

Wiley Consumer Protection Download (February 27, 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 Commissioner Christine Wilson Announces Resignation. On **February 14**, FTC Commissioner Christine Wilson announced her intention to resign from the FTC "soon". Commissioner Wilson cited her concerns with, among other things: the FTC's challenge to Meta's acquisition of app creator Within; the FTC's November 2022 Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the FTC Act, which according to Commissioner Wilson ignores "decades of court rulings and condemn essentially any business conduct that three unelected commissioners find

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distasteful"; and the FTC's recent Notice of Proposed Rulemaking (NPRM) proposing to broadly ban noncompete clauses, which, according to Commissioner Wilson, run contrary the Supreme Court's decision in *West Virginia v. EPA*. Overall, she criticized FTC Chair Lina Khan's practices for "disregard for the rule of law."

Following Commissioner Wilson's announcement, Chair Khan and Commissioners Alvaro Bedoya and Rebecca Kelly Slaughter released a joint statement that "[w]hile we often disagreed with Commissioner Wilson, we respect her devotion to her beliefs and are grateful for her public service. We wish her well in her next endeavor." The FTC has not yet announced Commissioner Wilson's official resignation date.

FTC Launches Office of Technology. On **February 17**, the FTC announced the launch of its Office of Technology, which is intended to "strengthen the FTC's ability to keep pace with technological challenges in the digital marketplace by supporting the agency's law enforcement and policy work." The new Office of Technology will be headed by Chief Technology Officer Stephanie T. Nguyen and will: support FTC enforcement investigations and actions; advise and engage with FTC staff on policy and research projects; and identify relevant market trends and emerging technologies. The FTC voted 4-0 to approve the creation of the Office of Technology.

CFPB Publishes Blog Post on Underreporting of Actual Payment Data by Certain Credit Card Companies. On **February 16**, the CFPB published a blog post noting that a number of large credit card companies did not report actual payment data to nationwide consumer reporting agencies. As the CFPB explains, actual payments are "the amount a borrower repays each month, as opposed to the minimum payment or balance." In May 2022, the CFPB sent letters to a number of the largest credit card companies asking them about their underreporting of actual payment data. On February 16, 2023, the CFPB published a summary of the responses it received.

According to the CFPB, the share of furnished credit card accounts with actual payment information has been falling since late 2013. In the blog post, the CFPB alleges that the credit card companies "suppressed" actual payment information "to make it harder for competitors to offer their more profitable and less risky customers better rates, products, or services" because some credit card companies "specifically noted they observed other credit card companies had stopped furnishing actual payment information and didn't want to be at a 'competitive disadvantage' by providing data their competitors had chosen to stop sharing." The CFPB notes that it is monitoring these practices going forward.

CFPB Releases Report on Third-Party Debt Collection Trends. On **February 14**, the CFPB released a report titled *Market Snapshot: An Update on Third-Party Debt Collections Tradelines Reporting*, which analyzes trends in credit reporting of debt collection from 2018 to 2022. The report finds that the total number of collections tradelines on credit reports declined by 33% from 2018 to 2022. Despite this decline, however, the CFPB report notes that medical collections tradelines still represent 57% of all collections items on credit reports.

FTC Releases New Data Showing That Consumers Reportedly Lost Almost \$8.8 Billion to Scams in 2022. On **February 23**, the FTC released new data showing that consumers reported losing nearly \$8.8 billion to scams in 2022, which represents a more than 30% increase from 2021. The new data shows that investment

scams were responsible for the highest loss total – more than \$3.8 billion. The second highest loss amount came from imposter scams at \$2.6 billion, which is up from \$2.4 billion in 2021.

Recent Enforcement Actions

CFPB Settles Predatory Lending Allegations with Auto Title Lender. On **February 23**, the CFPB issued a consent order against TitleMax, which includes several entities under TMX Finance that provide a variety of lending services. The CFPB alleges that TitleMax has consistently charged veterans, and other consumers, interest rates higher than 36% annual percentage rate (APR) as calculated under the Military Lending Act and failed to adequately disclose charges and APRs to its customers, as required by the Truth in Lending Act and the Consumer Financial Protection Act (CFPA). The CFPB's consent order states that it considers TitleMax a repeat offender, as it had previously issued an order against TitleMax for allegedly misrepresenting loan payment options in 2016 in violation of the CFPA. The new consent order requires TitleMax to pay a \$10 million civil money penalty and \$5.05 million in redress in addition to injunctive relief.

FTC Finalizes Settlement with Two Glass Container Manufactures Regarding Noncompete Provisions. On **February 23**, the FTC voted 3-1, with Commissioner Wilson dissenting, to finalize proposed orders against O-I Glass, Inc. and Ardagh Group S.A., after the 30-day notice and comment period ended. Specifically, following FTC allegations that the companies' noncompete agreements violated the FTC Act, these manufacturers are prohibited from enforcing or threatening to enforce noncompete clauses against employees. Additionally, the orders require the manufacturers to provide all current and past employees with the stipulated order notifying them that any noncompete clauses are void, ensure that all future directors and managers continue abiding by this order, and conspicuously display notice of the absence of noncompete clauses for at least 10 years.

FTC Sues Telecommunications Company and Others for Participation in Alleged Robocall Scams. On **February 16**, the FTC filed a complaint in the U.S. District Court of Southern California against seven different companies and their respective owners for allegedly running ringless voicemail robocall scams in violation of the Telemarketing Sales Rule (we discussed the complaint in greater detail here). Specifically, the FTC alleges that outbound calling service provider Stratics Networks Inc. sold ringless voicemail and other outbound calling products and worked with the other defendants to call consumers and offer misleading debt relief services. One set of defendants, a marketing and lead service provider, Kasm Inc., and its owner, Kenan Azzeh, has settled with the FTC for \$3.8 million, which was partially suspended due to an inability to pay.

Upcoming Comment Deadlines and Events

FTC Issues NPRM Proposing to Broadly Ban Employee Non-Compete Clauses. Comments are due **March 20, 2023** on the FTC's NPRM that proposes to ban employers from imposing and enforcing employee non-compete clauses in contracts (we summarized the NPRM here). The NPRM specifically seeks comment on prohibiting an employer from: (1) either entering into or attempting to enter into a non-compete agreement with an employee; (2) maintaining a non-compete agreement with an employee; and (3) representing to an employee that they are subject to a non-compete clause without a good faith basis to believe that the

employee is subject to an enforceable non-compete clause.

CFPB Proposes Rule to Establish Registry of Nonbank Terms or Conditions That Claim to Waive or Limit Consumer Rights. Comments are due **March 31, 2023** on the CFPB's Proposed Regulation to establish a public registry of nonbank financial institutions' terms or conditions that purport to waive or limit consumer rights or protections, such as "bankruptcy rights, liability amounts, or complaint rights." Specifically, the Proposed Rule would require nonbanks that are subject to the CFPB's supervisory authority to submit information on terms and conditions in form contracts they use.

FTC Requests Comment on Regulatory Review of the Green Guides. Comments are due April 24, 2023 (extended from February 21, 2023) 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.

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

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

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

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

FTC Proposes New Rule to Broadly Ban Non-Compete Agreements

FTC Requests Comment on Potential Revisions to Green Guides

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

FCC Releases Long-Anticipated Data Breach Reporting NPRM, Proposing Major Changes to CPNI Rules

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 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

Federal Report Criticizes Mobile App Ecosystem and Calls for New Regulation

West Virginia v. EPA and the Future of Tech Regulation

U.S. State Privacy Law Guide

Enter Stage Right – a New Cyber Regulator Steps into the Spotlight

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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