

Wiley Consumer Protection Download (October 2, 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 Holds September Open Commission Meeting and Releases Social Media Report. On **September 19**, the FTC held a virtual Open Commission Meeting and heard presentations on: (1) a report describing findings from the 2020 Section 6(b) orders issued to study how social media and video streaming services use consumer data, and (2) the FTC's Final Rule on the Use of Consumer Reviews and Testimonials. FTC staff first presented a report that analyzes the data practices of certain social media and video streaming companies. The report assesses the companies' practices and the agency's

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Practice Areas

Cyber and Privacy Investigations, Incidents
& Enforcement

FTC and Consumer Protection

Privacy, Cyber & Data Governance

Telecom, Media & Technology

related findings into the following categories: data practices; advertising; algorithms, data analytics, and AI; and children and teens. The FTC voted 5-0 to issue the report, with Commissioners. Holyoak and Ferguson issuing statements concurring in part and dissenting in part.

FTC staff also presented on the agency's new Final Rule on the Use of Consumer Reviews and Testimonials, which takes effect on October 21, and would prohibit certain practices regarding consumer reviews for the purpose of ensuring that reviews are based on real experiences with a product or service. During the presentation, staff stated that the Rule is designed to increase deterrence, allow the agency to provide redress more quickly, and allow the agency to seek civil penalties for knowing violations.

CFPB Issues Consumer Financial Protection Circular Stating That Financial Institutions Must Obtain Opt-In Consent to Charge Overdraft Fees for ATM and One-Time Debit Card Transactions. On **September 17**, the CFPB released a Consumer Financial Protection Circular stating that a financial institution may violate the Electronic Fund Transfer Act (EFTA) and Regulation E if it charges an overdraft fee for ATM and/or one-time debit card transactions and "there is no proof that it obtained affirmative consent to enrollment in covered overdraft services." Regulation E, which implements EFTA, requires that ATM and debit card transactions be declined if sufficient funds are not available. Moreover, if the financial institution approves the transaction despite insufficient funds, it cannot charge a fee without prior affirmative consent.

CFPB Issues Annual Report on Financial Concerns for Veterans, Servicemembers, and Their Families. On **September 24**, the CFPB released its annual report on financial issues facing veterans, servicemembers, and their families. Specifically, the report notes the following problems: (1) issues with contacting and receiving assistance from student loan servicers; (2) errors preventing enrollment in income-driven loan repayment plans; and (3) transcripts being withheld by colleges and universities, which may prevent servicemembers and veterans from receiving promotions, securing employment, or completing degrees.

Costa Rica, the Dominican Republic, and Panama Join Cross-Border Consumer Protection MMOU with the FTC and Chile, Colombia, Mexico and Peru. On **September 25**, the FTC announced that Costa Rica, the Dominican Republic, and Panama have joined an existing multilateral memorandum of understanding (MMOU) with the FTC and its consumer protection counterparts in Chile, Colombia, Mexico and Peru in an effort to combat fraud schemes both inside and outside of the U.S. The MMOU specifically permits the signatories to share consumer complaints; provide investigative assistance; coordinate enforcement actions against international violations of law; provide other practical case assistance; participate in econsumer.gov; and cooperate on non-investigatory measures, including "exchanging approaches to consumer protection policy issues and participating in staff exchanges, joint training programs and workshops." The MMOU also includes a mechanism that allows other consumer protection authorities to join the agreement in the future.

Select Enforcement Actions

FTC Sues Several "Business Opportunity" Companies and Their Owners for Allegedly Deceptive Advertising. On **June 3**, the FTC filed a complaint and ex parte application for a temporary restraining order in the U.S. District Court for the District of New Jersey against several companies that sell business opportunity

programs, and the companies' two owners, for alleged violations of the FTC Act and Business Opportunity Rule. The FTC alleges that the defendants advertised online business opportunities run by AI that they claimed would generate large profits, but few customers gained such profits. The court granted the FTC's request for a temporary restraining order against all of the defendants on June 3. One defendant agreed to a stipulated preliminary injunction on August 8, and the case remains ongoing with the other defendants. The FTC is seeking monetary and injunctive relief from the remaining defendants.

FTC Sues Online Business Opportunity Company and Its Owners for Allegedly Deceptive Advertising. On **September 9**, the FTC filed a complaint and ex parte application for a temporary restraining order in the U.S. District Court for the Central District of California against a company that sells business opportunity programs, and the company's owners, for alleged violations of the FTC Act and Business Opportunity Rule. The FTC alleges that the defendants advertised passive income ecommerce opportunities if customers purchased their services, which were powered by AI tools. The court granted the FTC's request for a temporary restraining order on September 13. The FTC is seeking monetary and injunctive relief.

