Federal Trade Commission

CONSUMER PROTECTION ISSUES

PREPARED REMARKS OF
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FEDERAL TRADE COMMISSION

BEFORE

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The views expressed are those of the Commissioner and do not necessarily reflect those of the Federal Trade Commission or the other Commissioners.

Good afternoon. I am very pleased to be here today. I have been asked to tell you a little about the Federal Trade Commission and then discuss two broad areas of Commission activity that are of particular interest to you. These areas relate to, first, marketing practices, particularly telemarketing and, second, to credit practices, especially rules governing the extension of a loan and lending discrimination.

At the outset I must say that the views I express are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

The Commission was established in 1914 and given broad authority over antitrust matters. Its antitrust authority, which is shared with the Antitrust Division of the Department of Justice, continues as a vital part of the Commission's mission. Since the late 1930s, the Commission also has had an extremely broad mandate to safeguard consumers from unfair or deceptive acts or practices. You often see mention of the Commission in the newspapers in connection with enforcement actions, involving credit repair, franchises or business opportunities, and the full gamut of telemarketing issues. We also closely follow issues involving all aspects of advertising -- from food to dietary supplements to automotive fuels, to smokeless tobacco, as well as claims made for weight loss and smoking cessation programs, and various health care procedures.

As this sampling of substantive areas suggests, the Commission is the only general jurisdiction consumer protection agency in the United States, and we are extremely proud of our efforts on behalf of consumers.

Under our enabling statute and other laws we enforce, a variety of tools are available to us, including law enforcement actions -- in federal court or before the Commission's own administrative law judges. In such actions, the Commission often obtains injunctive relief, which requires the deceptive or unfair activities to cease. Additionally, the courts may order defendants to pay redress to consumers who have been harmed by the challenged acts, or order disgorgement of defendants' ill-gotten gains.

In addition to such traditional law enforcement actions, the Commission also provides varying forms of industry guidance through trade regulation rules, and also through less formal "guidelines" or "policy statements," which allow us to be flexible in selecting the most effective means of dealing with particular issues. For example, the Commission has issued formal rules governing disclosures in areas as diverse as the funeral industry, the franchise industry, used car industry, and the pay-per-call, or 900 number industry. Our less formal guidelines address issues such as environmental advertising, and last year we issued an enforcement policy statement addressing food advertising.

Let me emphasize that our focus in all of these areas is to ensure that consumers have accurate and truthful information so that their purchasing decisions -- whether involving acquisition of a business venture or purchase of a recycled container -- are made with accurate knowledge of the choices that are available. Similarly, we strive to give industry guidance up front, in an effort to ensure a level playing field for all and spur creativity.

Now that I have given you a flavor of what the Commission is and what it does, let me turn to the two broad areas you may be most interested in -- marketing practices and credit practices.

1. <u>Marketing Practices</u>

One of the Commission's most successful law enforcement programs involves telemarketing fraud. The Commission devotes significant law enforcement resources to combatting such fraudulent conduct, and this is one of the areas where we often work with the assistance of state and local law enforcement agencies, as well as other federal enforcement agencies such as the FBI and U.S. Postal Service.

Let me give you a sense of the consumer injury sustained as a result of telemarketing fraud: The House Committee on Government Operations has estimated that over 8 billion telemarketing calls are made each year, and in 1991 alone, telemarketing sales exceeded

$250 billion. While the vast majority of such sales are legitimate, consumers' losses to fraudulent telemarketers may be in the range of $3 billion to $40 billion annually. [1]

Not only is the economic loss striking, so too is the nature of some of the fraudulent conduct. Too often, fraudulent telemarketers prey on vulnerable consumers, many of whom are elderly. Because of the significant consumer injury and the fact that these frauds keep springing up, the Commission's commitment to combatting telemarketing fraud remains strong.

