

Wiley Consumer Protection Download (February 16, 2021)

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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

Acting FTC Chairwoman Slaughter Previews the FTC's Agenda in Remarks. On **February 10**, Acting Federal Trade Commission (FTC) Chairwoman Rebecca Slaughter provided insight into the FTC's privacy priorities in the coming years. The remarks were among her first as Acting Chairwoman, and they indicate that privacy

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Practice Areas

Cyber and Privacy Investigations, Incidents
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FTC and Consumer Protection

enforcement will continue to be an important issue for the agency. As we discuss in greater detail here, key areas highlighted in her remarks include addressing privacy issues associated with the coronavirus (COVID-19) pandemic and promoting racial equity; addressing potential bias in artificial intelligence and facial recognition; protecting health data; investigating location data tracking; and pushing for more extensive remedies for privacy and data security violations. Acting Chairwoman Slaughter also indicated that the FTC will host a workshop to examine marketplace incentives for protecting privacy and safeguarding consumer data.

Acting CFPB Director Uejio Prioritizes Housing Insecurity, Racial Equity, and Protecting Small Business

Access to Credit. On **February 4**, Acting Consumer Financial Protection Bureau (CFPB) Director Dave Uejio announced his priorities for the CFPB's Division of Research, Markets, and Regulations. In particular, he has directed them to analyze housing insecurity, including mortgage foreclosures, repossessions, and landlord-tenant evictions; examine the "most pressing" consumer finance barriers to racial equity; and implement Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). Section 1071 requires financial institutions to submit data to the CFPB pertaining to applications for credit submitted by small businesses.

FTC Data Demonstrates That It Received 2.2 Million Fraud Reports from Consumers in 2020. On **February 4**, the FTC announced that it received more than 2.1 million fraud reports from consumers in 2020, with imposter scams representing the most common type of fraud reported. Consumers reported losing more than \$3.3 billion to fraud in 2020, which represents a \$1.8 billion increase from 2019. Moreover, the FTC's Consumer Sentinel Network received more than 4.7 million consumer fraud reports in 2020. The Consumer Sentinel Network is a database that receives reports from consumers, and federal, state, and local law enforcement agencies. A full breakdown of the 2020 reports is available [here](#).

FTC Sends Annual Letter to CFPB Outlining Its 2020 ECOA Activities. On **February 3**, the FTC provided its annual summary of the activities that it has taken to enforce the Equal Credit Opportunity Act (ECOA) and promote the statute's goals. ECOA prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or good faith exercise of certain rights. The FTC has authority to enforce ECOA against non-bank financial service providers. The 2020 summary included an enforcement action against a car dealership; a comment in response to the CFPB's Request for Information about Regulation B addressing the FTC's work in disparate-impact analysis; and the FTC's actions to assist military consumers.

Significant Enforcement Actions

FTC Approves Final Order to Prevent Superglue Manufacturer from Marketing Products with Allegedly Misleading "Made in USA" Claims. On **February 12**, the FTC approved a Final Consent Order that settles charges that glue maker Chemence, Inc. (Chemence) supplied pre-labeled and pre-packaged glues with deceptive "Made in USA" claims to trade customers. The FTC's complaint, which we discussed in our January 4 Newsletter, was originally filed on December 22. The Final Consent Order requires Chemence to pay \$1.2 million to the FTC, which represents the highest monetary judgement ever for a Made in USA case. Among

other things, the Final Consent Order also prohibits Chemence from making unqualified U.S.-origin claims for any product.

FTC Bans Payday Lender from Industry and Forgives Consumer Debts Owed. On **February 11**, the owners and operators of a large payday lending operation, which was operated under the names Harvest Moon Financial, Gentle Breeze Online, and Green Stream Lending, will be permanently banned from the lending industry by an FTC settlement. The FTC's complaint alleges that the scheme used deceptive marketing to convince consumers that their loans could be repaid in a fixed number of payments. Moreover, the complaint alleges that the scheme continued to draw millions of dollars in payments from consumer bank accounts after the loan's original principal amounts and repayment costs had been repaid. The FTC's settlement also includes a monetary judgment of \$114.3 million, and provides that almost all outstanding debt held by the company will be deemed as paid in full.

FTC Settles with Two Companies for Their Alleged Role in a Credit Card Laundering Scheme. On **February 10**, the FTC reached settlements with Electronic Payment Solutions of America, and Electronic Payment Services, which were charged with assisting to launder millions of dollars in credit card charges through fraudulent merchant accounts. According to the FTC, the companies allegedly assisted in a fraudulent operation known as Money Now Funding, that allowed the operation to process almost \$6 million through credit card networks. The FTC originally sued Money Now Funding in 2013 for telemarketing worthless business opportunities promising consumers thousands of dollars in income. The settlements include monetary judgements of \$4.6 million against Electronic Payment Solutions of America and Electronic Payment Services.

Publisher Agrees to Pay More Than \$2 Million to Settle FTC Allegations That It Targeted Seniors with Phony Schemes. On **February 8**, Agora Financial, LLC (Agora) and several of its affiliates agreed to pay more than \$2 million to settle FTC allegations that they duped seniors into buying pamphlets, newsletters, and other publications which promoted a phony cure for type 2 diabetes or advertised a fraudulent plan to help them obtain money from a government-affiliated check program. In addition to the monetary penalty, the FTC's proposed Consent Order requires Agora and its affiliates from making misrepresentations about type 2 diabetes without sufficient scientific evidence. The FTC filed the proposed Consent Order in the U.S. District Court for the District of Maryland.

