

Wiley Consumer Protection Download (September 4, 2024)

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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 select 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

FTC Files Amicus Brief in Support of Class Action Plaintiffs Suing Childrens' Online Learning Platform. On **August 19**, the FTC filed an amicus brief in support of class action plaintiffs alleging that a children's online learning platform unlawfully collected, used, and sold the plaintiffs' children's data on the platform's website and software in school. The plaintiffs allege that the online learning platform violated various laws, including the Federal Wiretap Act and several California consumer protection statutes. In response, the online learning platform filed a motion to compel arbitration, arguing

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that because the school districts agreed to the platform's terms of service, school districts acted as agents for the plaintiffs under the Children's Online Privacy Protection Act (COPPA) in signing the terms of service, which compelled arbitration. The FTC's amicus brief asserts that nothing in COPPA or the COPPA Rule "addresses whether parents and their children should be bound by every provision contained in a contract between an operator ... and a school district."

CFPB Issues Advisory on Video Game Payments and Virtual Currencies. On **August 28**, the CFPB released an advisory on video game payments and in-game currencies, stating that "[m]any games use gambling-like design tricks to hide the odds and encourage compulsive spending." The CFPB concludes that in-game designs can result in increased spending, "especially when a game is connected to a mobile payment service or credit or debit card." The report makes several recommendations for consumers to limit spending in video games, including purchasing a gift card to limit "surprise overcharging," identifying parental controls on payments, and considering selecting games without in-game purchases.

Select Enforcement Actions

FTC and Florida Attorney General Sue Trucking Management Company and Its Executives for Allegedly Deceptive Advertising. On **August 19**, the FTC and Florida Attorney General (AG) filed a complaint in the U.S. District Court for the Southern District of Florida against a trucking management company, its owner, and a company executive for alleged violations of the FTC Act, the FTC's Business Opportunity Rule, the Consumer Review Fairness Act, and Florida's Deceptive and Unfair Trade Practices Act. The FTC and Florida AG allege that the defendants misled consumers in promising high investment returns from using the company's service to purchase and operate a semi-truck. The FTC and Florida AG seek monetary and injunctive relief.

CFPB Settles with Residential Mortgage Servicer for Allegedly Deceptive Business Practices. On **August 21**, the CFPB issued a consent order and stipulation against a nonbank residential mortgage servicer for alleged violations of the Consumer Financial Protection Act, the Real Estate Settlement Procedures Act, Regulation X, the Truth in Lending Act, Regulation Z, the Homeowners Protection Act, and a prior CFPB Consent Order. The CFPB alleges that the company failed to provide consumers loss mitigation options and that some consumers overpaid for private mortgage insurance and late fees. The company agreed to pay \$3 million in monetary relief and \$2 million in monetary penalties, and to put \$2 million toward updating its servicing technology and compliance management systems.

FTC Settles with Caregiver Service Provider for Allegedly Deceptive Business Practices. On **August 26**, the FTC filed a complaint and stipulated order in the U.S. District Court for the Western District of Texas against an online caregiving service provider for alleged violations of the FTC Act and Restore Online Shoppers' Confidence Act. The FTC alleges that the company misrepresented potential wages to caregivers and made it difficult for individuals hiring the caregivers to cancel their memberships. The company agreed to monetary relief of \$8.5 million in addition to injunctive relief.

CFPB Settles with a Mortgage Lender for Allegedly Misrepresenting Loan Costs. On **August 29**, the CFPB issued a consent order and stipulation against a non-bank direct mortgage lender for alleged violations of the Consumer Financial Protection Act. The CFPB alleges that the company only disclosed some of the costs associated with new loans they offered to consumers. The company agreed to a \$2.25 million fine in addition to injunctive relief.

FTC and DOJ Settle with Security Camera Company Based on Allegedly Insufficient Data Security Safeguards and Email Marketing Practices. On **August 30**, the FTC and U.S. Department of Justice (DOJ) filed a complaint and stipulated order in the U.S. District Court for the Northern District of California against a security camera company for alleged violations of the FTC Act and Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act). The FTC and DOJ allege that the company sent emails to prospective customers without either providing the option to opt out of the email or honoring an opt-out request, and did not include a physical postal address in these emails, in violation of the CAN-SPAM Act. The agencies also allege, among other claims, that the company failed to implement reasonable safeguards to protect customer data prior to the occurrence of a data security breach, in violation of the FTC Act. The company agreed to pay a \$2.95 million monetary penalty and implement an information security program, among other injunctive relief.

Upcoming Comment Deadlines and Events

FTC Schedules Hearing on Proposed Changes to Energy Labeling Rule. The FTC will hold a virtual oral hearing at 1 p.m. ET on **September 19**. The FTC announced the oral hearing in response to a request from one company, which will present at the hearing on certain test procedures for proposed air cleaner labels. As described by the FTC, the Energy Labeling Rule requires, for certain products, “the familiar yellow Energy Guide labels stating a product’s estimated annual operating cost and energy consumption, and a range for comparing the highest and lowest energy cost for similar models.”

CFPB and Other Agencies Seek Comment on Proposed Rule to Standardize Data Submissions. Comments are due **October 21** on a rule proposed by the CFPB and eight other agencies to establish data standards “to promote interoperability of financial regulatory data across these agencies.” The other participating agencies include the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Federal Housing Finance Agency, Commodity Futures Trading Commission, Securities and Exchange Commission, and the Department of the Treasury. The agencies are proposing the rule as required by the Financial Data Transparency Act of 2022.

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