

## Wiley Consumer Protection Download (March 28, 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.

In case you missed it, our recent webinar on FTC's Revised Safeguards Rule: How To Navigate New Information Security Requirements, is available on-demand.

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### Regulatory Announcements

**CFPB Issues Compliance Bulletin on Consumer Reviews of Products and Services.** On **March 22**, the CFPB issued a Compliance Bulletin regarding certain consumer review practices that the agency views

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FTC Regulation

as unfair or deceptive acts or practices under the Consumer Financial Protection Act (CFPA) because they are prohibited under the Consumer Review Fairness Act. The Compliance Bulletin states that using form contracts to prevent consumers from leaving reviews of products or services and pressuring consumers to remove negative reviews pursuant to form contract prohibitions generally constitute deceptive acts or practices under the CFPA. Additionally, the Bulletin suggests that the CFPB would likely consider it to be a deceptive practice under the CFPA for a company to instruct its own employees to leave reviews of its own products, or for a company to only post positive customer reviews. The Compliance Bulletin is effective upon publication in the Federal Register.

**FTC Holds March 2022 Open Commission Meeting and Announces E-Cigarette Study Report.** On **March 17**, the FTC held an Open Commission Meeting. During the meeting, agency staff presented a report on the growth of the U.S. e-cigarette market from 2015 to 2018. The report used data collected from various companies using the agency's FTC Act Section 6(b) authority. The data collected from the companies showed an increase in e-cigarette sales from \$304.2 million to \$2.06 billion between 2015 and 2018. The staff report also detailed a shift in sales from tobacco-flavored e-cigarette cartridges to flavored cigarette cartridges, which tripled in sales from 2015 to 2018. Additionally, the report found that the nicotine concentration in e-cigarettes increased by almost 60% between 2015 and 2018. The vote to release the report was 4-0.

**CFPB Issues Revised Supervisory Examination Manual on Unfair, Deceptive or Abusive Acts or Practices That Includes Discriminatory Practices.** On **March 16**, the CFPB announced revisions to its Supervisory Examination Manual on Unfair, Deceptive or Abusive Acts or Practices (Manual), addressing how discriminatory practices can be considered unfair, deceptive, or abusive, regardless of whether they are covered by other laws such as the Equal Credit Opportunity Act (ECOA). Specifically, the revised Manual notes that discriminatory practices may meet the "unfairness" criteria by causing substantial harm to consumers that cannot be reasonably avoided, even in those instances where ECOA may not apply to a particular transaction. In a related Press Release, the CFPB states that it will examine "for discrimination in all consumer finance markets, including credit, servicing, collections, consumer reporting, payments, remittances, and deposits," and that the revisions are intended to "better protect families and communities from illegal discrimination, including in situations where fair lending laws may not apply."

**FTC Approves Enforcement Rule Proposed by Horseracing Integrity and Safety Authority.** On **March 25**, the FTC announced that it approved the Enforcement Rule proposed by the Horseracing Integrity and Safety Authority (HISA) following a public comment period, with some further direction to HISA. HISA, which was established following the implementation of the Horseracing Integrity and Safety Act of 2020, is charged with developing a horseracing anti-doping and medication control program and a racetrack safety program. The HISA Enforcement Rule enumerates certain actions forbidden as violations (such as failures to provide truthful responses to HISA questioning and the failure to cooperate with HISA during an investigation), and sets penalty amounts, enforcement mechanisms, appeal processes, and the investigatory powers of HISA.

## Significant Enforcement Actions

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**FTC Enjoins Credit Repair Company from Making False Credit Repair Claims.** On **March 21**, the FTC announced that it obtained an injunction against Texas-based Turbo Solutions, Inc., which does business as Alex Miller Credit Repair, and its individual owner for alleged violations of the Federal Trade Commission Act (FTC Act), the Credit Repair Organizations Act (CROA), and the Telemarketing Sales Rule (TSR). The complaint alleges that the company made false claims to consumers that for a fee, the company can improve consumers' credit scores. The FTC also alleges that the company attempted to improve the credit scores of customers by filing false identity theft reports on the FTC's identitytheft.gov website, that it accepted prohibited advanced fees for credit repair services, and that it failed to make required disclosures. The U.S. District Court for the Southern District of Texas, Houston Division granted the FTC's preliminary request for an injunction halting the practices.

