

Wiley Consumer Protection Download (February 7, 2022)

February 7, 2022

*Originally published February 7, 2022

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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.

Register here for Wiley's upcoming webinar: FTC's Revised Safeguards Rule: How To Navigate New Information Security Requirements.

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Regulatory Announcements

FTC Bureau of Consumer Protection Director Testifies Before the U.S. Senate Subcommittee on Consumer Protection, Product Safety, and Data Security. On **February 1**, Samuel Levine, the FTC's Director

Authors

Duane C. Pozza
Partner
202.719.4533
dpozza@wiley.law
Antonio J. Reynolds
Partner
202.719.4603
areynolds@wiley.law
Stephen J. Conley
Associate
202.719.4572
sconley@wiley.law
Tawanna D. Lee
Consulting Counsel
202.719.4574
tdlee@wiley.law

Practice Areas

Cyber and Privacy Investigations, Incidents
& Enforcement
FTC Regulation

of the Bureau of Consumer Protection, testified before the U.S. Senate Subcommittee on Consumer Protection, Product Safety, and Data Security to discuss the agency's efforts to combat COVID-19-related fraud schemes. Director Levine stated that the FTC "is taking a comprehensive approach to identifying and addressing COVID-related consumer frauds impacting American consumers and businesses." Specifically, Director Levine reported that the agency is: (1) working with law enforcement agencies to address fraud related to the pandemic; (2) collecting and analyzing data on the latest consumer fraud trends; and (3) continuing outreach to consumers and businesses and "proactively using social media, video streaming conferences, and other methods to reach historically underserved communities and people in economically and geographically diverse communities." The witness list, opening statements, and a recording of the hearing are available [here](#).

CFPB Releases Request for Information on Fees Related to Consumer Financial Products. On **January 26**, the CFPB released a Request for Information seeking public input on certain consumer financial product fees. The CFPB announcement refers to these as "back-end fees" or "junk fees," which according to the CFPB may include fees such as "unexpected fees for a product or services" and "fees where it was unclear why they were charged." The announcement indicates that the CFPB is gathering input "[t]o craft rules, issue industry guidance, and focus supervision and enforcement resources to achieve this goal [of addressing these kinds of fees]." The agency noted that it is specifically interested in comments from consumers, "social services organizations, consumer rights and advocacy organizations, legal aid attorneys, academics and researchers, small businesses, financial institutions, and state and local government officials." Comments are due **March 31**.

CFPB Releases Report on the Financial Product Market for Justice-Impacted Individuals. On **January 31**, the CFPB released a report on the financial products and services available to justice-impacted individuals and their families. The report concluded that the financial products and services available to such individuals "impose severe costs on, and undermine the economic security of, justice-involved individuals, their families, and communities." Moreover, the CFPB's report concluded that financial burdens "disproportionately on people of color, women, and people with lower incomes." The report specifically raises issues about fines and fees imposed by federal, state, and local governments; the purported lack of consumer choice related to available financial products for justice-impacted individuals and their families; and governments shifting the costs of incarceration onto justice-impacted individuals and their families.

CFPB Releases Annual List of Consumer Reporting Agencies. On **January 27**, the CFPB released its annual list of consumer reporting agencies under the Fair Credit Reporting Act. The list includes the three nationwide consumer reporting agencies – Experian, Equifax, and TransUnion – and specialty reporting companies that offer information regarding individuals' finances, employment, check writing histories, and rental records, among other things.

FTC Report Reveals That Consumers Reported \$770 Million in Losses from Social Media Fraud in 2021. On **January 25**, the FTC released a report finding that more than 95,000 consumers lost approximately \$770 million in 2021 to fraud initiated over social media platforms. The losses account for approximately 25% of all reported losses in 2021, and were 18 times greater than losses reported from social media fraud in 2017. The FTC report found that consumers aged 18 to 39 were more than twice as likely to lose money to social media

scams as consumers in other age demographics.

Significant Enforcement Actions

FTC Obtains \$3.5 Million in Penalties and Redress for Alleged Violations of the Contact Lens Rule. On **January 28**, the FTC announced that it reached a settlement with Vision Path, Inc. (Vision Path), an online seller of direct-to-consumer contact lenses, to resolve a number of complaint allegations, including that the company allegedly substituted its off-brand lenses for those actually prescribed to consumers. In particular, the FTC alleged that the company violated the Contact Lens Rule (CLR) and the Fairness to Contact Lens Consumer Act (FCLCA) in a number of ways, including by failing to obtain prescriptions and to properly verify consumer information, and by substituting its own lenses for those actually prescribed to consumers. The agency also alleged that Vision Path violated the FTC Act by deceptively failing to disclose that many of Vision Path's online reviews were written by: (1) reviewers who were compensated; and (2) in at least one instance, one of its own executives. The FTC's consent order imposes two monetary judgment amounts—a \$1.5 million civil penalty and \$2 million in redress to provide refunds to consumers who were harmed.

