

Wiley Consumer Protection Download (September 27, 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 Chair Lina Khan Circulates Memorandum to Agency Commissioners and Staff on FTC Priorities; Names Directors for FTC Bureaus of Consumer Protection and Competition. On **September 22**, FTC Chair Lina Khan circulated a publicly available memorandum to the FTC's Commissioners and staff regarding her vision and priorities for the agency during her tenure. Strategically, Chair Khan

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emphasized taking a more “holistic approach” to identifying consumer harms, and targeting the agency’s enforcement actions towards “root causes” rather than “one-off effects.” The Chair also outlined a “forward-looking” approach in anticipating problems” and taking action, including when next-generation technologies are involved. Chair Khan highlighted three overall policy priorities – (1) strengthening the FTC’s merger enforcement work, including through adopting new merger guidelines after the FTC withdrew the 2020 Vertical Merger Guidelines at the September 15 Open Meeting; (2) addressing intermediaries in markets across the economy that the memorandum describes as “dominant” and using “extractive business models;” and (3) examining the extent to which certain contract terms – such as non-compete clauses, “repair restrictions,” and “one-sided contract provisions” – may constitute unfair methods of competition or unfair or deceptive practices. Finally, Chair Khan will be moving to name Holly Vedova as Director of the Bureau of Competition and Samuel Levine as Director of the Bureau of Consumer Protection. Both have been serving as Acting Directors.

FTC Holds September Open Meeting. On **September 15**, the FTC held the third FTC Open Meeting of the Chair Lina Khan era, as we summarized here. At the meeting, the FTC approved: (1) a policy statement on privacy breaches by health applications and online platforms, which we summarized in more detail here; (2) an FTC study on non-Hart-Scott-Rodino Act reported acquisitions by certain technology platforms; (3) revisions to the agency’s rules regarding petitions for rulemaking; and (4) a withdrawal of the Vertical Merger Guidelines issued in June 2020 by the FTC and Department of Justice (DOJ), and the FTC’s Commentary on Vertical Merger Enforcement issued in December 2020.

- The FTC voted 5-0 to make the FTC study public and voted 3-2 to approve the policy statement and the withdrawal of the 2020 Vertical Merger Guidelines with Commissioners Phillips and Wilson dissenting. Additionally, Commissioner Wilson dissented on the FTC’s decision to revise its rules pertaining to petitions for rulemaking and moved to first consider adding disclosure requirements to petitions, but that motion did not pass.

FTC Testifies Before Senate Special Committee on Aging. On **September 23**, the FTC testified before the U.S. Senate Special Committee on Aging. Testifying on behalf of the agency, the Associate Director of the FTC’s Division of Marketing Practices, Lois C. Greisman, noted that in 2020 older consumers filed 334,411 fraud reports in the Consumer Sentinel database and reported losses of over \$600 million total. She reported that romance scams; prize, sweepstakes, and lottery scams; and business impersonator scams caused the highest total losses. The testimony also reiterated the FTC’s request that Congress provide authority to recover consumer redress in such instances of fraud. In the Supreme Court’s *AMG* decision, the Court held that the agency cannot obtain consumer redress under Section 13(b) of the FTC Act. The FTC voted to approve the testimony 5-0.

CFPB Report Finds That Renters are at Risk of Eviction Following the End of Federal and State Relief Programs. On **September 17**, the CFPB announced the release of a report warning that millions of renters may be at risk of financial instability and eviction as federal and state COVID-19 stimulus programs come to an end. The report found, moreover, that renters, as compared to homeowners, are more likely to be Black or Hispanic, more likely to have lower incomes, and are more likely to be women. The CFPB reports that renters

represent over 30% of U.S. households.

Significant Enforcement Actions

FTC Bans Seven Remaining Defendants in Cruise Line Operation from Making Telemarketing Robocalls.

On **September 20**, the FTC announced a proposed settlement order against Johnathan Blake Curtis; Anthony DiGiacomo; Grand Bahama Cruise Line, LLC; Ultimate Vacation Group, also doing business as (d/b/a) Royal Bahamas Cruise Line, LLC; Tropical Accommodations, LLC, also d/b/a Grand Celebration Cruise Line; VSC, LLC; and Florida V.S.C. Inc. for their role in the Grand Bahama Cruise Line LLC (GBCL) telemarketing operation. Specifically, the FTC alleges that GBCL made millions of illegal robocalls nationwide. The proposed order permanently bans the defendants from making telemarketing robocalls and imposes a \$6.4 million civil penalty jointly and severally against the defendants.

CFPB Sues Software Company for Allegedly Assisting Credit-Repair Businesses Charging Illegal Fees. On **September 20**, the CFPB filed a complaint in the U.S. District Court for the Central District of California against Credit Repair Cloud for allegedly violating the Telemarketing Sales Rule (TSR) and the Consumer Financial Protection Act of 2010 (CFPA). The CFPB alleges that Credit Repair Cloud is providing substantial assistance to credit-repair companies that use telemarketing to reach consumers and charge unlawful advance fees under the TSR. The CFPB's complaint specifically alleges that Credit Repair Cloud has encouraged these businesses to charge unlawful advance fees. The CFPB is seeking monetary relief for consumers, injunctive relief, and a civil money penalty.

FTC Streamlines Investigations in a Number of Enforcement Areas. On **September 14**, the FTC voted 3-2 to approve eight compulsory process resolutions to streamline investigations in certain areas of agency scrutiny in consumer protection and competition matters. The areas of emphasis are as follows: (1) Acts or Practices Affecting United States Armed Forces Service Members and Veterans; (2) Acts or Practices Affecting Children; (3) Bias in Algorithms and Biometrics; (4) Deceptive and Manipulative Conduct on the Internet; (5) Repair Restrictions; (6) Abuse of Intellectual Property; (7) Common Directors and Officers and Common Ownership; and (8) Monopolization Offenses. The resolutions allow the FTC to use compulsory process orders to obtain information; compulsory process orders are enforceable by courts. FTC Chair Khan and Commissioner Slaughter issued a statement in support of the resolutions, stating that they focus on areas of particular public concern because harmful conduct in these areas target the most vulnerable consumers. FTC Commissioners Wilson and Phillips issued a dissenting statement, arguing that the resolutions create less accountability in investigations.

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Privacy in Focus: AI Risk Management Framework Is Among Emerging Federal Initiatives on AI

Webinar: Shifting US privacy regulation: new state laws complicate compliance efforts

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

FTC Adopts Policy Statement on Consumer Device Repairs and Announces That Enforcement Approach Will Be a Priority

California's New Privacy Agency Kicks Off the New CPRA Rulemaking Process

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

Implementing AI Governance: An International Perspective

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

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Supreme Court Curbs FTC Power to Seek Monetary Relief

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