

Wiley Consumer Protection Download (September 11, 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 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

CFPB Publishes Issue Spotlight on the Role of Large Technology Companies in the Mobile Payments Space. On **September 7**, the CFPB published an issue spotlight titled, "Big Tech's Role in Contactless Payments: Analysis of Mobile Device Operating Systems and Tap-to-Pay Practices." The issue spotlight focuses on the impact of large technology companies' policies and practices governing tap-to-pay mobile devices, such as smartphones and smartwatches. The spotlight also examines how access policies by mobile operating systems related to bank and payment apps can impact innovation,

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Practice Areas

Cyber and Privacy Investigations, Incidents & Enforcement
FTC Regulation
Privacy, Cyber & Data Governance
Telecom, Media & Technology

consumer choice, and open and decentralized banking and payments in the U.S.

FTC to Hold September Open Commission Meeting. On **September 7**, the FTC announced that the agency will hold a virtual Open Commission Meeting on Thursday, September 14. During the meeting, the FTC will: (1) consider whether to issue a policy statement concerning improper patent listings in the Food and Drug Administration's publication of Approved Drug Products With Therapeutic Equivalence Evaluations, also known as the "Orange Book"; and (2) vote on whether to release a staff perspective and recommendations on the impact of digital media advertising on kids and teens. The digital media staff perspective builds on the FTC's May 19, 2022 Virtual Event on Protecting Kids from Stealth Advertising in Digital Media.

Recent Enforcement Actions

FTC Chief ALJ Issues Initial Decision Finding That Tax Filing Software Company Engaged in Deceptive Advertising. On **September 8**, FTC Chief Administrative Law Judge (ALJ) D. Michael Chappell ruled that Intuit Inc. (Intuit), the maker of the TurboTax tax filing software, "engaged in deceptive advertising in violation of Section 5 of the FTC Act" and deceived consumers when it ran ads for "free" tax products and services for which many consumers were ineligible. The ALJ also found that there is a "cognizant danger of a recurring violation," and required Intuit to cease and desist from engaging in the allegedly deceptive practices specified in the FTC's March 29, 2022 complaint. That complaint alleged that the company engaged in a high-profile marketing campaign for its "free" tax filing services, but the service is free only for some users, and for others, the company tells consumers they will need to upgrade to a paid service to complete and file their taxes after they have completed entering their personal and financial information. Intuit may appeal the ALJ's order to the full Commission.

FTC Files Stipulated Final Order Against Online Financial Investment Company Representative for Making Allegedly False Earnings Claims. On **September 8**, the FTC filed a stipulated order for permanent injunction in the U.S. District Court for the District of Maryland against Raging Bull representative Kyle Dennis for making allegedly false claims in online videos and seminars, including assertions that consumers who receive tips or use his stock trading methods could make 100 percent profits in "just one to three days," in alleged violation of the FTC Act and the Restore Online Shoppers' Confidence Act. The FTC's March 2022 amended complaint charged that Dennis earned more than \$13.6 million from these practices. As part of the settlement detailed in the stipulated order, Dennis would be barred from making any representations about potential earnings without having written evidence that those earnings claims are typical for consumers, along with any generally false or misleading claims.

CFPB Settles Telemarketing Sales Rule Allegations with Several Corporate Repair Companies. On **August 28**, the CFPB filed a stipulated final judgment against PGX Holdings, Inc. and its subsidiaries in the U.S. District Court for the District of Utah, for alleged violations of Telemarketing Sales Rule (TSR). In its amended complaint, filed August 17, 2022, the CFPB alleged that PGX Holdings requested upfront services fees for its credit repair services and used deceptive advertising. On March 10, 2023, the district court partially granted the CFPB's motion for summary judgment, holding that PGX Holdings violated the TSR by charging upfront fees. PGX Holdings agreed to \$2.7 billion in redress and \$64 million in civil penalties in addition to injunctive

relief. Due to the companies' financial insolvency, however, the CFPB will determine whether the agency's victims relief fund can be used to make payments to impacted consumers.