There is seemingly no end to the types of fraudulent sales pitches we have seen. One staple has been what I would call the "investment" pitch. Here, the representation is made that the investment is low risk, will yield a high return and, of course, must be acted upon quickly. Just what are consumers encouraged to invest in? Anything from allegedly -- and let me stress that word -- rare coins, limited edition works of art, to gemstones.[2] Most recently, we are seeing investment pitches that target consumers' interests in new technologies, such as alleged investments in the

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[1] House Committee on Government Operations, The Scourge of Telemarketing Fraud: What Can Be Done Against It? H.R. Rep. No. 421, 102d Cong., 1st Sess., at 5, 7 (1991).

[2] E.g., FTC v. Levine, 93 Civ. 1972 (E.D.N.Y. 1995) (art fraud); FTC v. Goddard Rarities, Inc., CV-93-4602 JMI (C.D. Cal. 1994) (coins); FTC v. Newport Gems,Inc., CV-90-2001-R (C.D. Cal. 1991) (gemstones).

development of novel wireless communication technologies.[3]

A different kind of telemarketing sales pitch might be referred to as the "you've just won" or "prize promotions" pitch. While this pitch may be initiated by a "cold" telephone call, it is often preceded by a postcard informing consumers that they need only call to claim the fabulous prize they have already won -- a luxury car, vacation trip or costly jewelry. What the consumers learn only later, however, after spending money for the prize, is that the jewelry is nearly worthless or the travel vouchers r equire payment of substantial sums for redemption or have onerous restrictions.[4]

Yet an additional area of fraud involves what I might call the "service-oriented" telemarketing pitches. Here, in some instances, telemarketers target victims of previous sales pitches who did not receive their prize or promotion and offer their services -- for a fee of course -- in assisting the consumer to obtain or recover the gift previously promised. We are particularly concerned that a new generation of telemarketers are operating these so-called "recovery rooms," and, using lists of consumers who have been victimized by an unscrupulous telemarketer in the past, representing that, for a

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[3] E.g., FTC v. Digital Interactive Assocs., Inc., No. 95-Z-754 (D. Colo.) (complaint filed April 4, 1995); FTC v. Chase McNulty Group, Inc., No. 95-524-CIV-T-25E (M.D. Fla.) (complaint filed April 4, 1995).

[4] E.g., FTC v. Passport International(e), No. 92-275-CIV-ORL-22 (M.D. Fla. 1993).

fee, they can recover consumer loses.[5]

Let me identify one specific service-oriented telemarketing scheme that was the subject of a consent decree recently filed in court, which may be of special interest to you. The case involved alleged misrepresentations about the ability to resell timeshares. The Commission charged that the defendants made allegedly false claims that they would match timeshare owners who wanted to sell their timeshares with prospective buyers. Based upon such allegedly false claims, consumers paid an advance fee of $190 to $375. The consent agreement prohibits misrepresentations in connection with providing any services relating to real estate, and also requires one of the individual defendants to post a bond of $50,000 before engaging in any direct marketing activity.[6]

Regardless of the type of sales pitch made to induce consumers to spend money, we see that many telemarketers operate out of what are called "boilerrooms" -- a temporary room typically outfitted with phone banks. Targeting these individual boilerrooms has the limited effect of shutting down just one small part of the fraud network. By attacking a major supplier or what we often call a "root," a single FTC action can disrupt a number of telemarketing boilerrooms by cutting off the means used to perpetuate their

[5] E.g., FTC v. United Consumer Servs., Inc., 1:94-CV-3164-CAM (N.D. Ga. 1995) (recovery room).

[6] FTC v. Turcal Inc., No. 94-1398-AWT (C.D. Ca.) (April 14, 1995).

deception. One of the Commission's most significant cases to date illustrating this approach was brought against Citicorp Credit Services, Inc.[7] In that action, the Commission alleged that Citicorp provided processing of credit card charges for a travel club telemarketer, BankCard Travel Club, when it knew or should have known about the club's deceptive practices. Under the terms of the consent agreement, Citicorp is required to investigate any of its clients with high chargeback rates, and to terminate them if they are found to be engaging in fraudulent, deceptive, or unfair practices.

