

FTC. v. Wyndham Litigation

By: Peter S. Bauman, Esq.

<http://commercialcounselor.com/>

The Federal Trade Commission (“FTC”) has been active in recent years pursuing companies that suffer data security breaches and arguably failed to live up to the data security standards promised in their privacy policies. There have been numerous settlements with companies that have resulted in payment of fines and agreements to take steps to remedy any data security lapses that may have occurred.

FTC enforcement actions in this regard are usually private until news of a settlement is announced. But in the case of Wyndham Hotel & Resorts a settlement did not occur and the FTC filed suit after hackers accessed customer credit card data on Wyndham systems. The FTC alleges that Wyndham failed to live up to its privacy policy and that this failure was a “deceptive” act under Section 5 of the FTC Act (15 U.S.C. § 45) which prohibits “unfair or deceptive acts or practices in or affecting commerce.”

Wyndham is fighting back, and according to a recent [article](#) filed a motion to dismiss the FTC complaint, alleging that the agency lacks authority under the FTC act to regulate data security standards, arguing that the agency is overextending its authority with respect to what are deceptive statements to consumers and unfair acts or practices.

If successful, the FTC may find it difficult to argue that failure to live up the terms of a privacy policy amounts to a deceptive or unfair act when a data security breach occurs.

Regardless of outcome, companies should take steps to ensure that the promises made in their privacy policies regarding data security are met. In this regard a recent [article](#) noted the alleged failures of Wyndham in the FTC case, some of which included:

- failure to use firewalls between networks
- storing credit card info in clear readable text
- using well-known or easy default ID’s/passwords with access to entire network
- failure to employ reasonable measures to detect and prevent
- failure to follow proper incident responses
- failure to restrict third-party access

Link to original article: <http://commercialcounselor.com/ftc-v-wyndham-litigation/>

For over 35 years small businesses, major corporations, public entities, individuals and insurance companies have depended on Tharpe & Howell, LLP, to deliver pragmatic, innovative, cost-effective civil litigation and transactional solutions. For more information, please contact us at (818) 473-5720 or email your request to cabusinesslawreport@tharpe-howell.com.