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STRIKING STATS ABOUT INTERNET MARKETING AND ONLINE LEAD GENERATION

All About Advertising Law Blog

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Online advertisers and marketers, including lead generators, and their service providers, have long had to contend with scrutiny from the FTC, state Attorneys General, competitors, and customers. And, since 2012, advertisers of consumer financial products and services have had to contend with the CFPB. Regardless of what you are promoting, bedrock advertising law says an advertiser can't over promise, be misleading, or deceptive. Moreover, depending on *how* you advertise, you may have to comply with numerous medium specific requirements, such as the Telemarketing Sales Rule. Finally, some advertisers have to meet *product specific* regulations (e.g., consumer financial services laws). And, the list goes on. There are many ways for advertising to cause legal risk. But, what are some of the root causes? Survey says:

We recently organized and participated in a panel, "Staying Current with Consumer Protection: Practical Lessons from Recent Enforcement Actions," at LeadsCon NY 2014. The other panelists included enforcers from the CFPB and FTC—Natalie Williams (Assistant Litigation Deputy, Office of Enforcement, CFPB) and Roberto Anguizola (Assistant Director, Division of Marketing Practices, FTC) and David Morgan, Chief Revenue Officer of PerformLine. David identified several compliance trends in his opening comments from a recent infographic that pulled from over 22 billion "compliance observations from a wide sampling websites and contact centers" from January to June.

Here are some of the findings from the data that jumped out at us:

- Webpages without violations—determined by the presence of banned language or the absence of required language—doubled from 11% to 20%. In other words, 80% of the pages still present potential legal violations, and that's just based on the words displayed on the webpages without taking into account more complex aspects of an ad, such as its "overall" net impression.
- In the education advertising market, the top trigger terms were: "scholarship," "salary," "FAFSA," "earn," and "largest."
- In the consumer finance market, the top trigger terms were: "bad credit," "will qualify," "free credit," "credit score," and "up to \$."
- At contact centers, the top trigger terms were: "call will be recorded," "enrollment is not required", "grant," "one of the best," and "automated technology."
- Of the websites reviewed in the study, the percentage of sites that appeared to comply with TCPA's express written consent and disclosure requirements rose to 57% since October 2013 (when the rule took effect).

More data, including a full list of flagged rule categories by vertical, and an expanded analysis of education trigger terms, are [available here](#). To be clear, these aren't the most common terms on the websites that were reviewed. They represent the terms that correlate to a list of "banned" or "required" compliance terms, relevant to each vertical, which are selected and maintained by the company.

According to the company, the terms are checked for contextual relevancy and are flagged if a banned term is present or a required term is missing. They are not always indicative of an issue and depending on the fact situation may not be material. Nevertheless, the stats provide some insight into what could be a potential violation depending on how they're used and the overall net impression conveyed to a consumer. Of course, data from websites doesn't tell the full story of legal compliance, or help to identify all areas of potential risk.

For a deeper dive on related topics, see:

- **The FTCs Revised com Disclosures Guide What Third Party Advertisers and Lead Generators Need to Know** - In 2013, the FTC issued new guidance for digital advertisers and marketers titled “.com Disclosures: How to Make Effective Disclosures in Digital Advertising.” It’s focus is on one of the most confusing yet important advertising issues confronting digital advertisers: disclosures. There are critical distinctions in this area that are important to understand for online and mobile advertisers, and there is a host of valuable design techniques and guidance of which every advertiser (and their lawyers) should be aware.
- **Navigating CFPB, FTC, and State Attorneys General Consumer Protection Investigations** - Advertising, marketing, and third party lead generation is increasingly being scrutinized by the CFPB, FTC, and state Attorneys General. All three are focused on compliance with restrictions on unfair, deceptive, or abusive practices, restrictions on telemarketing, consumer privacy, and other subject matter or medium specific statutes and regulations. Government enforcers are issuing civil investigative demands and subpoenas in the areas of education, small dollar lending, debt relief services, mortgage, credit monitoring, business opportunities, coaching and mentoring, and more. This presentation discusses what’s driving investigations, what to do when you’re the target versus a recipient of a third-party request, and ways to avoid scrutiny all together.
- **Lessons for Marketers from the CFPB and FTC Attack on For-Profit Education** - The CFPB and FTC have stepped-up scrutiny on for-profit education and related marketing. The opening round of federal enforcement actions started in February, when the CFPB filed a lawsuit against a large private sector school with accusations that it “used high-pressure tactics to push many students into expensive private student loans that were likely to end in default.” The CFPB is seeking restitution for consumers, a civil fine, and an injunction against the company. For-profit schools and marketers of all types can learn important lessons from this enforcement action.

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Given the high stakes of not complying with the substantive and procedural legal and regulatory requirements applicable to online advertising and marketing, compliance is a topic that deserves attention.