

Wiley Consumer Protection Download (July 16, 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 Sends Warning Letters to Companies About Warranty

Practices. On **July 3**, the FTC sent letters to eight companies stating that their warranty practices may violate the Magnuson-Moss Warranty Act (MMWA) due to alleged restrictions on consumers' ability to repair certain products. The letters note that company statements requiring consumers to use specified parts or service providers to keep their warranties intact are generally prohibited by the MMWA and may be deceptive under the FTC Act. Additionally, the FTC warned against the use of stickers stating "warranty void if

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removed” or similar language that discourages consumers from performing maintenance and repair on their products. The letters state that the FTC will review the companies’ websites and warranty practices after 30 days.

FTC Commissioners Testify Before House Energy and Commerce Subcommittee on Innovation, Data and Commerce. On **July 9**, FTC Chair Khan and the other Commissioners testified before the House Energy and Commerce Subcommittee on Innovation, Data, and Commerce regarding the agency’s proposed fiscal year 2025 budget. In her testimony, Chair Khan outlined the reasons for the FTC’s requested budget increase, and emphasized that any budget decrease would reduce FTC capabilities, including the ability to retain personnel.

FTC, ICPEN, and GPEN Release Results of “Dark Pattern” Reviews. On **July 2**, the International Consumer Protection and Enforcement Network (ICPEN), in collaboration with the FTC, released a public report on its annual review of subscription service providers for so-called “dark patterns,” which the FTC defines as digital design techniques that may manipulate consumers into buying products or giving up their privacy. The review, which took place from January 29 – February 2, 2024, examined 642 websites and mobile apps across 26 countries. According to the report, nearly 76% of the sites and apps examined employed at least one such digital technique, and nearly 67% used multiple of these techniques. ICPEN stated the most common so-called “dark patterns” encountered were alleged “sneaking practices,” which involve hiding or delaying the disclosure of information that may impact a consumer’s decision-making, and what it called “interface interference,” which involves obscuring or framing information in a manner that influences a consumer to make decisions more favorable to the company.

CFPB Publishes Supervisory Highlights Report on Servicing and Collection of Consumer Debt. On **July 2**, the CFPB published a Supervisory Highlights report on select examinations regarding auto loan servicing, student loan servicing, debt collection, medical payment products, and deposit and prepaid accounts. The CFPB states in the report that it found several instances of alleged unfair, deceptive, or abusive acts or practices by loan servicers. For example, the CFPB reports that certain auto loan servicers allegedly charged late fees after failing to provide adequate notifications that borrowers were required to make their final payments manually despite the borrowers being enrolled in autopay. The CFPB also asserts that some student loan servicers had excessive phone hold times and other barriers to assistance, that servicers had provided inaccurate information about benefit forms, and that servicers failed to notify consumers prior to withdrawing amounts that varied from preauthorized electronic fund transfers in violation of the Electronic Fund Transfer Act (EFTA).

In the report, the CFPB also highlighted consumer complaints regarding medical payment products, including medical credit cards, and how these products were promoted, offered, and sold. Specifically, the agency highlighted complaints that health care providers misrepresented details of the product promotions and pressured consumers to open a credit card while receiving treatment. Lastly, the CFPB reported on deposit and prepaid account practices, and concluded that some entities engaged in unfair acts or practices with respect to account freezes. The CFPB also reported on industry compliance with Section 1034(c) of the Consumer Financial Protection Act (CFPA), which requires large banks and credit unions to comply with consumer requests for basic account information, noting that some responding entities had eliminated fees

associated with obtaining information and had updated their policies, procedures, and fee schedules to adequately implement these changes.

Select Enforcement Actions

FTC Sues Two Online Businesses and Their Owners for Allegedly Charging Consumers Without Proper Consent. On **June 17**, the FTC filed a complaint, which was unsealed on July 1, in the U.S. District Court for the Middle District of Florida against two online product sellers and their respective owners for alleged violations of the FTC Act, Restore Online Shoppers' Confidence Act (ROSCA), and the EFTA. The FTC alleges that the defendants misled consumers by offering free products to consumers and subsequently enrolling the consumers in continuity programs without consent or charging consumers for products they did not purchase. The FTC is seeking injunctive and monetary relief.

