

Wiley Consumer Protection Download (April 2, 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

FTC Denies New COPPA Parental Consent Mechanism Application, Without Prejudice to Refiling. On **March 29**, the FTC announced that it voted 4-0 to deny a June 2, 2023 Application to use "Privacy-Protective Facial Age Estimation" technology to obtain parental consent under the Children's Online Privacy Protection Act (COPPA) Rule. The COPPA Rule requires website operators to obtain "verifiable parental consent" before collecting, using, or disclosing personal information from children under the age of 13. The COPPA Rule also permits parties to file written requests for FTC "approval of parental

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Practice Areas

Cyber and Privacy Investigations, Incidents & Enforcement
FTC and Consumer Protection
Privacy, Cyber & Data Governance
Telecom, Media & Technology

consent methods” not listed in the COPPA Rule.

In voting 4-0 to deny the Application without prejudice, the FTC explained that the agency is aware that the Applicants “submitted a facial age estimation model to the National Institute of Standards and Technology (NIST) in September 2023” and that the FTC expects that a forthcoming report by NIST on the model “will materially assist” the FTC and the public to better understand the age verification technologies. While the Applicants had requested that the FTC stay any decision on the Application for an additional 90 days to permit time to evaluate the NIST testing results, the FTC held instead that “rather than staying or extending the deadline for the Commission to make a decision on the application, the Commission is declining the application without prejudice to the applicants refiling in the future.”

FTC Holds March 2024 Open Commission Meeting. On **March 21**, the FTC held a virtual Open Commission Meeting and heard staff presentations on Telemarketing Sales Rule (TSR) amendments and a TSR Notice of Proposed Rulemaking (NPRM) announced earlier this month, and an FTC staff report examining disruptions to the U.S. grocery supply chain during and in the wake of the COVID-19 pandemic. In particular, staff from the FTC’s Division of Marketing Practices gave a presentation on a Final Rule under the TSR announced in early March. As FTC staff explained, the Final Rule amends the TSR to prohibit telemarketers and sellers from making “material misrepresentations and false or misleading statements” in business-to-business calls, and imposes new recordkeeping requirements on telemarketers under the TSR, while the TSR NPRM would amend the TSR to cover inbound technical support service calls.

FTC and 23 ICN Agencies Issue Joint Statement on Tech Capacity. On **March 25-26**, the FTC hosted member agencies of the International Competition Network (ICN) for its inaugural Technology Forum. Following the forum, the FTC and 23 ICN member agencies issued a joint statement about the need to strengthen tech capacity due to the increasing digitization of the economy. On **March 26**, the FTC separately released an action statement on building tech capacity in law enforcement and a staff report detailing the evolution of the agency’s work to expand its technological expertise.

CFPB Releases Statement on Efforts to Increase Technological Expertise. On **March 26**, CFPB Director Rohit Chopra and Chief Technologist Erie Meyer issued a statement explaining the CFPB’s goal to embed more technologists across its core function areas. The statement also asserted that the CFPB “has led a number of research endeavors to identify how technologies are implemented in consumer finance” and that the agency seeks to ensure “that emerging business practices are consistent with federal law, and to take action when they are not.”

FTC Submits FY 2025 Budget Request to Congress. On **March 11**, the FTC submitted its FY 2025 budget request to Congress, asking for \$535 million in funding. If granted, this request would represent an increase of \$105 million and an estimated 55 full-time employees. The budget request notes that the increased funding would allow the FTC’s Bureau of Consumer Protection to add staff to “not only combat perennial priority issues, but also investigate and litigate more and increasingly complex matters, such as those involving health privacy and children’s privacy; [and] unfair or deceptive practices by digital platforms,” and monitor compliance “with orders, including initiation of enforcement investigations and law enforcement, as needed.”

FTC Warns Consumers of Potential Impersonation Scams Impacting the Agency. On **March 19**, the FTC issued a warning to the public regarding reports of individuals using the names of real FTC employees to demand or threaten consumers to move, transfer, send, or wire money. According to the agency, since 2019, the median loss from FTC impersonators has increased from \$3,000 to \$7,000, while similar government and business impersonation scams have cost consumers billions of dollars. In response to a rising number of complaints, the FTC has issued guidance on how to spot FTC impersonation scams, and also has now finalized the Government and Business and Impersonation Rule, as we have previously covered.

FTC Partners with Canadian Counterpart to Combat Fraud. On **March 22**, the FTC announced its involvement with the Quebec Strategic Partnership to engage in public outreach aimed at combatting cross-border fraud, such as imposter, investment, and prize winnings scams. The Partnership includes the Canada Competition Bureau, U.S. Postal Inspection Service, U.S. Secret Service, Canadian Anti-Fraud Centre, Canada Post, Canada Revenue Agency, and several local police departments in Quebec. The Partnership's public outreach initiative is focused on consumer and community education to spot and prevent fraud.

