

Wiley Consumer Protection Download (April 26, 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 Acting Chairwoman Slaughter Issues Statement Following Supreme Court Ruling in *AMG Capital Management, LLC v. FTC*.

On **April 22**, FTC Acting Chairwoman Rebecca Kelly Slaughter issued a statement following the Supreme Court's unanimous decision in *AMG Capital Management, LLC v. FTC*, holding that the FTC lacks

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authority to recover money under Section 13(b) of the FTC Act. Section 13(b) authorizes the agency to seek a permanent injunction to enjoin acts or practices that violate the FTC Act. For decades, courts had held that Section 13(b) authorizes equitable monetary relief in addition to an injunction. The Supreme Court found, however, that the “language and structure of §13(b), taken as a whole, indicate that the words ‘permanent injunction’ have a limited purpose—a purpose that does not extend to the grant of monetary relief.” In her statement, Acting Chairwoman Slaughter stated that: “With this ruling, the Court has deprived the FTC of the strongest tool we had to help consumers when they need it most. We urge Congress to act swiftly to restore and strengthen the powers of the agency so we can make wronged consumers whole.” The decision comes after all of the FTC Commissioners testified before the U.S. Senate Committee on Commerce, Science, and Transportation on the need for Section 13(b) legislation.

CFPB Issues Interim Final Rule Clarifying That Tenants Can Hold Debt Collectors Accountable for Unlawful Evictions. On **April 19**, the CFPB issued an Interim Final Rule to support the Centers for Disease Control and Prevention’s (CDC) eviction moratorium. The CDC established the eviction moratorium in an attempt to slow the spread of the COVID-19 virus. The Interim Final Rule requires debt collectors to provide written notice to tenants of their rights under the COVID-19 eviction moratorium. The Interim Final Rule made clear that debt collectors that misrepresent eviction rights may be held liable for violations of the Fair Debt Collection Practices Act (FDCPA).

FTC Releases Staff Report on Protecting Consumers During the COVID-19 Pandemic. On **April 19**, the FTC released a staff report addressing the challenges that consumers face during the COVID-19 pandemic, and detailing FTC efforts to address COVID-19-related fraud. Among other things, the staff report notes that in the first year of the pandemic, the FTC created a public dashboard to monitor shifts in COVID-19 related reports from consumers; filed enforcement actions against 13 companies that failed to deliver personal protective equipment or made deceptive health claims; and prioritized privacy-related enforcement actions to address the types of conduct that have become more prevalent in the transition to digital work and education.

Significant Enforcement Actions

FTC Settles Charges with Cash Advance Firm Over Allegations That It Overcharged Small Businesses. On **April 22**, the FTC announced that Yellowstone Capital (Yellowstone) will pay over \$9.8 million to settle allegations that it withdrew money from small business bank accounts without their consent and deceived them about the amount of financing business owners would receive. Yellowstone provides merchant cash advances, which are a form of financing where a creditor provides money to a small business up front in exchange for repayments through daily automatic payments. Specifically, according to the FTC’s complaint, Yellowstone continued withdrawing money from businesses’ bank accounts days after the balances had been repaid.

CFPB and the New York Attorney General File Suit to Seize Hidden Assets from Operator of Alleged Debt Collection Company. On **April 22**, the CFPB and the New York Attorney General filed a complaint in the U.S. District Court for the Western District of New York against Douglas MacKinnon, the operator of Northern Resolution Group and Enhanced Acquisitions LLC (the Companies). The complaint seeks to seize a \$1.6 million

home, the ownership of which was allegedly fraudulently transferred by MacKinnon. In 2019, the CFPB and the New York Attorney General reached a settlement with MacKinnon and the Companies for harassing, threatening, and deceiving millions of consumers to pay inflated debts that they did not owe.

FTC Brings First Action Under the COVID-19 Consumer Protection Act Against Chiropractor. On **April 15**, the FTC filed a complaint in the U.S. District Court for the Eastern District of Missouri against Quickwork LLC (Quickwork) for violating the COVID-19 Consumer Protection Act and the FTC Act by allegedly marketing products containing Vitamin D and zinc as scientifically proven to treat or prevent COVID-19. The COVID-19 Consumer Protection Act makes it illegal under the FTC Act to engage in deceptive marketing regarding the treatment, cure, prevention, mitigation, or diagnosis of COVID-19, or any government benefits related to the COVID-19 pandemic. The COVID-19 Consumer Protection Act also authorizes the agency to seek civil monetary penalties for first-time violations.

