

# Wiley Consumer Protection Download (April 24, 2023)

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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 key 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 Commissioners Testify Before U.S. House Energy and Commerce Subcommittee on Innovation, Data, and Commerce.** On **April 18**, FTC Chair Khan and Commissioners Slaughter and Bedoya testified before the U.S. House Subcommittee on Innovation, Data, and Commerce, which is part of the U.S. House Committee on Energy and Commerce. The testimony focused on both the consumer protection and competition missions of the FTC. During the consumer protection portion, Chair Khan and Commissioners Slaughter and Bedoya stated that the FTC is taking steps to: (1) fight fraud and

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## Practice Areas

Cyber and Privacy Investigations, Incidents & Enforcement

FTC and Consumer Protection

Privacy, Cyber & Data Governance

Telecom, Media & Technology

deceptive business practices; (2) safeguard consumer data and enhance data security practices; (3) address purported “junk” fees; (4) enhance consumer protections for workers, small businesses, and entrepreneurs; (5) combat deceptive online advertising; and (6) improve the FTC’s technical expertise through the new Office of Technology.

**FTC Issues Notices to Approximately 670 Companies About Misleading Product Claims.** On **April 13**, the FTC announced that it sent over 700 Notice of Penalty Offenses to various advertising companies, e-commerce platforms, and other companies involved in the marketing of over-the-counter (OTC) drugs, homeopathic products, dietary supplements, or functional foods, about advertising practices regarding these products. As we have previously explained in greater detail, Notices of Penalty Offenses do not suggest that the companies have engaged in any unlawful conduct, but warn the companies that false or misleading advertisements could lead to large financial penalties. Specifically, the FTC states that the notices provide companies with actual notice of certain unlawful conduct, permitting the agency to bring enforcement action against companies that subsequently engage in such acts under 15 U.S.C. § 45(m)(1)(B).

**FTC Chief Counsel for Development and Innovation Testifies Before California Senate Committee on Right to Repair Bill.** On **April 11**, FTC Chief Counsel for Development and Innovation Dan Salsburg testified before the California Judiciary Committee on California S.B. 244, which would require manufacturers of certain consumer products to make available parts, diagnostic tools, and repair instructions to product owners and independent repair shops. Mr. Salsburg’s testimony was based on the FTC’s May 2021 Nixing the Fix Report, which analyzes arguments made by “right to repair” advocates, manufacturers’ and other stakeholders’ arguments in response, and the relevant statutory framework, including the Magnuson-Moss Warranty Act and FTC Act. The report advocates for “ways to expand consumers’ repair and maintenance options,” and outlines additional steps the FTC might take. During his prepared remarks, Salsburg argued that “there is scant evidence to support manufacturers’ justifications for repair restrictions,” and that “manufacturers’ safety arguments are difficult to square with the automotive sector, where owners and independent repair shops are routinely able to repair highly complex products that contain gasoline and battery acid, and that could cause great harm if improperly repaired.” S.B. 244 is currently before the California Senate Committee on Appropriations, and has not been voted on by the full legislature.

**FTC Sends Cease-and-Desist and Warning Letters to 24 VoIP Providers.** On **April 11**, the FTC announced that it sent cease-and-desist or warning letters to 24 gateway VoIP providers to prevent alleged illegal robocalls as part of Project Point of No Entry (PoNE). According to the FTC, PoNE “1) identifies point of entry VoIP service providers that are routing or transmitting illegal call traffic, 2) demands they stop doing so and warns their conduct may violate the Telemarketing Sales Rule, and then 3) monitors them to pursue recalcitrant providers, including by opening law enforcement investigations and filing lawsuits when appropriate.”

## Recent Enforcement Actions

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**FTC Finalizes Settlement with Vitamin Company for Allegedly Manipulating Amazon Ratings.** On **April 10**, the FTC finalized its order against vitamin and supplement marketer, The Bountiful Company, after a 30-day notice and comment period. The settlement resolves allegations that Bountiful deceived consumers into thinking one of their products had more ratings and better reviews by repurposing the reviews of a different product. The FTC's order requires Bountiful to pay \$600,000 to the FTC, in addition to injunctive relief.

**FTC and Florida Attorney General Sue Chargebacks911 for Allegedly Harming Consumers' Dispute of Credit Card Charges.** On **April 12**, the FTC and Florida Attorney General filed a complaint against Chargebacks911 in the U.S. District Court of Florida for violations of the FTC Act and Florida Unfair and Deceptive Practices Act. The FTC and Florida Attorney General allege that Chargebacks911 prevented consumers from successfully disputing credit card charges by overlooking suspicious activity from merchants from whom consumers were challenging charges and passing along fraudulent screenshots from the merchants to the credit card companies to confirm that the consumer agreed to the purchase. The complaint requests injunctive and monetary relief.