Let me give you another example of this so-called root approach. In 1991, the Commission brought an action against a small Silver Spring, Maryland, travel certificate boilerroom, Jet Set Travel. Our action put them out of business,[8] but during discovery, we learned about a root system, Passport International, a cluster of Florida companies comprising one of the largest distributors of travel certificates in the country. The Commission subsequently sued Passport,[9] alleging that Passport sustained scores of client boilerrooms by providing them with everything necessary to run a successful fraud. Our complaint alleged that they provided travel certificates or awards, telephone sales

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[7] In re Citicorp Credit Services, Inc., Docket No. C-3413 (consent order, Feb. 4, 1993).

[8] FTC v. Jet Set Travel, No. JFM 91-99 (D. Md. 1992).

[9] FTC v. Passport International(e), No. 92-275-CIV-ORL-20 (M.D. Fla. 1993).

scripts and training in sales techniques, as well as mailing lists and postcards designed to induce the consumer to call the boilerroom. Both cases are now resolved, and defendants are prohibited from making the challenged misrepresentations.

There have also been efforts on the legislative front to curtail telemarketing fraud. Last year, Congress enacted the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994, which requires the Commission to promulgate a rule banning numerous deceptive or abusive telemarketing sales practices by August 1995. The Commission has already begun that process by publishing a proposed rule and seeking public comment. Just last week, the Commission staff concluded a two and one-half day public workshop conference in Chicago to discuss issues raised pertaining to the proposal.

The draft rule proposed by the Commission would, among other things, require telemarketers to tell consumers at the beginning of each call that it is a sales call and the name of the seller. The rule also would prohibit telemarketers from calling before 8 a.m. or after 9 p.m., sending couriers to pick up payments, and re-soliciting consumers before the prior transaction is complete. The proposed rule would cover most types of telemarketing calls to consumers and would apply to calls from consumers responding to postcards or other promotional materials, except catalogs, and to other sales communications through telephone lines, such as the

Internet or fax machine. I want to state again that what I've described is a proposed rule, the final rule will take into consideration the comments received and the information obtained during the public workshop conference.

To the extent that you market your products and services via the telephone or other telephone line based media, you will want to watch this process closely.

Before I turn to credit issues, there is one more deceptive type of practice I want to bring to your attention involving use of the information superhighway, or cyberspace. The Commission has found that the unscrupulous are often among the first to use emerging technologies. Recently, the Commission brought its first case involving the use of the information superhighway in the marketing of credit repair services.[10] It was an old scam, but the medium was high tech. While we all look to the expansive opportunities along the new information superhighway, we will need to maintain our vigilance.

2. Credit Practices

There are two credit-related issues I want to talk about --

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[10] FTC v. Corzine, CIV-S-94-1446 (DFL) (E.D. Cal.) (complaint filed Sept. 12, 1994).

the Equal Credit Opportunity Act and the Truth in Lending Act. In general, the Equal Credit Opportunity Act prohibits discrimination in the provision of credit and the Truth in Lending Act requires, among other things, that accurate information about loan cost be given to consumers before they sign on the dotted line.

Looking first at the Equal Credit Opportunity Act, or ECOA for short, the ECOA prohibits discrimination in any type of lending, including mortgage lending, by anyone who is a creditor. Enforcement responsibility is divided among several federal agencies. The Commission enforces the ECOA for any lender not subject to the regulatory authority of another federal agency, such as the Federal Reserve Board or Comptroller of the Currency. As a result, the Commission exercises authority over mortgage companies, finance companies, and non-bank credit card issuers. Thus, by statute, the Commission does <u>not</u> have authority over banks, savings and loans, credit unions and other federally regulated entities.

