

July 7, 2014

Watch Out: Your Competitors Can Now Make You the Target of a CFPB Investigation

Throughout its short history, the Consumer Financial Protection Bureau (“CFPB”) has asserted jurisdiction over various nontraditional consumer-related financial industries, from law firms to collection agencies and automobile dealerships. While the CFPB is still in the process of expanding its already extensive reach, it is now accepting referrals from a new source —Your Competitor.

The advertising industry has a self-regulating accountability program called the Online Interest-Based Advertising Accountability Program. The program conducts formal and informal investigations to follow the self-regulation principles set forth by the program.

The accountability program, which is administered by the Council of Better Business Bureau as part of the Advertising Self-Regulatory Council, was developed at the request of the Digital Advertising Alliance to provide independent, industry-wide enforcement of the behavioral advertising principles developed by the Digital Advertising Alliance, the Network Advertising Initiative and the Direct Marketing Association as well as other major trade associations. One of the principles behind the program was to enhance transparency and user control over online tracking. The program patrols a wide swath of entities engaged in online behavioral advertising. Any person or group, including competitors, can refer companies to the accountability program.

While the accountability program routinely conducts both formal and informal investigations, for the first time, it referred one of its investigation targets to the CFPB. The referral was the result of an informal investigation related to the company’s refusal to provide information about the company’s practice of providing notice regarding data collection. The accountability program can receive complaints from anyone, including a company’s competitors. If the company chooses not to participate, the accountability program can refer the matter, no matter how frivolous, to the relevant government agency. However, by making the referral to the CFPB, the accountability program made a big hammer even bigger.

Companies now face competitor’s attacks routed through these industry associations, coupled with the risk of referral to the CFPB. The CFPB is opening the door for companies to utilize the government bureau’s enforcement provisions to damage their competitors. Other industry institutions such as the National Reverse Mortgage Lenders Association have powers to refer nonmembers to a government agency. It expands the playing field and puts all companies within the purview of the CFPB.

Understanding the regulations, principles and practices of the CFPB is becoming an ever-increasing necessity and material part of each company’s strategic plan. At [Brownstein](#), the Consumer Financial Protection Bureau Task Force is prepared to assist its clients in understanding and accounting for the new risks and challenges associated with this regulatory giant. Should you have any questions, please do not hesitate to contact any of the members below.

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