FTC Settles with Online Platform for Allegedly Misleading Advertising. On **July 2**, the FTC filed a complaint and stipulated order in the U.S. District for the Southern District of Florida against an online platform that facilitated gig work for alleged violations of the FTC Act and Business Opportunity Rule. The FTC alleges that the online platform misled consumers who joined the platform and paid monthly fees by promising certain lucrative financial opportunities and income that was not received by most gig workers who used this platform. The company agreed to pay \$7 million in addition to injunctive relief.

FTC Settles with Used Car Seller for Allegedly Misrepresenting Products and Services to Consumers. On **July 2**, the FTC filed a complaint and stipulated order in the U.S. District Court for the Southern District of Texas against an online used car seller for alleged violations of the FTC Act, Trade Regulation Rule Concerning the Sale of Mail, Internet, or Telephone Order Merchandise (MITOR), Used Car Rule, and the Rule Governing Pre-Sale Availability of Written Warranty Terms. The FTC alleges that the online seller did not accurately represent the condition of the used cars, did not timely deliver the products to customers, and failed to appropriately post the cars' warranty information on its website. The company agreed to pay \$1 million in addition to injunctive relief.

FTC and Los Angeles District Attorney Settle with Social Media Platform and its Founders for Allegedly Deceptive Marketing, Including to Children and Teens. On **July 9**, the FTC and Los Angeles District Attorney's Office (LA DA) filed a complaint and stipulated order in the U.S. District Court for the Central District of California against a social media platform and two of its founders for alleged violations of the FTC Act, ROSCA, the Children's Online Privacy Protection Rule, the California Unfair Competition Law, and the California False Advertising Law. The FTC and LA DA allege that the platform misled consumers by using AI-generated content and messages to make the app appear more popular to consumers, including children and teens, and the platform failed to disclose and obtain consent for recurring charges. As part of the settlement, the defendants agreed to pay \$5 million and are banned from offering their app to anyone under 18.

Upcoming Comment Deadlines and Events

CFPB Seeks Comment on Interpretive Rule on “Buy Now, Pay Later” Products. On **May 31**, the CFPB published an interpretive rule and request for comment in the Federal Register to address the applicability of Regulation Z, which implements the Truth in Lending Act (TILA), to “Buy Now, Pay Later” (BNPL) products and services. BNPL is a short-term financing option that allows customers to purchase items and pay for them over time in installments. The CFPB’s interpretive rule states that BNPL lenders are “creditors” under Regulation Z because BNPL customer digital accounts are “credit cards” under the regulation. Accordingly, the interpretive rule concludes that BNPL lenders must comply with subpart B of Regulation Z, including provisions governing credit card disputes and refund rights.

The request seeks comment on the CFPB’s interpretation, and comments are due **August 1**.

CFPB Seeks Comment on Proposed Rule to Remove Medical Bills from Credit Reports. Comments are due **August 12** on a CFPB proposed rule, “Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V),” to remove medical bill debt from consideration in credit reports and credit scores. Specifically, the proposed rule would remove the Regulation V exception that broadly permits lenders to obtain and use information regarding medical debt to make credit eligibility determinations. Additionally, the proposed rule would prohibit credit reporting agencies from including medical debt on credit reports and would prohibit lenders from taking medical devices as collateral for a loan or repossessing medical devices in the event of default.

More Analysis from Wiley

Key Takeaways from Our Conversation with Oregon and Texas Regulators About Privacy Enforcement

Podcast: Navigating State Privacy Laws: A Conversation with Oregon and Texas Regulators about Privacy Enforcement

Litigation Grows Around Website Technologies, With Focus on Sensitive Data

CYBER UPDATE: White House Seeks Regulatory Harmonization While Exploring a Pilot for Reciprocity Amid Proliferation of Regulations

State “Right to Repair” Patchwork Grows as Electronic Device Manufacturers Face New Compliance Deadlines

Colorado Enacts Landmark AI Legislation

Darned if You Do, Darned if You Don’t: Recent Lessons from the SEC On Cyber Reporting

Action Steps To Address New Restrictions On Outbound Data

New Federal Data Broker Law Will Restrict Certain Foreign Data Sales Effective June 23

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

Federal Government Acts on Connected Vehicle Privacy and National Security Concerns

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