Among other things, the ECOA prohibits lenders from discrimination on the basis of race, national origin, religion, sex, marital status, age, or receipt of public assistance income. If a loan application is rejected, the lender must give the specific reason or reasons or inform the applicant of his right to request them in writing. The ECOA also prohibits lenders from discouraging consumers from applying for loans based on the factors mentioned above: charging different prices to consumers on the basis of their race, national origin, religion or sex; and asking whether a consumer is divorced, widowed or about their plans for having or raising children.

The Commission has actively enforced the ECOA. In late 1993, the Commission along with the Department of Justice settled charges of race and national origin discrimination against a mortgage lender in New England.[11] The settlement provided for almost $1 million in redress to past victims of discrimination, as well as a number of remedial measures to ensure non-discrimination in the future.

In another recent case, the Commission entered into an agreement with a lender resolving allegations that it discriminated on the basis of marital status in the financing of mobile homes.[12] Pursuant to the settlement, the lender paid $150,000 in civil penalties.

Finally, let me address the Truth in Lending Act or TILA. The Act, TILA, covers a broad range of credit-related issues, including the unauthorized use of credit cards and disclosure requirements in consumer lease agreements and advertising. One over-arching

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[11] United States v. Shawmut Mortgage Co., Civ. Action No. 3:93 CV-2453 AVC (D. Conn. 1993).

[12] FTC v. CIT Group/Sales Financing Inc., Civ. Action No. 94-4092 (D. N.J. 1994).

concern of the Act is to ensure that consumers get accurate and complete disclosure of the cost of credit and leases when shopping for goods and services. As with the ECOA, many different federal agencies enforce the TILA with respect to those lenders that they regulate.

I will only focus on certain of TILA's requirements that specific disclosures be made about the cost of loans in advertising and in the loan documents themselves. When lenders advertise certain terms of financing such as down payments, the number of payments or period of repayment, the amount of any payment or the amount of any finance charge, they must also provide full disclosure of the financing terms, including, for example, the amount of any balloon payments and the annual percentage rate. Part of the aim of these disclosures is to provide certain, sometimes standardized, terms in credit transactions and advertisements so consumers can make informed choices among different options.

The Commission has brought a number of actions against creditors for alleged violations of the TILA. In a recent case, the Commission provisionally accepted a settlement with a home builder and lender resolving various allegations about claims in home financing promotions in both Chinese and English. In part, the complaint alleged that advertisements included some of the triggering terms, but failed to disclose the other terms required by TILA, including the amount of any balloon payment. It also alleged that the lenders failed to give consumers written credit cost disclosures before closing. The proposed consent agreement will require the respondents to comply with the full disclosure requirements of TILA in advertising credit terms.[13]

Also in the credit area, though not under the Truth in Lending Act, the Commission has brought actions against mortgage lenders for alleged violations of the FTC Act. In one case brought against Lomas Mortgage, the lender agreed to settle FTC charges that it deceptively represented the lock-ins it offered consumers on certain types of loans, and failed in some instances to lock in the interest rate or the number of discount points at the level agreed to by consumers.[14] Under the terms of the agreement, Lomas is prohibited from making such misrepresentations in the future and was required to pay $300,000 in consumer redress.

3. Summary

I hope you have found this overview of the Commission's consumer protection activities useful in understanding how the Commission operates and how it seeks to protect consumers,

[13] Felson Builders, Inc., FTC No. 932-3286 (proposed consent agreement placed on the public record February 9, 1995). The Commission provisionally accepts Section 5 and TILA actions and puts them on the public record for comments before deciding whether to issue them in final and binding form.

[14] Lomas Mortgage U.S.A., Inc., C-3462 (1993).

including industry, from unfair or deceptive acts or practices. The Commission brought well over 200 cases during the last fiscal year in its consumer protection program, and I appreciate this opportunity to give you the flavor of some of these cases as well as a sense of other ways in which the Commission strives to ensure the proper and fair functioning of the marketplace.

I have certainly appreciated the opportunity to meet with you today and learn more about your industry. At this time, I would be happy to respond to any questions you may have. Thank you.