**FTC Bans Supplement Marketers from Advertising or Selling Dietary Supplements.** On **March 16**, the FTC announced that it accepted, in a 4-0 vote, a proposed consent agreement stemming from an administrative complaint filed in November 2020 against supplement marketer Health Research Laboratories, LLC (HRL) and Whole Body Supplements (WBS) for making allegedly unsubstantiated claims that their supplements prevent or treat certain chronic diseases. The FTC filed the administrative complaint after it failed to prevail on federal court contempt motion alleging a violation of a previous stipulated order with the parties.

**FTC Settles with Sales Organization for Alleged Involvement in Credit Card Laundering Scheme.** On **March 15**, the FTC announced that it had filed and settled an administrative complaint against Electronic Payment Systems (EPS) and its owners, John Dorsey and Thomas McCann. As we previously reported, the FTC previously filed a federal court case alleging that EPS assisted in a fraudulent operation known as "Money Now Funding" that allowed the operation to process almost \$6 million through credit card networks. In the federal court case, the court granted summary judgment for the FTC against EPS, Dorsey, and McCann as to liability under the FTC Act and the Telemarketing Sales Rule but denied summary judgment as to the availability of injunctive relief. The proposed settlement order will provide injunctive relief, including prohibitions against deceptive or unfair payment processing acts or practices, and detailed screening and monitoring of potential merchants.

**FTC Pursues Action Against E-Commerce Platform for Alleged Data Security Failures.** On **March 15**, the FTC announced that it took action against CafePress, including its former owner, Residual Pumpkin Entity, LLC, and current owner, PlanetArt, LLC, for their alleged failure to provide reasonable security for personal information stored on its network and for their allegedly deceptive representations regarding the company's data security practices. The complaint alleges that CafePress stored sensitive personal information, including security questions and answers and Social Security numbers, in clear, readable text; retained the data longer than was necessary; failed to apply readily available protections against well-known and reasonably foreseeable threats; and failed to reasonably respond to security incidents, among other allegations, and suffered multiple breaches. The proposed settlement orders require CafePress's former owners to pay \$500,000 in redress. The current owner will be required to notify consumers whose personal information was accessed through data breaches and to provide consumers with information on how they can protect themselves. Both companies are also required to implement comprehensive information security programs that will be subject to third-party

assessment.

**FTC Sues Gig Economy Platform for Alleged Deceptive Commercial Practices.** On **March 11**, the FTC announced that it issued an administrative complaint against Home Advisor, Inc., (Home Advisor), for alleged misrepresentations to service providers regarding the quality and source of home improvement project leads, and the likelihood that the leads would result in actual jobs. The complaint alleges that in trying to recruit service providers to join the company's network, HomeAdvisor told service providers that its leads resulted in actual home improvement jobs at rates higher than HomeAdvisor's own data supported. The FTC also alleged that the company misled service providers about the cost of an optional one-month subscription to its software platform.

## Upcoming Comment Deadlines and Events

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**CFPB Extends Deadline for Comments on Fees Related to Consumer Financial Products.** Comments are due **April 11** on 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 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."

**FTC Seeks Comment on Petition for Rulemaking to Expand Scope of Proceedings Covered by Commissioner Recusal Process.** Comments are due **April 4** on a Petition for Rulemaking asking the FTC to amend its rules to include a broader and more detailed recusal process that would apply to enforcement proceedings, along with adjudicative and rulemaking proceedings. The Petition asks the FTC to implement a requirement that a response to a recusal motion be filed within 10 days and require written statements if the Commissioner does not recuse. We summarized the petition in more detail here.

**FTC Requests Comment on Earnings Claims ANPRM.** Comments are due **May 10** on an Advance Notice of Proposed Rulemaking (ANPRM) regarding a potential rule to address purported deceptive or unfair marketing pertaining to earnings claims made by money-making ventures. The ANPRM states that the "use of such [misleading earnings] claims both deprives consumers of the ability to make informed decisions and unfairly advantages bad actors in the marketplace at the expense of honest businesses."

## More Analysis from Wiley

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[FTC Takes Action Against Company for Collecting Children's Personal Information Without Parental Permission](#)

[Utah to Add Fourth Omnibus Privacy Law to the Growing State Patchwork](#)

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

Podcast: Ransomware, Geopolitical Tensions, and the Race to Regulate

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

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

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

*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

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**Download Disclaimer:** Information is current as of March 28, 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.