

Wiley Consumer Protection Download (December 5, 2022)

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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 ground-breaking 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 Holds November Open Commission Meeting and Votes to Approve Business Opportunity Rule ANPR. On November 17, the FTC held a virtual Open Commission Meeting. During the meeting the FTC voted 4-0 to issue an advance notice of proposed rulemaking (ANPR) proposing revisions to the agency's Business Opportunity Rule. As currently written, the Business Opportunity Rule prohibits persons selling a business opportunity from making deceptive

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statements, and requires them to make certain disclosures to buyers about the opportunity. The ANPR (1) initiates a regulatory review of the Business Opportunity Rule; (2) inquires about the efficacy of the current Business Opportunity Rule in preventing consumer harm; (3) asks whether the Business Opportunity Rule should be expanded to cover coaching programs, work-from-home e-commerce opportunities, and certain investment opportunities; and (4) incorporates into the record comments filed on the ANPR on Deceptive and Unfair Earnings Claims, which was published in the Federal Register in March 2022. Comments on the ANPR are due January 24, 2023.

FTC Issues a Six-Month Extension of the Safeguards Rule Compliance Deadline. On November 15, the FTC voted 4-0 to extend the December 9, 2023 Safeguards Rule compliance deadline to June 9, 2023. The Safeguards Rule requires financial institutions subject to the Gramm-Leach-Bliley Act (GLBA) to implement information security programs to protect consumer financial information. Covered companies include many online financial technology (fintech) companies, mortgage lenders, and companies otherwise involved in credit transactions, among others. The FTC's revisions to the Safeguards Rule were published in the Federal Register on December 9, 2021. As we discussed in greater detail here, financial institutions will be required to, among other things, designate a "qualified individual" to oversee and implement and oversee the institution's information security program; implement access controls, encryption, multi-factor authentication, retention and disposal policies, and logging; and create written incident response plans by June 9, 2023.

CFPB Releases Two Reports on Tenant Background Checks. On November 15, the CFPB released two reports on tenant background checks – (1) the Tenant Background Checks Market Report; and (2) Consumer Snapshot: Tenant Background Checks. The reports found that, among other things: prior rental payment history is largely not reflected in background check risk scores assigned to tenants, as only 1.7% to 2.3% of U.S. renters have prior rental payment history in the consumer reporting system per industry estimates; the demand for algorithmic risk scoring systems by landlords has increased; approximately 68% of renters pay for the background checks, but they often do not see them and do not have access to them; and landlords do not consistently inform prospective tenants of their right to dispute information in reports, as required under the Fair Credit Reporting Act.

FTC Issues FY 2022 Agency Financial Report. On November 15, the FTC issued its FY 2022 Agency Financial Report. The Report is submitted to Congress on an annual basis and includes annual audited financial statements and an assessment by the Office of the Inspector General of the FTC's management accomplishments and opportunities for performance improvements.

FTC Releases New Do Not Call Registry Data Book. On November 21, the FTC released its National Do Not Call Registry Data Book for Fiscal Year (FY) 2022 (Data Book). The agency's National Do Not Call Registry allows consumers to add their phone number to a national registry that prohibits telemarketers from contacting them. The FTC reports that, over FY 2022, more than 2.5 million people signed up with the National Do Not Call Registry. According to the Data Book, complaints about imposter fraud tops the list of FTC robocall complaints in FY 2022, with nearly 287,000 reported robocalls and live calls received. Such calls involve imposters falsely posing as government officials and legitimate businesses.

Recent Enforcement Actions

CFPB Settles with Financial Service Company for Alleged Misrepresentations Regarding Consumer Accounts. On **December 1**, the CFPB filed a proposed stipulated order in the Southern District of New York that would require Loan Doctor, a financial services company, and its founder, Edgar Radjabli, to refund \$19 million dollars to consumers, pay a civil money penalty of \$391,530, and cease all deposit-taking activities. The CFPB alleges that Loan Doctor made false and misleading statements about the security and type of deposit accounts consumers were investing in, violating the Consumer Financial Protection Act. The alleged misrepresentations included indicating that deposits were being invested in traditional savings accounts with guaranteed returns and FDIC insurance while actually investing consumer deposits in a cryptocurrency hedge fund owned by Mr. Radjabli and loaning consumer investments to other investors.

