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FTC Warns Payday Lenders To Disclose APR In Advertising

Charges Three Internet Payday Lenders With Violating TILA and Reg Z

Christopher T. Koegel, 202.585.6563
Helen Goff Foster, 202.585.6505

The Federal Trade Commission ("FTC") announced recently that three Internet payday lenders have agreed to settle administrative complaints brought by the FTC, charging that the lenders had failed to disclose the annual percentage rate ("APR") as required by federal law. In a press release issued Wednesday, February 27, 2008, the Commission stated that the settlements require the lenders to disclose the APR in similar loan advertisements in the future.

The three defendants were Anderson Payday Loans, CashPro d/b/a MakePaydayToday.com, and American Cash Market, Inc. The FTC alleged that each of the defendants stated loan costs in their Internet advertisements, but none of them disclosed the corresponding APR in the same advertisement.

The Truth in Lending Act and Regulation Z require disclosure of the APR in any advertisement which states the amount of any finance charge. According to the FTC, the APR helps consumers compare lending costs among various credit options, "so they can make informed decisions in securing credit."

What is most interesting about the FTC's actions is that the FTC chose to file these actions as administrative complaints

UPCOMING EVENTS

October 21, 2008
ACI: Sports Sponsorship Advertising and IP

Topic:
"When Retired Players Sue From Coscarart v. Major League Baseball to Parrish v. NFLPA"

Ronald S. Katz

"Morality and an Agreement Mortality--Taking Appropriate Measures to Avoid the Termination of an Endorsement Deal"

Linda Goldstein

The Carlton Hotel
New York, NY

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D.C. Bar CLE Seminar

Topic:
"Copyright Law and Litigation"

Kenneth M. Kaufman

D.C. Bar Conference Center
Washington, D.C.

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November 20-21, 2008
PMA's 30th Annual Promotion Marketing Law Conference

Topic:
"Navigating the Potholes: The Evolving Landscape for Sweepstakes, Games"

and did not seek civil penalties, disgorgement, or consumer redress. Instead, the FTC let these defendants off the hook with a simple promise to not make the same mistake in the future. And, as is typical of FTC consent orders, these orders do not constitute an admission of wrongdoing by the lenders.

This begs the obvious question: why was the FTC so lenient? In this case, the violations may not have warranted a more significant commitment of resources by the FTC. As a federal agency, the FTC has limited time and resources and strives to commit those resources to the matters having the most impact. Two of the three defendants here are sole proprietorships, and all three are Internet payday lenders. Therefore, the number and amount of loans at issue may not have warranted a more significant commitment of resources by the FTC. Moreover, it is far less likely that the FTC could have reached such quick settlements with the defendants had the stakes been higher. By filing administrative complaints and seeking only to correct future advertising, the FTC was able to fix the disputed advertising as quickly as possible, issue an ominous press release to forewarn the entire industry, and do so with minimal commitment of its finite resources.

But other payday lenders should take little comfort from the FTC's leniency in this case. In the future, the FTC may not look so kindly on similar offenses, particularly if the lender has processed a greater number of loans or has significant resources at its disposal. As is often the case with FTC enforcement actions, subsequent offenders are unlikely to get off as easily.

Nor should more conventional payday lenders take solace from the fact that these complaints were filed against three Internet lenders. TILA and Regulation Z clearly require disclosure of the corresponding APR if the amount of a finance charge is disclosed in advertising. Nothing about these three complaints or the implicated statutes and regulations confines their warning effect to only Internet lenders.

Lenders would be well-advised to have their loan advertisements reviewed by experienced FTC credit counsel now. Not only can such a review stave off potential FTC action, but it also can help minimize the risk of costly consumer lawsuits, including class actions. As the old saying goes, "a stitch in time saves nine."

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Majoras To Leave FTC In Late March

Federal Trade Commission Chair Deborah Platt Majoras has announced that she will step down in late March.

