

Wiley Consumer Protection Download (August 20, 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 Issues Final Rule Prohibiting Certain Review and Testimonials

Practices. On August 14, the FTC issued a Final Rule that classifies certain consumer review and testimonial practices as unfair or deceptive under Section 5 of the FTC Act. Specifically, advertising practices that the Final Rule classifies as "unfair" or "deceptive" include (1) selling or obtaining "fake" consumer reviews; (2) purchasing positive or negative reviews; (3) permitting insider reviews and testimonials without adequate disclosure; (4) representing that company-controlled review websites or entities are independent; (5)

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Privacy, Cyber & Data Governance

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suppressing negative reviews; and (6) misuse of fake social media influence indicators. The Final Rule will take effect 60 days after publication in the Federal Register.

FTC Files Comment on FCC NOI Regarding the Emergence of AI Technologies. On **July 29**, the FTC submitted a comment in response to the Federal Communications Commission's (FCC) Notice of Inquiry (NOI) seeking information on the implications of emerging artificial intelligence (AI) technologies for calling and texting, focusing almost exclusively on potential revisions to the Telephone Consumer Protection Act rules to address AI risks and benefits in the robocalling context. The FTC's comment discussed its AI Voice Cloning Challenge, which the agency designed to encourage the development of multidisciplinary solutions to protect the public from fraud perpetrated through cloned voices, including discussing the four winners of the challenge. The FTC's comment states that the agency "is prepared to use all of its tools to prevent harm and hold bad actors accountable, including through law enforcement and rulemaking, as well as through consumer and business education, and by spurring innovation, as exemplified by the Voice Cloning Challenge."

FTC Holds August Open Commission Meeting. On **August 1**, the FTC held a virtual Open Commission Meeting to hear staff presentations on (1) an ongoing study of Pharmacy Benefit Managers, or PBMs (Interim Report) and their potential impact on access and affordability of medicines; and (2) the FTC's actions to protect servicemembers, veterans, and their families. According to FTC staff, the Interim Report, which is part of the agency's ongoing study of PBMs, concluded that: (a) there is often no negotiation for contract terms between PBMs and pharmacies; (b) PBM reimbursement rates can be unfavorable, especially for local community pharmacies; and (c) PBM and drug manufacturers' rebate contracts are designed to limit access to affordable drugs and exclude generic drugs from formularies.

FTC staff also provided a presentation on the agency's efforts to conduct consumer outreach and education regarding military consumers, as well as recent enforcement work intended to protect military consumers. Staff discussed how the FTC joined Department of Veterans Affairs webinars to discuss the ways in which imposter scams affect veterans, conducted radio interviews with the American Forces Network (AFN), and partnered with organizations such as the American Association of Retired Persons and the AFN networks.

CFPB Issues Report and Consumer Advisory on Residential Solar Panel Financing Market. On **August 7**, the CFPB released an Issue Spotlight and Consumer Advisory, concluding that "some residential solar lenders are misleading homeowners about the terms and costs of their loans, misrepresenting the energy savings they will deliver, and cramming markup fees into borrowers' loan balances." According to the CFPB, there are four areas of "significant" risk pertaining to industry practices – (1) "hidden" dealer fees that may increase the cost of the loan by 30% or more; (2) advertising that promotes the 30% federal "Investment Tax Credit," even though not all consumers may qualify for the credit; (3) circumstances where, if the homeowner does not qualify for the tax credit, they may end up responsible for a "substantial" prepayment; and (4) claims of financial benefits including covered financing costs and the elimination of future energy bills.

CFPB and Other Financial Agencies Propose Rule to Standardize Data Submissions. On **August 2**, the CFPB, in conjunction with other financial agencies, issued a proposed rule seeking comment on establishing data standards “to promote interoperability of financial regulatory data across these agencies.” The other participating agencies include the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Federal Housing Finance Agency, Commodity Futures Trading Commission, Securities and Exchange Commission, and the Department of the Treasury. The agencies are proposing the rule as required by the Financial Data Transparency Act of 2022. Comments on the proposed rule are due 60 days after publication in the Federal Register.

Select Enforcement Actions

FTC Settles with Auto Warranty Company and Loan Servicer for Allegedly Deceptive Advertising. On **July 31**, the FTC filed a complaint and stipulated order in the U.S. District Court for the Eastern District of Missouri against an auto warranty company and its loan servicer for alleged violations of the FTC Act and Telemarketing Sales Rule. The FTC alleges that the companies advertised to consumers that the vehicle service contracts they purchased would cover all repairs, allow them to receive a free rental car if their covered car broke down, and let them choose the repair facility. The FTC alleges that these representations were false, and further alleged that the celebrity endorsers of the contracts falsely claimed to have saved a certain amount of money, despite not being actual customers of the defendants. The defendants agreed to \$10 million in monetary relief in addition to injunctive relief.

FTC Settles with Two Individuals for Allegedly Deceptive Marketing Practices. On **May 31** and **August 7**, the FTC filed two separate stipulated orders in the U.S. District Court for the Eastern District of Pennsylvania against two individuals selling a build-your-own-business program for alleged violations of the FTC Act and the Telemarketing and Consumer Fraud and Abuse Prevention Act. In December 2023, the FTC filed a complaint against these two defendants, as well as another individual and the company they ran together, alleging that they charged consumers for membership to help them build successful online businesses but misrepresented the services they offered, failing to provide their customers the benefits promised. Two of these individuals settled their claims with the FTC and agreed to injunctive relief and a collective monetary judgment of \$7.5 million. The case against the third individual and the company remains ongoing.