**FTC Settles with Payment Processing Company and Executives for Allegedly Enabling Tech Support Scams.** On **April 17**, the FTC filed a complaint and proposed orders against Nexway, Asknet, CEO Victor Iezuitov, and Chief Strategy Officer Casey Potenzzone (Defendants) in the U.S. District Court of District of Columbia for violations of the FTC Act and Telemarketing Sales Rule (TSR). The FTC alleged that the Defendants knowingly processed credit card charges for multiple tech support scammers from 2016 to 2020, in addition to failing to monitor high-risk clients as required by the TSR. All Defendants have agreed to injunctive relief and will collectively pay a monetary judgement of \$650,000.

**FTC Settles with ATV Manufacturer for Alleged Deceptive US-Origin Advertising Claims.** On **April 18**, the FTC filed a complaint and proposed order against motocross and ATV parts maker Cycra and its officer, Chad James, for allegedly advertising products manufactured in Asia and Europe as being "Proudly designed, developed and manufactured in Lexington, North Carolina," in violation of the FTC Act and "Made in USA" Labeling Rule. The FTC alleges that the company imported parts from other countries and did not assemble or develop enough of the product in North Carolina to justify their product label and avoid misleading consumers. Additionally, the FTC alleges that some parts shipped from Taiwan were found to already be labeled "Made in America." Cyra and James settled with the FTC for \$872,577 and agreed to cease making any unqualified claims about where its products are developed and assembled.

**FTC Finalizes Settlement with Gig Economy Platform for Alleged Deceptive Commercial Practices.** On **April 21**, the FTC voted 3-0 to finalize a consent order against Home Advisor, Inc. after a 30-day notice and comment period. The order settles allegations that the company misrepresented to service providers the quality and source of home improvement project leads, and the likelihood that the leads would result in actual jobs. Home Advisor agreed to pay \$7.2 million in redress, in addition to injunctive relief.

### Upcoming Comment Deadlines and Events

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**FTC to Hold Informal Hearing on Its Impersonation Fraud Rulemaking.** Written submissions and requests to make statements at the FTC's May 4 informal hearing on its proposed rule prohibiting government and business impersonation fraud were required to be submitted by **April 14**. According to the Federal Register Notice, there are "no 'disputed issues of material fact' to resolve at the informal hearing" and accordingly, "the presiding officer of the hearing will make no recommended decision." However, parties may submit written statement in advance, or make oral statements at the hearing.

**FTC Requests Comment on Regulatory Review of the Green Guides.** Comments are due April 24 (extended from February 21) on the FTC's Request for Comment to commence a regulatory review of the Guides for the Use of Environmental Marketing Claims (Green Guides). The Request for Comment (which we summarized here) asks, among other things: (1) whether the Green Guides should provide additional guidance on claims related to carbon offsets and climate change; (2) whether guidance on the term "recyclable" should be revised; (3) whether the term "recycled content" and claims about recycled content are widely understood by consumers; and (4) whether there is need for additional guidance in the Green Guides regarding "biodegradable," "compostable," "ozone-friendly," and "sustainable" product claims, or guidance on additional kinds of environmental claims. The Request for Comment also asks whether any aspect of the Green Guides should be codified as a rule.

**CFPB Proposes Rule to Regulate Credit Card Late Fees.** Comments are due **May 3** on the CFPB's Notice of Proposed Rulemaking (NPRM) proposing to regulate credit card payment late fees, which total \$12 billion annually. The NPRM's proposed changes would amend regulations implementing the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) to lower the immunity provision for late fees to \$8 for a missed payment. The NPRM would also ban late fee amounts above 25% of the consumer's required payment, among other things.

**FTC Releases RFI on Cloud Computing Industry.** Comments are due **May 22** on an FTC Request for Information (RFI) seeking information regarding the business practices of cloud computing providers. The RFI outlines questions on both competition and data security issues in the cloud computing industry. The RFI also notes that FTC staff is interested in cloud computing with regards to specific industries, including healthcare, finance, transportation, e-commerce, and defense.

**CFPB Releases RFI on Data Broker Business Practices.** Comments on the CFPB's RFI seeking public comments on the business practices of data brokers are due **June 13**. Specifically, the RFI seeks information about the business models and data collection practices of a range of entities it defines as "data brokers," including the types of information that they collect, sell, and aggregate; the types of sources that they rely on to collect information; and the types of information that they receive from financial institutions, among other questions.