Contests"

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December 4-5, 2008 Film & Television Law

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Topic:

"The Value of Fame: Understanding the Right of Publicity"

[Mark S. Lee](#)

Century Plaza Hyatt Regency
Los Angeles, CA

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NEWSLETTER EDITORS

[Jeffrey S. Edelstein](#)

Partner
jedelstein@manatt.com
212.790.4533

[Linda A. Goldstein](#)

Partner
lgoldstein@manatt.com
212.790.4544

OUR PRACTICE

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She is expected to be replaced by William Kovacic, a Republican who is one of the five current FTC commissioners. It's not clear whether the White House will try to nominate another Republican to fill Kovacic's seat at this late date in the administration. Majoras is expected to go in-house at Procter & Gamble Co.

During her tenure, Majoras focused on consumer protection, in particular, data security, identity theft, and junk food ads to kids.

The agency brought few antitrust cases, although in a break from the White House, it did go after several large pharmaceutical companies for allegedly trying to delay generics from competing for market share. In its most recent complaint, filed February 2, 2008, in U.S. District Court in Washington, the FTC alleged that Cephalon Inc. illegally attempted to delay generic competition with its popular narcolepsy drug, Provigil. The agency alleges the pharmaceutical company paid generic competitors to delay introducing their products to the market, denying consumers billions of dollars in savings. Cephalon counters that its arrangements with generic companies are legal.

Although Majoras' resignation will leave the commission with two Republicans, a Democrat, and an independent, observers do not expect too many deadlocks. Under Majoras, many votes have been unanimous.

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FDA Will Step Up Inspection of Drug Ads

The Food and Drug Administration has received \$6.1 million for the current fiscal year to review direct-to-consumer drug ads.

The amount is more than in the previous five years combined. In 2007, the agency had \$2.2 million to scrutinize drug ads and in 2006, just \$1 million.

For years, the FDA has been so flooded with drug ads that it is able to review only a "small portion," according to a 2006 report by the Government Accountability Office. Last year, there were 12,616 drug ads for the FDA to review. Even when the agency did find ads false or misleading, it was not until well after the ad campaigns were completed, the GAO said. The FDA says it intends to use the extra money to increase hires to review ads. Currently, there are 13 FDA employees examining DTC drugs ads.

The White House hopes to convince Congress to authorize industry user fees for drug ad reviews. The program did not pass this year because of funding concerns and resistance

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from some members of Congress. In its proposed 2009 budget sent to Congress last month, the White House is trying again, requesting \$14 million in fees to pay for 27 employees dedicated to DTC ad reviews. The FDA would be required to examine TV drug ads within 45 days of receiving them from pharmaceutical companies and before the ads are aired.

Opponents of user fees argue that Congress should give the FDA a direct appropriation to minimize industry influence in the agency.

Pharmaceutical Research and Manufacturers of America, the biggest industry trade association, backs user fees. The FDA currently gets user fees to examine new human and animal drugs and medical devices. In Bush's proposed budget, 25% of the FDA's budget would come from fees paid by industries that the FDA regulates.

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IAB Issues New Privacy Guidelines

The Interactive Advertising Bureau has put forth new privacy principles to guide companies on consumer notice and choice, security, and accountability.

The five guidelines address consumer notice of data collection and usage, information security, and business accountability to consumers. In announcing the guidelines, IAB President and CEO Randall Rothenberg contrasted the trade group's suggested guidelines with the Federal Trade Commission's guidelines, saying, "the FTC is too rigid on the matters of notice and choice. Our principles strike the appropriate balance between protecting consumers' security and allowing industry to provide the free services and content they desire."

The FTC is currently paying close attention to the use of consumer data for targeted Internet advertising. Last year, it held a conference to explore issues of behavioral targeting and it has proposed rules for companies that use the technique.

Jessica Rich, assistant director of the FTC's division of privacy and identity protection, said the FTC would not comment on the IAB principles at this time. She said that the agency would like the IAB to comment on the FTC's proposed rules, "so we can have a really meaningful discussion." The IAB said it would submit comments to the FTC shortly.

The IAB's principles urge websites to explain "in a consumer-friendly manner" how they collect and store consumer information, and offer "meaningful notice" of how and for what advertising purposes consumer data is collected. The guidelines also state that choice regarding data collection for

advertising, such as opt-outs should also be provided to consumers "where appropriate." The guidelines also call for its members to make sure they and their business partners take "reasonable security" precautions for data used in advertising. In addition, the IAB said firms should be accountable to consumers with complaints and concerns, and educate them about the benefits of online advertising.