FTC Publishes 2023 Privacy and Data Security Update. On **March 28**, the FTC released its 2023 Privacy and Data Security Update highlighting the agency's recent enforcement actions, rulemaking, and policy work on consumer privacy. *First*, the report discusses the history of the agency's privacy and data security enforcement actions. The agency notes that, from 2021-2023, the FTC took specific enforcement action related to artificial intelligence, health privacy, children's privacy, and geolocation data. Additionally, the report notes that the FTC has taken several recent actions alleging that companies failed to implement reasonable data security measures to protect consumer data. *Second*, the report details the FTC's recent rulemakings including its proposed amendments to the Health Breach Notification Rule and the COPPA Rule, as well as the Commercial Surveillance Advanced Notice of Proposed Rulemaking (ANPR). *Third*, the report discusses the agency's policy work, including a policy statement warning companies against using education technology in a manner that may violate COPPA.

Select Enforcement Actions

FTC and 10 States Sue Cancer Fund for Allegedly Misrepresenting Donation Beneficiaries. On **March 11**, the FTC, Attorneys General of the states of California, Florida, Maryland, Massachusetts, North Carolina, Oklahoma, Oregon, Texas, Virginia, and Wisconsin, and the Secretaries of State of Maryland and North Carolina filed a complaint in the U.S. District Court for the Southern District of Texas against a cancer charity fund and its operator for alleged violations of the FTC Act, the TSR, and state statutes regulating charitable solicitations. The FTC and states allege that the defendants misrepresented to consumers that the charitable donations made to the fund would go to cancer patients and families despite the money mainly funding the charity's fundraising, overhead costs, and the charity operator's salary. The complaint alleges that out of \$18.25 million donated, less than \$200,000 went to cancer patients. The FTC and states seek injunctive relief, civil penalties, and restitution.

FTC Settles with Tech Support Companies for Allegedly Deceptive Marketing Practices. On **March 14**, the FTC filed a complaint in the U.S. District Court for the District of Columbia against two technology support companies for alleged violations of the FTC Act and TSR. The FTC alleges that the companies misled consumers through pop-up ads that told consumers that their computers were infected with viruses, despite a lack of any evidence that the consumers' computers were compromised, and directed them to download the companies' antivirus software. On March 15, the FTC filed a stipulated order. The defendants agreed to pay \$26 million in addition to injunctive relief.

FTC Settles with Two Small Business Financing Companies for Allegedly Misrepresenting Loan and Financing Services. On March 18, the FTC filed a complaint against a financing company and its subsidiary in the U.S. District Court for the Southern District of New York and a complaint against a separate financing company in the U.S. District Court for the Northern District of California. In both complaints, the FTC alleged that the companies misrepresented their services to small businesses seeking Paycheck Protection Program (PPP) loans during the COVID-19 pandemic and did not properly submit applications on behalf of the small businesses. Both companies have settled with the FTC, agreeing to pay \$33 million and \$26 million, respectively, in addition to injunctive relief.

Upcoming Comment Deadlines and Events

FTC to Convene 'Scams Against Older Adults' Advisory Group. The FTC will host an online meeting of the Scams Against Older Adults Advisory Group on **April 2, 2024** at 2 p.m. Eastern Time. The Advisory Group includes committees focused on "expanding consumer education and outreach efforts; improving industry training on scam prevention; identifying innovative or high-tech methods to detect and stop scams; and reviewing research on effective consumer messaging to prevent scams." The Advisory Group is comprised of representatives from government agencies, advocacy groups, and private industry. The online meeting will be open to the public and viewable at ftc.gov.

FTC Seeks Comment on Energy Labeling Rule NPRM. Comments are due **April 19, 2024** (extended from April 2) on the FTC's 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 an NPRM proposing to adopt a rule that would prohibit businesses from advertising prices without including a “Total Price” that includes required fees, and misrepresenting the nature and purpose of any fees. The proposed rule would enable the FTC to seek civil penalties for violations. At the hearing, interested parties that have previously requested to participate will be permitted to present their positions orally, where presentations will be limited to 15 minutes each. Those interested parties may also submit written documents by **April 10, 2024**. Administrative Law Judge Jay L. Himes will preside over the hearing, which will be open to the public and viewable at [ftc.gov](https://www.ftc.gov).

FTC Issues SNPRM Seeking Comment on Prohibiting the Impersonation of Individuals. 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. 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.”

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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

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

SEC Chairman Critiques AI: Compares Faulty AI to "Hallucinogenic Mushrooms" and Predicts Regulation and Oversight

Podcast: AI in 2024: What Comes Next?

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

State Privacy Update: New Jersey Becomes 13th State to Pass a Consumer Privacy Bill

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 and FTC Launch Inquiries on AI and Voice Cloning

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

5 questions for Duane Pozza (Q&A with *Politico*)

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