FTC Sues Social Media Company for Allegedly Violating COPPA. On **August 2**, the FTC filed a complaint in the U.S. District Court for the Central District of California against a social media company and its parent company for alleged violations of the FTC Act, Children’s Online Privacy Protection Act (COPPA), and the company’s 2019 consent order. The FTC and DOJ allege that the company failed to provide the necessary notice and receive the requisite consent from parents before collecting the personal information of children under 13 on their platform. The FTC seeks civil penalties and injunctive relief.

FTC Settles with Credit Repair Services Provider and its Owners for Allegedly Deceptive Business Practices. On **August 5**, the FTC filed four stipulated orders in the U.S. District Court for the Eastern District of Michigan against a credit repair operator, its owners, and their affiliated companies for alleged violations of

Credit Repair Organizations Act, Telemarketing and Consumer Fraud and Abuse Prevention Act, Telemarketing Sales Rule, and the FTC Act. In 2022, the FTC filed a complaint against the defendants alleging that they made false representations that consumers' credit scores could be improved by, among other things, removing permanently negative information from or adding positive payment history to consumers' credit reports or profiles; unlawfully charged consumers for credit repair services; failed to make required disclosures regarding those services; and operated and promoted an unlawful pyramid scheme. The defendants agreed to monetary judgments totaling \$12 million in addition to injunctive relief.

FTC Settles with Individual for Allegedly Misrepresenting Sweepstakes Prizes to Consumers. On August 6, the FTC filed a stipulated order in the U.S. District Court for the Southern District of California for alleged violations of the FTC Act against an individual who ran a sweepstakes program. In 2015, the FTC brought a complaint against the defendant for allegedly sending consumers letters about winning large monetary prizes and requesting a \$20-\$30 check from the consumers in order to deliver the prize money, however, after the consumers sent the funds, the defendant allegedly failed to send the consumers the prize money. The individual agreed to a permanent injunction, banning him from any involvement in any sweepstakes or other form of prize promotion.

CFPB Settles with Credit Repair Software Company and its Owner for Allegedly Assisting Credit-Repair Businesses Charing Illegal Fees. On August 8, the CFPB filed a stipulated order in the U.S. District Court for the Central District of California against a credit repair software company and its owner/CEO for alleged violations of the Telemarketing Sales Rule and the Consumer Financial Protection Act. In 2021, the CFPB filed a complaint alleging that the company provided substantial assistance to credit-repair companies that use telemarketing to reach consumers and encouraged them to charge advance fees. The defendants agreed to pay \$3 million in civil penalties in addition to injunctive relief and warning companies using its software not to charge advance fees.

FTC and Arizona Attorney General Settle with Automobile Dealership and its General Manager for Allegedly Misrepresenting Fees to Consumers. On August 15, the FTC and Arizona Attorney General (AG) filed a complaint and stipulated order in the U.S. District Court for the District of Arizona against an automobile dealership and its general manager for alleged violations of the FTC Act, the Equal Credit Opportunity Act, and the Arizona Consumer Fraud Act. The FTC and Arizona AG allege that the defendants charged consumers for add-on products or services they did not consent to and would sometimes charge consumers more than once for such add-ons. The defendants agreed to pay \$2.6 million in addition to establishing a fair lending program and injunctive relief.

FTC Issues Administrative Complaint Against an Auto Group, Three Car Dealerships, and Its Officer for Allegedly Misrepresenting Fees to Consumers. On August 16, the FTC filed an administrative complaint against an auto group, three Texas automobile dealerships, and their general manager for alleged violations of the FTC Act and the Equal Credit Opportunity Act. The FTC alleges that the defendants misled consumers by failing to disclose additional fees added to consumers' bills and failing to receive consumer consent to add optional charges. The FTC is seeking injunctive relief.

Upcoming Comment Deadlines and Events

CFPB Seeks Comment on Proposed Interpretive Rule That Would Classify Certain EWA Products and Services as “Credit” Under TILA and Regulation Z. Comments are due **August 30** on the CFPB’s proposed Interpretive Rule that, if adopted, would classify earned wage access (EWA) products and services as consumer “credit” offerings under the Truth In Lending Act (TILA) and Regulation Z. EWA products are employer-provided benefits that allow employees to access money that they have earned before their scheduled payday. TILA and Regulation Z require covered financial institutions to, among other things, make certain disclosures to consumers regarding credit products and services. If finalized, the proposed Interpretive Rule would specifically address EWA products that involve both “(1) the provision of funds to the consumer in an amount that is based, by estimate or otherwise, on the wages that the consumer has accrued in a given pay cycle; and (2) repayment to the third-party provider via some automatic means, like a scheduled payroll deduction or a preauthorized account debit, at or after the end of the pay cycle.” The proposed Interpretive Rule would also supplant the CFPB’s 2020 Advisory Opinion, which concluded that certain EWA products and services where no fee – voluntary or otherwise – is charged are not consumer “credit” under Regulation Z or the TILA.

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White Paper on Telephone Consumer Protection Act Litigation Abuse

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

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

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