

Wiley Consumer Protection Download (January 3, 2023)

January 3, 2023

*Originally published January 3, 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 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 Issues New Business Guidance for Marketers and Sellers of Health Products. On December 20, the FTC's Bureau of Consumer Protection announced the issuance of *Health Products Compliance Guidance*, which provides guidance on advertising of health-related products. The *Guidance*, issued by the Bureau, expands upon and replaces its 1998 guide, *Dietary Supplements: An Advertising Guide for Industry*, and increases its coverage from dietary supplements to

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all health-related products. Among other updates, the new guidance includes a more detailed discussion on the evidence needed to substantiate health claims in advertising of health-related products.

Recent Enforcement Actions

CFPB Files Consent Order Against Wells Fargo for Alleged Unfair and Deceptive Customer Practices. On **December 20**, the CFPB filed a stipulated consent order against Wells Fargo for a series of alleged violations of the Consumer Financial Protection Act (CFPA). The CFPB alleges various activities by the company between 2011 and 2020 in violation of the CFPA. Among other allegations, the CFPB argues that Wells Fargo incorrectly applied auto loan payments, charged unexpected overdraft fees, improperly denied mortgage loan modifications, and incorrectly froze consumer accounts. The company has agreed to pay \$2 billion to affected consumers and a \$1.7 billion fine to the CFPB.

FTC Settles with Epic Games Over Alleged Child Online Privacy Violations and Deceptive Billing Practices. On **December 19**, the Department of Justice, on behalf of the FTC, filed a complaint and stipulated order in the U.S. District Court for the Eastern District of North Carolina against Epic Games, alleging violations of the Child Online Privacy Protection Act (COPPA). The complaint alleges that Epic failed to comply with COPPA's rules for parental notice, consent, review, and data deletion requirements, and further caused children harm by configuring default settings to pair children and teens with adult strangers in interactive gameplay. The stipulated order requires Epic to pay \$275 million monetary penalty, delete certain personal information, establish a privacy program, and require parental consent before enabling voice and text communications for users under 13.

On the same day, the FTC also filed an administrative complaint and consent order resolving claims against Epic for allegedly deceptive and unfair practices involving charges to consumers. Specifically, the complaint alleges that Epic misled users by charging consumers for in-game purchases using buttons that were similar to those used for basic gaming functions, allegedly leading to unwanted in-game purchases by users. Additionally, the FTC claims that Epic allowed children to make in-app purchases without parental consent and locked user accounts while disputed charges were being reviewed. Epic agreed to pay \$245 million to the FTC and to require affirmative consent from users before charging consumers. The FTC will publish a description of the consent agreement package for public comment in the Federal Register.

Upcoming Comment Deadlines and Events

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.

FTC Solicits Feedback on Funeral Rule ANPR. Comments are due **January 17, 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 Business Opportunity Rule ANPR. Comments are due **January 24, 2023** on the FTC's Business Opportunity Rule ANPR. 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.

FTC Seeks Comment on Energy Labeling Rule ANPR. Comments are due **January 31, 2023** (extended from December 27) on the FTC's ANPR. The ANPR requests public input on a number of proposed revisions to the Rule, including whether to amend the rule to require companies to provide repair instructions for products covered under the Rule.

FTC Seeks Comment on Junk Fees ANPR. Comments are due **February 8, 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 Comment on Regulatory Review of the Green Guides. Comments are due **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.

More Analysis from Wiley

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

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

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 Launches Rulemaking on Fee Disclosures and Practices Across Industries

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

Crypto and Web3 Under Consumer Protection Scrutiny

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

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

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Download Disclaimer: Information is current as of January 3, 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.