The issues covered by the guidelines are not new. As far back as 2000, the IAB issued guidelines urging websites to reveal in their privacy policies what Personally Identifiable Information, or PII, they collect and how it was used or might be provided to third parties, in addition to choices available to consumers for the use and distribution of their PII.

One major difference this time around is that the new guidelines cover "information for interactive advertising purposes," rather than just PII. Much of the data collected for Internet ad targeting, including behavioral targeting, is non-PII.

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FTC Bans Makers of 7 Day Miracle Cleanse Program From Infomercials

The marketers of the 7 Day Miracle Cleanse Program have settled a Federal Trade Commission complaint that they falsely advertised their product as a cure for cancer and other serious illnesses.

The settlements bans the defendants from airing infomercials for any product, service, or program, except for infomercials for informational publications. They are also banned from marketing health-related products in any medium.

According to the FTC's complaint, marketers claimed that the program effectively prevented, treated, and cured many illnesses, including cancer, AIDS, Alzheimer's, diabetes, high blood pressure, and arthritis, and that it safely caused rapid and substantial weight loss. The defendants also claimed their product, Parasine 2, was "clinically proven" to eliminate parasites and worms, the FTC alleged. These claims, the FTC argued, were false or unsupported by reliable scientific studies, in violation of the FTC Act. One of the defendants, Paris DeAgüero, appeared as "the Health Man" in nationally televised infomercials, claiming that his program cured him of skin and breast cancer within weeks and without the need for surgery or other treatments.

Under two stipulated final orders, 7 Day Marketing, Inc., DeAgüero, Dieter Ammann, and Laura DeAgüero, are banned from involvement in infomercials for any product, program, or service, and, regardless of the advertising medium, from

representing that any product, program, or service can cure, treat, or prevent any disease or provide health benefits. Representations made in books, newsletters, or other informational publications are exempt. The defendants are also prohibited from misrepresenting any test or study concerning any product, program, or service. They also are banned from transferring, selling, or renting personal information collected from customers who bought the program or individual products, and must destroy this information upon the conclusion of certain pending lawsuits.

One of the orders contains a monetary judgment of \$14,455,123, which is suspended based on the defendants' inability to pay. A separate settlement with Dieter Ammann also includes a monetary judgment of \$14,455,123, which is suspended upon payment of \$70,000, and also is based on his inability to pay. Under both orders, the full judgment will be imposed if the defendants are found to have misrepresented their financial condition.

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Our Practice Group

Danny Andrews 310.312.4206	Michael Barkow 212.790.4590	Renée Brissette 212.790.4620
Lauren Reiter Brody 212.790.4518	Kim S. Brown 212.790.4503	Alan M. Brunswick 310.312.4213
Aydin S. Caginalp 212.790.4610	Kerrie Campbell 202.585.6526	Gregory A. Clarick 212.790.4525
Christopher A. Cole 202.585.6524	George A. Cooke 212.790.4538	Elise Dang 202.585.6507
Jennifer Deitch Lavie 212.790.4595	R. Bruce Dickson 202.585.6522	Jeffrey S. Edelstein 212.790.4533
Gene R. Elerding 310.312.4158	Tamar Feder 310.312.4161	Clayton S. Friedman 714.338.2704
Seth A. Gold	Linda A. Goldstein	William M. Heberer

310.312.4371 212.790.4544 212.790.4566

**Susan
E.
Hollander**
650.812.1344

**Angela
C.
Hurdle**
212.790.4574

**Felix
H.
Kent**
212.790.4588

**Christopher
T.
Koegel**
202.585.6563

**Charulata
B.
Pagar**
310.312.4155

**Kimo
Peluso**
212.790.4570

**Jill M.
Pietrini**
310.312.4325

**Lindsay
M.
Schoen**
212.790.4504

**Brad
W.
Seiling**
310.312.4234

**Amy
Terry
Sheehan**
212.790.4548

**Lauren
Tang**
714.338.2706

**Carly
Van
Orman**
202.585.6539

**Svetlana
Walker**
202.585.6533

**Kathrin
A.
Wanner**
310.312.4178

**Charles
E.
Washburn,
Jr.**
310.312.4372

**Ivan
Wasserman**
202.585.6529