CFPB Sues Installment Lender for Allegedly Engaging in Deceptive Marketing Related to Refinancing. On **August 22**, the CFPB filed a complaint against Heights Finance Holdings, an installment lender, and its state-licensed subsidiaries in the U.S. District Court for the District of South Carolina. The CFPB alleges that Heights Finance violated the Consumer Financial Protection Act by engaging in deceptive advertising regarding loan refinancing. Specifically, the complaint alleges that the companies market refinancing as a fresh start and the best option for customers struggling to repay their debts. However, the CFPB argues that for many consumers, refinancing will only prolong indebtedness and increase borrowing costs. The CFPB is seeking injunctive relief in addition to redress and civil money penalties.

FTC Finalizes Order with Clothing Manufacturer for Alleged Misuse of "Made in the USA" Label. On **August 29**, the FTC voted 3-0 to finalize its settlement with a group of retail stores in New England which includes Chaucer Accessories, Bates Accessories, and Bates Retail Group, and their owners. In its June 27 complaint, the FTC alleged that these stores deceived consumers by advertising their products as "Made in USA," although they sold certain belts that were made in Taiwan. The stores agreed to a monetary penalty of \$191,481 and to injunctive relief.

FTC Finalizes Settlement with Genetic Testing Firm Over Alleged Privacy Misrepresentations. On **September 7**, the FTC voted 3-0 to finalize its settlement with 1Health.io, formerly Vitagene, Inc. for allegedly violating the FTC Act. In its complaint on June 16, the FTC alleged that 1Health.io engaged in deceptive practices by not securely storing or deleting consumers' health and personal data as stated in its privacy policy, and engaged in unfair practices by materially and retroactively changing its policy for sharing health and genetic information with third parties. The company agreed to pay \$75,000 in addition to implementing an information security program.

FTC and Six State Attorneys General Settle with Internet Platform for Allegedly False Advertising. On **August 28**, the FTC and Attorneys General of New York, California, Colorado, Florida, Illinois and Massachusetts filed a stipulated order in the U.S. District Court for the Southern District of New York against Roomster Corp., an internet-based room and roommate finder platform, and its owners, John Shriber and Roman Zaks. In the complaint filed August 30, 2022, the FTC and state attorneys general alleged that the defendants posted fake positive reviews to promote the platform, used fake listings to drive consumers to the platform, and falsely claiming to verify listings. Roomster and its owners agreed to a monetary judgment of \$36.2 million and civil penalties totaling \$10.9 million payable to the states, in addition to injunctive relief.

Upcoming Comment Deadlines and Events

CFPB, HHS, and Treasury Seek Comment on Medical Payment Products. Comments are due **September 11** on the RFI issued by the CFPB, HHS, and U.S. Department of Treasury seeking information about the prevalence of medical credit cards and installment loans that are offered to patients as a way to pay for medical care. The agencies specifically request information about the specialty medical payment market and

associated data on interest fees and costs for medical credit products, patient experiences with medical credit cards and installment loans, issues with patient billing and collections, and any incentives that health care providers have to offer medical credit cards and installment loans.

Comptroller of the Currency, CFPB, Federal Housing Finance Agency, and HUD Host Roundtable Discussion About the Availability of Special Purpose Credit Programs. On **September 12**, the CFPB, the Comptroller of the Currency, the Federal Housing Finance Agency, and U.S. Department of Housing and Urban Development (HUD) will host a roundtable discussion regarding special purpose credit programs. Special purpose credit programs are a tool permitted under the Equal Credit Opportunity Act and Regulation B. CFPB Director Rohit Chopra, Acting Comptroller of the Currency Michael J. Hsu, Federal Housing Finance Agency Director Sandra L. Thompson, and HUD Secretary Marcia L. Fudge will offer remarks at the roundtable. Information about how to participate virtually are available [here](#).

FTC and DOJ Seek Comment on Draft Merger Guidelines. Comments are due **September 18** on the FTC and the U.S. Department of Justice (DOJ) (collectively, the Agencies) draft update of the merger guidelines (Draft Guidelines). If finalized, the Draft Guidelines will inform the Agencies' review of mergers and acquisitions to determine compliance with the federal antitrust laws, including the Sherman Act, the Clayton Act, and the FTC Act. The Draft Guidelines are broken down as follows: (1) frameworks for assessing the risk that a merger's effect may be substantially to lessen competition or to tend to create a monopoly; (2) issues that often arise when the Agencies apply those frameworks in several common settings; and (3) a framework for considering mergers and acquisitions that raise competitive concerns not addressed by the other Guidelines.