FTC Finalizes Settlement with Emergency Travel Services Provider That Failed to Secure Sensitive Information. On **February 5**, the FTC issued a Final Settlement with SkyMed International (SkyMed), a Nevada-based emergency travel services provider. As we covered in the December 21 Newsletter, the FTC filed a complaint against SkyMed on December 16, 2020, which alleges that SkyMed failed to implement reasonable measures to secure personal information that it collected on travel emergency membership participants. As a result, the company left a cloud database containing 130,000 membership records unsecured. The database contained members' personal information, including names, dates of birth, home addresses, health information, and membership account numbers. The FTC's Final Settlement requires SkyMed to, among other things, send notices to affected consumers detailing the information compromised by the data breach, implement a data security program, and obtain third-party biennial assessments of the program.

Defendant in Florida-Based Health Insurance Scheme Agrees to Settle Charges With FTC. On **February 4**, one of the defendants in the alleged Simple Health Plans LLC (Simple Health) insurance scheme reached a Proposed Settlement with the FTC. The Proposed Settlement permanently bans the defendant, Candida Girouard, from the health care business. The FTC's complaint, which was filed in the U.S. District Court for the Southern District of Florida, alleges that Girouard – the former chief compliance officer of Simple Health – was a critical part of the scheme. The FTC's complaint alleges that Simple Health and Girouard lured consumers through deceptive websites and misled them into thinking that they were purchasing comprehensive health insurance that would cover preexisting medical conditions, prescription drugs, a host of standard care, treatments, and tests. Simple Health's plans allegedly did not provide such comprehensive coverage. The FTC is still litigating against the other defendants involved in federal court.

Amazon Agrees to Pay \$61.7 Million to Settle FTC Allegations That It Did Not Pay Some Customer Tips to Flex Drivers. On **February 2**, Amazon agreed to pay \$61.7 million to settle FTC charges that it failed to pay Amazon Flex drivers the full amount of tips that they earned over a two and a half year period. The FTC's complaint alleges that Amazon stopped this practice only after it became aware of the agency's investigation in 2019. Amazon's subsidiary, Amazon Logistics, purportedly featured advertisements that stated: "You will receive 100% of the tips you earn while delivering with Amazon Flex." The FTC's complaint alleged that Amazon Logistics stopped paying drivers their full salaries plus tips in 2016. Under the terms of the FTC's settlement, Amazon will be prohibited from making further misrepresentations regarding driver tips.

FTC Finalizes Settlement with Zoom Over Allegations That It Misled Consumers Over Data Security. On **February 1**, the FTC finalized a settlement with Zoom following allegations that the company deceived consumers regarding the level of security that it provided for Zoom meetings. As we discussed in our November 23 Newsletter, the FTC first sought comment on the proposed settlement on November 9. The FTC's Final Order requires Zoom to, among other things, implement a comprehensive security program, review software updates for security vulnerabilities, and ensure that updates will not compromise any third-party security features.

Upcoming Comment Deadlines and Events

FTC Seeks Research Presentations for PrivacyCon 2021. The FTC issued a call for research presentations on a wide array of privacy and security issues as part of its sixth PrivacyCon, which will be held on July 27, 2021. The FTC is seeking research on issues such as the evolution of privacy and security risks; privacy and security issues related to working from home; the costs and benefits of privacy and security; the effectiveness of consumer privacy and security disclosures; algorithmic bias and fairness in algorithms; and privacy-enhancing technologies for consumers. Research presentations are due April 9, 2021, and more information about submitting presentations can be found [here](#).

More Analysis from Wiley

Wiley Receives Diversity & Flexibility Alliance 'Tipping the Scales' Recognition

Wiley Among First Organizations to Join FCBA's New Diversity Pipeline Program

Duane Pozza Weighs In on Whether FTC Priorities Will Change Under Biden Administration

Five Issues a Biden-Era FTC is Likely to Prioritize

Acting Chairwoman Slaughter Forecasts FTC's Privacy Agenda

Facial Recognition Tech and Biometrics Under Scrutiny at FTC

Supreme Court Argument Analysis: AMG Capital Management v. FTC

California Privacy Rights Act – What Does It Mean For You?

Key Cyber Takeaways from the Senate Hearing on Biden's Nominee for DHS Secretary

Key Tech Takeaways from Hearing on Biden's Nominee for Commerce Secretary

Privacy in Focus: Federal AI Efforts Will Be Greatly Boosted by 2021 NDAA

Privacy in Focus: 2021 Preview: How the Private Sector Will be Impacted by IoT Cybersecurity Work at NIST

Privacy in Focus: The EU Proposes New Regulations Targeting Big Tech

FTC 6(b) Orders Start a Broad Investigation of Privacy Practices and Technology Use by Nine Tech Companies

TCPA Update: FCC Imposes New Call Limits and Opt-Out Requirements

More Modifications to the CCPA Regulations Proposed as California Readies to Launch New CPRA Rulemaking Activity

FCC Clarifies That Government Contractors Must Obtain Prior Express Consent Under the TCPA

New IoT Cybersecurity Drafts From NIST Will Impact the Ecosystem

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