

Wiley Consumer Protection Download (July 19, 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

FTC Sets Agenda for July 21 Open Commission Meeting. On July 12, FTC Chair Lina Khan announced that the next open commission meeting will be held on July 21. As part of the meeting, the agency will consider a proposal to rescind the Care Labeling Rule, which requires both manufacturers and importers to attach labels with care

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instructions for garments, so consumers have reliable instructions for washing, bleaching, drying and ironing their clothing. The FTC will also consider whether to issue a new policy statement following the agency's May 2021 "Nixing the Fix" Report, which as we explained in our May 10 Newsletter, analyzed arguments made by "right to repair" advocates, manufacturers' and other stakeholders' arguments in response, and the relevant statutory framework, including the Magnuson-Moss Warranty Act and FTC Act. Finally, the agency will vote on whether to rescind a 1995 policy statement regarding "prior approval" and "prior notice" remedies in antitrust cases. As was the case for the FTC's July 1 Open Commission Meeting, the agency will also hear comments from the public (our recap of the July 1 meeting is available [here](#)).

Significant Enforcement Actions

Online Lender Agrees to Settle FTC Charges That It Allegedly Deceived Consumers Regarding Hidden Fees. On **July 14**, the FTC announced that LendingClub Corporation (LendingClub) agreed to pay \$18 million to settle charges that it allegedly deceived consumer about hidden fees and about whether their loan applications were approved. The FTC originally filed suit against LendingClub in 2018, alleging that the company falsely promised consumers that it would not charge fees in connection with loans. The FTC also argued that LendingClub had told consumers that they had been approved for loans when they had not, and withdrew money from consumer bank accounts without authorization.

CFPB Files Suit Against Fintech Company for Allegedly Enabling Merchants to Secure Loans Without Consumer Approval. On **July 12**, the CFPB announced that it had issued a consent order against GreenSky, LLC (GreenSky) for allegedly violating the Consumer Financial Protection Act of 2010 by authorizing third parties to take out loans on consumers' behalf without their approval. Specifically, the CFPB alleges that between 2014 and 2019, GreenSky permitted contractors and other merchants to take out loans on behalf of thousands of consumers who did not approve the loans. The CFPB's consent order requires GreenSky to pay \$9 million in cash refunds and cancellations, and \$2.5 million to the CFPB.

FTC Reaches Settlement with Florida Companies Offering Debt Relief Services. On **July 12**, the FTC announced that it had reached a settlement with Moneta Management, LLC and Moneta Management, Inc. (collectively, Moneta) for allegedly providing false or deceptive information to credit card and automated clearing house processors to obtain merchant processing information for a scam operated by Brandon Frere, a third party. Frere and his companies reached a settlement with the FTC in November 2020. As part of the settlement, Moneta will be barred from payment processing, acting as a sales agent, and from assisting or facilitating unfair sales practices. The settlement also proposes a \$26.8 million penalty against Moneta for violating the Telemarketing Sales Rule.

FTC Sues CBD Marketer for Making Unsupported Health Claims. On **July 6**, the FTC announced that it approved an administrative consent order against Kushly Enterprises LLC (Kushly) for making unsupported health claims in connection with the marketing and sale of cannabidiol (CBD) products. As we noted in our May 24 Newsletter, the FTC filed a complaint against Kushly for allegedly making false or unsubstantiated claims that their CBD products could treat or cure acne, psoriasis, cancer, and multiple sclerosis. The consent order requires Kushly to pay \$30,583.14 to the FTC, which represents the amount consumers paid to Kushly for

products it sold using its allegedly deceptive marketing.

Upcoming Comment Deadlines and Events

Federal Reserve Board, FDIC, and OCC Seek Comment on Third Party Risk Management Principles.

Comments are due **September 17** on proposed interagency guidance issued by the Board of Governors of the Federal Reserve (the Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC). The proposed interagency guidance is focused on risk management practices for banking organizations to consider when developing risk management strategies for third party relationships. The Board, FDIC, and OCC intend for the proposed interagency guidance to take “into account the level of risk, complexity, and size of the banking organization and the nature of the third-party relationship.” If adopted, the proposed guidance would replace each agency’s existing guidance and would be directed to all banking organizations regulated by the agencies.

More Analysis from Wiley

Wiley Achieves Perfect Score on Human Rights Campaign’s 2021 ‘Best Places to Work for LGBTQ Equality’ List

The FTC’s Public Meeting Forecasts an Active and Far-Reaching Agenda Under Chair Lina Khan

Implementing AI Governance: An International Perspective

Biden Administration Signals Tech and Telecom Priorities in EO on Competition

Under New FTC Rule, “Made in USA” Violators Will Face Monetary Penalties

Duane Pozza Discusses Colorado Privacy Law’s Potential Impact on Compliance

Privacy in Focus: All Data Is Not HIPAA Data – Healthcare Covered Entities Should Pay Close Attention to State Privacy Laws Regulating the Health IoT Ecosystem

Privacy in Focus: U.S. Supreme Court Clarifies Circuit Split – Privacy Suits Require Concrete Harm for Article III Standing

Duane Pozza Discusses FTC’s Focus on Rulemaking After Supreme Court’s AMG Decision

Key Takeaways from the AMG Capital Management v. FTC Decision

Supreme Court Curbs FTC Power to Seek Monetary Relief

FTC Outlines Approach to Discrimination in AI and Foreshadows Potential Enforcement

CCPA Compliance Reminder: Annual Privacy Policy Update

Virginia's New Privacy Law: How to Navigate the New Privacy Framework

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

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Download Disclaimer: Information is current as of July 19, 2021. 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.