electric spas; (2) new issues that commenters raised in the Advance Notice of Proposed Rulemaking phase regarding existing labels for clothes washers, televisions, and heating products including water heaters, pool heaters, and boilers; (3) several proposed amendments to match label format and location shopping patterns (such as requiring manufacturers to affix labels to large appliances prepared for showroom display only); and (4) minor amendments to address various issues, including compliance dates for ranges, television data updates, and format and placement requirements for labels.

FTC to Host Informal Hearing on Proposed Rule on Junk Fees. The FTC will host an informal hearing on the proposed Rule on Unfair or Deceptive Fees on **April 24, 2024** at 10 a.m. ET. On November 9, 2023, the FTC published a Notice of Proposed Rulemaking (NPRM) to ban so-called "junk fees" by prohibiting businesses from misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. The NPRM broadly addresses two practices: (1) fee disclosures after a consumer sees an initial base price, and (2) "practices that misrepresent the nature and purpose of fees or charges." The proposed rule would define both as unfair and deceptive practices, which would enable the FTC to seek civil penalties for violations. Among other things, the NPRM proposes to require businesses to disclose a "Total Price" in any offer, display, or advertisement that contains an amount a consumer must pay, and do so more prominently than other pricing information. It also proposes a preemptive disclosure requirement which would require businesses to disclose, clearly and conspicuously and before the consumer consents to pay, the nature and purpose of any amount the consumer may pay that is excluded from the "Total Price," including shipping charges, government charges, optional fees, voluntary gratuities, and invitations to tip.

FTC Issues SNPRM Seeking Comment on Amending Impersonation Rule. Comments are due **April 30, 2024** on the FTC's Supplemental Notice of Proposed Rulemaking (SNPRM) proposing to amend the newly adopted Trade Regulation Rule on Impersonation of Government and Business to prohibit the impersonation of individuals and add an additional liability provision. Specifically, and as we summarized here, the SNPRM proposes to revise the Rule to both add a prohibition on the impersonation of individuals, and extend liability for Rule violations to parties who provide goods and services with "knowledge or reason to know that those goods or services will be used in impersonations of the kind that are themselves unlawful under the Rule."

More Analysis from Wiley

10 Things to Know About the APRA – the Latest Federal Privacy Law Effort

Utah Adopts New AI Disclosure Law that Goes Into Effect on May 1, 2024

FCC's "Spring Cleaning" Initiative Signals More Robocall Enforcement Activity Ahead

Attorney: AI development will be shaped by OMB's next steps on procurement (*Inside AI Policy*)

EU Adopts World's First Comprehensive AI Regulation

Executive Order on Foreign Access to Sensitive Personal Data Will Increase U.S. Regulation of Cross-Border Data Transfers

7 Tips for Leveraging Artificial Intelligence While Managing Risks in Political Campaigns

DOJ Kicks Off Work to Regulate Foreign Access to Sensitive Personal Data Under New EO

State Privacy Law 2024: Major Enforcement and Compliance Activity Shows No Signs of Slowing Down

Start Here: Cyber Fundamentals for Public Policy Makers

NIST Cybersecurity Framework 2.0 Reveals Major Shifts in Federal Guidance

Federal Government Acts on Connected Vehicle Privacy and National Security Concerns

FCC Extends Regulatory Reach Over AI: Announces TCPA Restrictions Cover AI-Generated Voices in Outbound Calls

California Appeals Court Allows Immediate Enforcement of CPRA Regulations

DOJ Signals Tough Stance on Crimes Involving Misuse of Artificial Intelligence

5 questions for Duane Pozza (*Politico*)

Podcast: AI in 2024: What Comes Next?

CES 2024: FTC Commissioner Slaughter Discusses New Rules, Competition, and AI

Heading into 2024, Federal AI Activity Ramps Up After AI Executive Order

AI Around the Globe: What to Know in 2024

Cybersecurity in 2024: Ten Top Issues to Consider

Annual Updates to Privacy Policies Reminder and Looking Ahead to 2024

FCC Expands Privacy and Data Protection Work with States to Increase Investigations

AI Use is Promising Yet Risky for Government Subpoenas and CIDs

DOJ Must Help in Fighting Illegal Robocalls, Lawyers Say (*Law360*)

CFPB Poised to Significantly Expand the Reach of the Fair Credit Reporting Act

FTC and HHS Caution Hospitals and Telehealth Providers on Tracking Tech

Podcast: The “Wild West” of AI Use in Campaigns

SEC Cyber Reporting Mandates: How to Request a National Security or Public Safety Delay

Podcast: What could AI regulation in the U.S. look like? (*ABA Journal*)

Podcast: AI Risk Management: A Discussion with NIST’s Elham Tabassi on the NIST AI Risk Management Framework

Generative AI Policies: Five Key Considerations for Companies to Weigh Before Using Generative AI Tools

U.S. State Privacy Law Guide

Wiley Promotes Megan Brown and Duane Pozza to Co-Chairs of Privacy, Cyber & Data Governance Practice

Legal 500 US Recognizes Wiley’s Telecom, Media & Technology Practice as Tier 1. Read more [here](#).