**FTC to Host a Workshop on "Recyclable" Claims.** The FTC will host a workshop on **May 23** titled *Talking Trash at the FTC: Recyclable Claims and the Green Guides*. The workshop is part of its recently announced regulatory review of the Green Guides. The half-day hybrid event will cover topics including: the current state of recycling practices and advertisements, consumer perceptions of recycling-related claims, and whether the

Green Guides need to be updated or revised to accommodate changes in recycling advertising. Comments related to the issues discussed at the workshop are due **June 13**.

**FTC Seeks Comment on Negative Option Rule NPRM.** Comments are due **June 23** on the FTC's Negative Option Rule NPRM. Negative option marketing refers to commercial transactions where sellers interpret a customer's inaction to either reject or cancel an agreement as an acceptance of a product or service. The FTC's current Negative Option Rule requires certain prenotification plan sellers to disclose their plan's material terms clearly and conspicuously before consumers subscribe. Prenotification plans are those that provide periodic notices offering goods to participating consumers and subsequently send and charge for those goods if consumers take no action to decline the offers. The NPRM proposes to expand the Negative Option Rule to all forms of negative option marketing, including continuity plans, automatic renewals, and free trials in all media (e.g., telephone, Internet, traditional print media, and in-person transactions). The NPRM also would make a number of changes to the Negative Option Rule, including requiring negative option plan sellers to provide a one-click opt-out mechanism for current subscription customers; adding opt-in requirements for negative option plan sellers seeking to make new offers to customers; and implementing a requirement that negative option plan sellers must, on an annual basis, remind customers enrolled in subscription services involving anything other than physical goods about the current subscription before it is renewed.

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Wiley Wins Four Law360 'Practice Group of the Year' Awards for 2022

FTC Joins the Cloud Security Discussion

5 Takeaways From Recent CFPB, FTC Equal Credit Push

State Privacy Update: California Finalizes New CCPA Regulations and Iowa Becomes the Sixth State to Adopt Comprehensive Privacy Legislation

State Privacy Update: A New Omnibus Privacy Law Passes in Iowa, Colorado Finalizes Privacy Rules

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

FTC Proposes New Rule to Broadly Ban Non-Compete Agreements

FTC Requests Comment on Potential Revisions to Green Guides

At CES, FTC Commissioner Slaughter Discusses Agency Priorities and Tech Innovation

Webinar: Staying Ahead of State Privacy Laws: Tips and Best Practices for Building Compliant Strategies for Five Key States

Podcast: State Privacy Laws and Federal Government Contractors

California Moves Closer to Finalizing Updated CCPA Regulations and Launching a New Rulemaking for Cybersecurity Audits, Risk Assessments, and Automated Decisionmaking

NIST Releases AI Risk Management Framework, Expected to Be a Critical Tool for Trustworthy AI Deployment

New York Law Will Regulate Consumer Device Repair Options: What the Digital Fair Repair Act Means for the Consumer Electronics Industry

New Year, New State Privacy Laws: California and Virginia Laws Are Now Effective and More Requirements Are on Tap in 2023

FCC Publishes Robotexting Report and Order and FNPRM in the Federal Register

FTC and DOJ File Complaint Against “Web of VoIP Service Providers” for Allegedly Making Illegal Robocalls Using Ringless Voicemails

PrivacyCon Illustrates the FTC’s Focus on AI and Automated Decision Making Systems

FTC’s PrivacyCon Highlights Risks and Opportunities For Children’s Privacy

PrivacyCon 2022: FTC Hears from Researchers on Wide Range of Topics, Many of Which Overlap With Its Ongoing Privacy and Security Efforts

FTC Pushing Ahead Toward Major Privacy Regulation

FTC Hosts Event to Examine Children’s Advertising in Digital Media

New Congressional Report Raises Possibility of False Claims Act Scrutiny for Fintech Companies Involved In PPP Loans

The Future of Web3 Depends on Careful Regulatory Approaches

California Age-Appropriate Design Code Act to Impose Significant New Requirements on Businesses Providing Online Services, Products, or Features

An Introduction to the California Age-Appropriate Design Code

*West Virginia v. EPA* and the Future of Tech Regulation

U.S. State Privacy Law Guide

Cyber Spotlight: Wiley Tackles White House’s National Cybersecurity Strategy and Other Developments

Webinar: Transactional Due Diligence Related to Privacy and Cybersecurity

Webinar: FTC's Revised Safeguards Rule: How to Navigate New Information Security Requirements

Duane Pozza Named a Cryptocurrency and Fintech 'Trailblazer' by The National Law Journal

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**Download Disclaimer:** Information is current as of April 24, 2023. This document is for informational purposes only and does not intend to be a comprehensive review of all proceedings and deadlines. Deadlines and dates are subject to change. Please contact us with any questions.