FTC Seeks Comment on Amendments to Premerger Notification Rules and Premerger Notification and Report Form and Instructions. Comments are due **September 27** (extended from August 28) on the FTC's NPRM proposing to amend the premerger notification rules that implement the Hart-Scott-Rodino Antitrust Improvements Act, and the Premerger Notification and Report Form and Instructions. If adopted, the FTC's NPRM proposals would substantially expand the amount of information that covered entities must submit to the agency about potential transactions.

FTC Solicits Comment on NPRM Proposing to Classify Certain Consumer Review and Testimonial Practices as Unfair or Deceptive. Comments are due **September 29** on an NPRM that, if adopted, would classify certain consumer review and testimonial practices as unfair or deceptive practices under Section 5 of the FTC Act. Advertising practices that the NPRM proposes to classify as "unfair" or "deceptive" include (1) selling or obtaining "fake" consumer reviews; (2) repurposing consumer reviews or "review hijacking;" (3) purchasing positive or negative reviews; (4) permitting insider reviews and testimonials without adequate disclosure; (5) representing that company-controlled review websites or entities are independent; (6) review suppression; and (7) misuse of fake social media influence indicators.

FTC Issues Supplemental Proposed Amendments to Testing Methods Under the Amplifier Rule. Comments are due **October 20** on the FTC's Supplemental Notice of Proposed Rulemaking (SNPRM) proposing amendments to the agency's Amplifier Rule. The Amplifier Rule, formally known as the Rule Relating to Power

Output Claims for Amplifiers Utilized in Home Entertainment Products, regulates power output claims for home entertainment amplifiers. The SNPRM proposes to amend the Amplifier Rule to, among other things, set standard test conditions for measuring amplifier power output; clarify which power output disclosures comply with the Amplifier Rule and which do not; and to revise language in the rule related to these proposed modifications.

[More Analysis from Wiley](#)

CFPB Poised to Significantly Expand the Reach of the Fair Credit Reporting Act

FTC and HHS Caution Hospitals and Telehealth Providers on Tracking Tech

Biden Administration Looks at Harmonizing Cyber Regulations Amidst Flurry of New Activity

Coming Soon: New Cyber Labeling Program for IoT Devices

Podcast: The FTC Safeguards Rule: A Deep Dive into the Revisions Effective June 9, 2023

Webinar: How to Keep Up with the Influx of New State Privacy Laws and Regulations

Podcast: What could AI regulation in the US look like?

The FTC Is Targeting Crypto Too - With a Significant New Enforcement Action

California privacy law changes draw in more businesses

U.S. Fulfills Its Commitments to Implement the EU-U.S. Data Privacy Framework

Companies May Begin Submitting EU-U.S. Data Privacy Framework Certifications

European Commission Adopts EU-U.S. Data Privacy Framework Adequacy Decision

California AG Initiates CCPA Investigations, Despite Setback in Court

DOD Devotes Resources to Responsible Adoption of Generative AI

A New White House Project on Responsible AI Sends a Message to the Private Sector, Including Contractors

Podcast: AI: The Next Big Thing in Government Contracting

FCC Launches Privacy and Data Protection Task Force

Initial Takeaways on the FCC's New Privacy and Data Protection Task Force

FTC Issues Policy Statement on Biometric Information, Signaling a New Enforcement Priority

FTC Joins the Cloud Security Discussion

5 Takeaways From Recent CFPB, FTC Equal Credit Push

Podcast: AI Risk Management: A Discussion with NIST's Elham Tabassi on the NIST AI Risk Management Framework

Generative AI Policies: Five Key Considerations for Companies to Weigh Before Using Generative AI Tools

Federal Legislators Are Taking AI Implementation and Oversight Seriously

NIST Announces Generative AI Working Group

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

U.S. State Privacy Law Guide

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