FTC Files Suit Against Individuals and Their Companies for Allegedly Violating the Telemarketing Fraud and Abuse Act. On **November 30**, the FTC filed a complaint in Middle District Court of Tennessee against Sean Austin, John Steven Huffman, and John Preston Thompson and their affiliated companies for allegedly deceiving consumers into paying for a fake credit card relief program. The FTC claims that the defendants called consumers and offered them a debt relief opportunity that did not exist in violation of the FTC Act and the Telemarketing Sales Rule. The court granted the FTC's motion for a temporary restraining order, temporarily freezing the defendants' assets and ordering preliminary injunctive relief.

FTC Reaches Settlement Regarding Allegedly Deceptive Product Endorsements. On **November 28**, the FTC filed a complaint and proposed settlement with Google and iHeartMedia based on allegations that radio personalities promoted certain mobile phones though they had not personally owned or used them, which the FTC alleged was deceptive in violation of the FTC Act. Seven state attorneys general also reach monetary settlements with the companies. The FTC voted 5-0 to approve the proposed consent orders and release them for public comment for 30 days after publication in the Federal Register.

CFPB And New York Attorney General Settle with Companies for Alleged Misrepresentations Regarding Victim Compensation Funds. On **November 23**, the CFPB and New York Attorney General filed a proposed stipulated order in the Southern District of New York against RD Legal Funding, RD Legal Finance, and RD Legal Funding Partners (together, RD Legal) for alleged violations of the Consumer Financial Protection Act. The government agencies allege that RD Legal misrepresented the type of contractual agreements consumers were making when they agreed to accept cash-advance offers for settlements from victim-compensation funds. The proposed order would require RD Legal to refund \$600,000 to consumers, pay a \$1 civil money penalty to the CFPB, and stop engaging in business with recipients of the Zadroga Fund for 911 victims.

Department of Justice and Wisconsin Attorney General File Suit Against Companies and Individuals for Allegedly Deceptive Timeshare Marketing Practices. On **November 21**, the FTC announced that the Wisconsin Attorney General and U.S. Department of Justice (DOJ), upon the FTC's referral, filed suit in the Eastern District Court of Missouri against 16 defendants, which included nine companies, five individuals, and two irrevocable trusts. The complaint alleges violations of the FTC Act and Wisconsin's Direct Marketing Rule and Fraudulent Misrepresentation law for offering a service that claimed to help consumers exit timeshare

contracts. DOJ asserts that the defendants pressured consumers, usually senior citizens, to sign contracts and pay for the timeshare-exit service, which the defendants did not provide. The DOJ also claims that the defendants used misleading logos to imply affiliations with major timeshare companies and failed to fulfill promises that consumers would receive full refunds if the service was unsuccessful. The complaint seeks a permanent injunction, monetary damages, and civil money penalties.

FTC Sues Dietary Supplement Company for Allegedly Deceptive Advertising. On November 18, the FTC filed a complaint against Precision Patient Outcomes, Inc. and its CEO, Margrett Priest Lewis, in the Northern District Court of California, alleging violations of the FTC Act and COVID-19 Consumer Protection Act. The FTC claims that Precision deceptively labeled some supplements as COVIDresist and VIRUSresist to mislead consumers, arguing that the supplements were just multivitamins that were not scientifically proven to fight COVID. The FTC is requesting the court issue a permanent injunction and award monetary relief and civil money penalties for each violation. The Commission voted to file this complaint against Precision 4-1, with Commissioner Wilson dissenting.

CFPB Settles with Mortgage Servicer for Alleged CARES Act Violations. On November 17, the CFPB issued a consent order against non-bank mortgage servicer, Carrington Mortgage Services, for allegedly violating rights provided to borrowers by the CARES Act. The CFPB alleges that during the COVID19 pandemic Carrington charged improper late fees, failed to correctly notify homeowners of their protections against foreclosures, and provided inaccurate information to consumer reporting companies. Carrington agreed to refund certain late fees back to consumers, pay a \$5.25 million fine to the CFPB, and conduct internal assessments to prevent any similar activity in the future.