FTC Settles Made in USA Claims with Promotional Products Company. On **April 14**, the FTC announced that it had approved a final consent order charging Gennex Media LLC (Gennex) with allegedly making false, misleading, or unsupported claims that their products were made in the United States in violation of the Made in USA Standard. The FTC's complaint, which was first announced in March 2021, alleges that Gennex has violated the FTC Act since 2012 by claiming on their Brandnex website that products that they sell are made in the United States when in fact they were imported from China in numerous instances. The final consent order requires Gennex to pay a monetary judgement of \$146,249.

CFPB Sues Online Debt Settlement Company for Allegedly Steering Consumers Towards High-Cost Loans. On **April 13**, the CFPB announced a complaint and proposed settlement with SettleIt, Inc. (SettleIt) for allegedly failing to disclose its relationship to certain creditors, and steering consumers to select high-cost loans offered by those affiliated lenders. The CFPB's complaint, which was filed in the U.S. District Court for the Central District of California, argues that SettleIt engaged in abusive acts or practices in violation of the Consumer Financial Protection Act of 2010 (CFPA). The complaint also alleges that SettleIt violated the Telemarketing Sales Rule (TSR). Moreover, the CFPB and SettleIt filed a proposed order, that, if accepted by the court, would require SettleIt to pay \$646,000 in fees, along with a \$750,000 civil penalty.

Upcoming Comment Deadlines and Events

CFPB Seeks Comment on Proposed Amendments to RESPA for Borrowers Affected by COVID-19. Comments are due **May 10** on a CFPB Proposed Rule that would amend Regulation X of the Real Estate Settlement Procedures Act (RESPA) by establishing a temporary COVID-19 emergency pre-foreclosure review period until December 31, 2021 for principal residences. RESPA requires residential real estate settlement providers to make certain disclosures about the mortgage and real estate settlement process. Moreover, the temporary amendments would allow mortgage servicers to make certain loan modifications available to borrowers experiencing a COVID-19-related hardship based on the evaluation of an incomplete application. The proposed effective date of the Regulation X rule changes is August 31.

CFPB Proposes to Delay Effective Date of New Debt Collection Rules. Comments are due **May 19** on the CFPB's Notice of Proposed Rulemaking that would delay the effective date of two final rules issued under the Fair Debt Collection Practices Act (FDCPA) – the October 2020 Debt Collection Rule, which focuses on the use of communications related to debt collection; and the December 2020 Debt Collection Rule, which clarifies the disclosures that debt collectors must provide to consumers. The CFPB states that it wants to give parties more time to comply due to the ongoing COVID-19 pandemic. Comments will be due 30 days after publication in the Federal Register.

FTC Requests Comments on Digital “Dark Patterns”. Submissions are due **May 29** on the FTC's Request for Comments on “digital dark patterns,” which is a term used to describe a range of potentially deceptive user interface designs on websites and applications. Specifically, the FTC is seeking comment on several topics that will be discussed at its April 29 event – Bringing Dark Patterns to Light: An FTC Workshop, which will examine the ways in which user interfaces can have the intentional or unintentional effect of obscuring, subverting, or impairing consumer autonomy or decision-making. The workshop will consider how dark patterns differ from sales tactics used by brick-and-mortar stores; whether some groups of consumers are unfairly targeted; and whether there are additional rules or standards needed to protect consumers. The agenda for the event can be found here.

CFPB Seeks Input on Financial Institutions' Use of AI. Comments are due **June 1** on a Request for Information released by the CFPB; the Board of Governors of the Federal Reserve System's Bureau of Consumer Financial Protection; the Federal Deposit Insurance Corporation; the National Credit Union Administration; and the Office of the Comptroller of the Currency. The five agencies are gathering information on financial institutions' use of artificial intelligence (AI) for fraud prevention, the personalization of services, credit underwriting, and a number of other operations. Among other things, the Request for Information seeks comment to understand the use of AI; appropriate governance and risk management controls over AI; and challenges in developing and managing AI.

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Supreme Court Curbs FTC Power to Seek Monetary Relief

Privacy in Focus: FTC Prepares to Expand Rulemaking, Including on Privacy and Data Use

Privacy in Focus: FCC's Acting Chairwoman Rosenworcel to Continue the Agency's Anti-Robocall Work

Supreme Court Argument Analysis: TransUnion LLC v. Ramirez

FemTech: Biases and Data Privacy

Acting Chairwoman Slaughter Forecasts FTC's Privacy Agenda

Virginia Enacts Comprehensive Privacy Legislation

California Attorney General Issues Further Revisions to CCPA Opt-Out Requirements

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

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