FTC Bans Auto Marketing Company That Allegedly Misled Consumers. On **January 28**, the FTC announced that the agency has issued an opinion and order banning marketer Traffic Jam Events, Inc. and its owner, David J. Jeanson, II (Traffic Jam Events) from advertising, selling, or leasing automobiles for 20 years for alleged violations of the FTC Act. According to the opinion, Traffic Jam Events deceived consumers with misleading mailers that were designed to lure consumers to auto dealerships under the guise that federal COVID-19 stimulus benefits were available at designated locations for a short period of time. According to the FTC, Traffic Jam Events also allegedly sent flyers to consumers deceptively indicating that consumers had won a valuable prize and that they had to go to a car dealership to "claim" their prize, but that they learned at the dealership that they had not won a prize. In addition, the FTC's alleged that Traffic Jam Events violated the Truth In Lending Act and Regulation Z by failing to clearly disclose required credit-related information in its advertising.

FTC Bans Student Loan Debt Relief Services Provider from Providing Products and Services. On **January 26**, the FTC announced a settlement with Jay Singh, two corporate entities under his control—American Financial Support Services and U.S. Financial Freedom Center—and seven other corporate entities in connection with a complaint alleging violations of the FTC Act and the Telemarketing Sales Rule. Specifically, the FTC's complaint alleged that the entities lured borrowers by using fraudulent ads, pretending to be affiliated with the Department of Education, and promising to reduce or even eliminate consumers' monthly student loan payments and principal balances in exchange for illegal upfront and monthly fees. The stipulated order bans Singh and the corporate entities under his control from providing student loan debt relief products and services and imposes a monetary judgment of 7,557,001.10, which was partially suspended due to an inability to pay. The stipulated order also levies a monetary judgment of \$22 million against the remaining defendants.

FTC Order Requires Fashion Retailer to Pay \$4.2 Million For Allegedly Blocking Negative Customer Reviews. On **January 25**, the FTC announced that fashion retailer Fashion Nova, LLC (Fashion Nova) has settled charges that the company blocked negative reviews of its products from being posted to its website. The settlement requires Fashion Nova to pay a monetary judgment of \$4.2 million. The FTC's complaint alleges that, from late-2015 until November 2019, Fashion Nova violated the FTC Act by automatically posting four-and five-star reviews to its website while suppressing hundreds of thousands of lower-starred negative reviews. The FTC alleged that this practice violated the FTC Act because deceptively concealed more negative reviews of Fashion Nova.

Upcoming Comment Deadlines and Events

FTC Seeks Comment on Proposal to Further Amend Safeguards Rule to Include Incident Reporting Requirement for Covered Financial Institutions. Comments are due **February 7, 2022** on a supplemental notice of proposed rulemaking to require reporting of certain security incidents to the FTC by covered companies within 30 days of discovery. Specifically, the proposed additional amendment to the Safeguards Rule would require financial institutions to report defined "security events" to the FTC if a determination has been made that consumer information has been misused, or is reasonably likely to be misused, in an event affecting at least 1,000 consumers.

FTC Seeks Comment on Business and Government Impersonation Fraud. Comments are due **February 22** on an Advance Notice of Proposed Rulemaking (ANPRM) proposing a rule targeting business and government impersonation fraud, which we describe in greater detail here. The ANPRM specifically targets business and government impersonation fraud committed via telephone calls, text messages, and other forms of communication.

More Analysis from Wiley

Upcoming Webinar: FTC's Revised Safeguards Rule: How To Navigate New Information Security Requirements

'An Avalanche of Rulemakings' – The FTC Gears Up for an Active 2022

Steps to Take in 2022 To Prepare for New State Privacy Laws

The Top 5 Cyber Issues for 2022

2022 Cyber Watch List: A look at 2021 and What's to Come in the Year Ahead

Podcast: Why the FTC Matters for Fintech

White House Seeks to Develop AI Bill of Rights and Calls for Feedback on Use of Biometric Data

Podcast: Cyber in 2022: What Happened and What is Coming

FTC Commences Rulemaking Targeting Business and Government Impersonation Fraud

Podcast: Artificial Intelligence Can Do Really Dumb Things With Personal Information

American Bar Association Webinar: Crypto at a Crossroads: Crypto and Privacy

FTC Releases Detailed Information Security Requirements and Proposes Breach Notification for Financial Institutions

Duane Pozza Discusses FTC's Updated Safeguards Rule

Data Transfers from the EU – Further Guidance Issued

Duane Pozza Discusses Emerging Regulatory Approach to Crypto and DeFi

Latest Changes at FTC Will Drive Federal Action on Privacy, Data Security, and AI

FTC Policy Statement Signals Increasing Scrutiny on the Protection of Sensitive Personal Health Information

AI Risk Management Framework Is Among Emerging Federal Initiatives on AI

Wiley's Telecommunications practice wins Law360 'Practice Group of the Year' Award

Download Disclaimer: Information is current as of February 7, 2022. 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.