FTC Settles with Company and Owners for Allegedly Deceptive Advertising and Violations of the Business Opportunity Rule. On November 16, the FTC filed a complaint and proposed stipulated order in the Southern District Court of Florida against DK Automation, its affiliates, and its owners. The Commission alleges that the defendants deceived consumers by promising turnkey business opportunities through purchase of its business coaching packages but failed to provide them. Additionally, the FTC's complaint claims that the defendants suppressed negative reviews on its website and failed to provide disclosures to consumers as required by the Business Opportunity Rule. The proposed order includes a \$2.6 million penalty and injunctive relief.

Upcoming Comment Deadlines and Events

CFPB Re-Opens Comment Period to Collect Information on Business Practices of Large Technology Companies. Comments are due December 7 on a request for comment regarding several orders issued on October 21, 2021 to collect information on the business practices of national technology companies operating payment systems in the United States. The CFPB initially sought comment on the orders in November 2021, but re-opened the docket this month, adding additional questions. The CFPB states that the information will help the agency to better understand how the companies use payments data and manage data access. The agency issued the orders under its Consumer Financial Protection Act (CFPA) Section 1022(c)(4) authority, which gives the CFPB the ability to seek information from payments markets participants in order to monitor for risks to consumers and publish aggregated findings.

FTC Seeks Comment on Business and Government Impersonation NPRM. Comments are due **December 16** on the FTC's Government and Business Impersonation Fraud Advance Notice of Proposed Rulemaking (NPRM). The NPRM proposes a rule that would allow the FTC to obtain penalties against fraudsters impersonating companies, non-profit organizations, and government agencies.

FTC Seeks Comment on Energy Labeling Rule ANPR. Comments are due **December 27** on the FTC's Energy Labeling Rule ANPR. The ANPR requests public input on a number of proposed revisions to the Energy Labeling Rule, including whether to amend it to require companies to provide repair instructions for products covered under the Rule.

FTC Solicits Feedback on Funeral Rule ANPR. Comments are due **January 3, 2023** on the FTC's Funeral Rule ANPR. The ANPR seeks comment on updates to the Funeral Rule, including improvements to the public accessibility of funeral home price information.

FTC Seeks Comment on Junk Fees ANPR. Comments are due **January 9, 2023** on the FTC's Junk Fees ANPR. As we explained in greater detail here, the ANPR asks 21 questions about what the FTC labels as "junk fees" practices such as "drip pricing"; billing consumers for products and services without consent; and whether a "junk fees" rule should require that "businesses to disclose in all advertising one price that encompasses all mandatory component parts."

FTC Requests Input on Fake Reviews and Endorsements ANPR. Comments are due **January 9, 2023** on the FTC's Fake Reviews and Endorsements ANPR. The ANPR asks 17 questions about the presence of fake reviews and endorsements in the marketplace, what regulatory provisions mitigate or deter them, and whether additional rules are needed.

More Analysis from Wiley

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

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

Updates on the FTC Privacy Rulemaking: Insights from Commissioner Slaughter and Comment Deadline Extension

FTC Pushing Ahead Toward Major Privacy Regulation

FTC Launches Rulemaking on Fee Disclosures and Practices Across Industries

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

Crypto and Web3 Under Consumer Protection Scrutiny

How the Supreme Court's OT 2022 Term (So Far) Might Affect Tech

With 2023 Compliance Deadlines Looming for Several New State Privacy Laws, California and Colorado Release Draft Privacy Rules

California AG Issues First Fine for CCPA Violations

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

NIST Is Taking Critical Steps Towards an AI Risk Management Framework

The Private Sector Should Watch NIST's Broad Work on Privacy and Cybersecurity Guidance

FTC Highlights Scrutiny of Health and Geolocation Data

West Virginia v. EPA and the Future of Tech Regulation

Executive Order on EU-U.S. Data Sharing Signed

EU Institutions Reach Agreement on Landmark Regulations Targeting Big Tech

U.S. State Privacy Law Guide

Webinar: Transactional Due Diligence Related to Privacy and Cybersecurity

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

Podcast: Why the FTC Matters for Fintech

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