FTC Settles with a Build-Your-Own-Business Company and Its Owner for Allegedly Deceptive Marketing Practices. On **September 13**, the FTC filed a stipulated order in the U.S. District Court for the Eastern District of Pennsylvania against a company that sold build-your-own-business programs, and its owner, for alleged violations of the FTC Act and the Telemarketing and Consumer Fraud and Abuse Prevention Act. In December 2023, the FTC filed a complaint against the company and the three individuals that ran the company, alleging that they charged consumers for membership to help them build successful online businesses but misrepresented the services they offered, failing to provide their customers the benefits promised. Two of the individuals settled their claims with the FTC in May and August for \$7.5 million. The third individual and the company agreed to settle their claims for a total monetary judgment of \$567,000 in addition to injunctive relief.

FTC Settles with AI Legal Services Company for Allegedly Misleading Marketing Practices. On **September 15**, the FTC issued a complaint and consent order against a company that offers AI-generated legal documents for alleged violations of the FTC Act. The FTC alleges that the company misled consumers by advertising AI-generated legal services that it claimed could remove the need to hire a lawyer. The company agreed to pay \$193,000 in addition to injunctive relief.

FTC Settles with Four Online Businesses and Their Owners for Allegedly Charging Consumers Without Proper Consent. On **September 16**, the FTC filed three stipulated orders in the U.S. District Court for the Middle District of Florida against four online product sellers and their respective owners for alleged violations of the FTC Act, Restore Online Shoppers' Confidence Act (ROSCA), and the EFTA. In its June 2024 complaint, the FTC alleged 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 defendants agreed to pay a total of \$63 million in addition to injunctive relief.

FTC Sues Ecommerce Business Training Company and Its CEO for Allegedly Deceptive Advertising. On **September 18**, the FTC filed a complaint in the U.S. District Court for the Eastern District of Pennsylvania against a company that offers ecommerce business training programs, and its CEO, for alleged violation of the FTC Act and Business Opportunity Rule. The FTC alleges that the defendants promised consumers large profits for purchasing its training program or preset online storefront, but most consumers did not receive such profits. The FTC seeks monetary and injunctive relief.

FTC Settles with a National Landlord Company for Allegedly Deceptive Business Practices. On **September 24**, the FTC filed a complaint and stipulated order in the U.S. District Court for the Northern District of Georgia against a national landlord for single-family homes, alleging violations of the FTC Act and Gramm-Leach-Bliley Act. The FTC alleges that the company failed to disclose all leasing costs and fees, did not inspect homes prior to new tenant arrivals, and withheld tenants' security deposits after they moved out. The company agreed to pay \$48 million in addition to injunctive relief.

FTC Settles with AI Writing Generator for Allegedly Deceptive Business Practices. On **September 25**, the FTC issued a complaint and consent order against a company that provides a variety of AI writing tools for alleged violations of the FTC Act. The FTC alleges that the company's tools to draft online reviews and testimonials with AI could be used to mislead consumers. The company agreed to injunctive relief.

Upcoming Comment Deadlines and Events

CFPB and Other Agencies Seek Comment on Proposed Rule to Standardize Data Submissions. Comments are due **October 21** on the CFPB's proposed rule seeking comment on establishing data standards "to promote interoperability of financial regulatory data across these agencies." The other participating agencies include the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Federal Housing Finance Agency, Commodity Futures Trading Commission, Securities and Exchange Commission, and the Department of the Treasury. The agencies are proposing the rule as required by the Financial Data Transparency Act of 2022.

CFPB Seeks Comment on Revisions to Remittance Transfer Rule. Comments are due **November 4** on the CFPB's proposed rule seeking comment on amendments to the agency's Remittance Transfer Rule. The EFTA and Regulation E require remittance companies to provide senders a disclosure at the time of payment, including a receipt and contact information for both state regulators and the CFPB. If adopted, the proposed rule would amend certain Regulation E disclosures to clarify that consumers should contact their remittance company for issues specific to their money transfer.

FTC to Hold Virtual Workshop to Examine Impact of Digital Platform Design Features on Kids and Teens. The FTC will hold a virtual workshop on **February 25, 2025** to "examine the use of design features on digital platforms aimed at keeping kids, including teens, online longer and coming back more frequently." The workshop, titled "Attention Economy: Monopolizing Kids' Time Online," will feature researchers, technologists, child development and legal experts, consumer advocates, and industry professionals. According to the FTC,

topics discussed will include: (1) how certain website design features may result in more engagement or time spent on digital platforms, and what relevant scientific research exists on the topic; (2) the physical and psychological impacts of the design features on children and teens; and (3) potentially beneficial measures or design considerations that might be effective, feasible, and consistent with current legal practice. Individuals interested in participating as panelists, or individuals with relevant information to provide, may contact the FTC here by **November 15**.

More Analysis from Wiley

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FCC Proposes New Rules for AI-Generated Calls and Texts

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

Athletes, Arenas, and Cyberattacks: The Evolving Landscape of Cybersecurity in Sports

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

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