# FTC Consumer Protection Advisory: Recent Actions Hint at Increased Enforcement Activity under the FTC's New Consumer Protection Director

7/8/2009

The Federal Trade Commission (FTC) recently announced two major consumer protection enforcement actions: one involving a nationwide crackdown against scammers, and the other resulting in a $3.7 million penalty. These announcements come less than a month into the tenure of David Vladeck, the FTC's new Director of the Bureau of Consumer Protection. Director Vladeck was named to the position in April and began his new role in June, after a handful of consumer watchdog groups called for the FTC Chairman to appoint someone with "a track record as a genuine champion of consumer rights." If these early announcements are any indication, Director Vladeck may be on his way to fulfilling that wish.

## Nationwide Crackdown on Scammers Marketing Get-Rich-Quick Schemes

Consistent with the expectation that under the Obama Administration the FTC will increase its enforcement of consumer protection laws, Director Vladeck previously highlighted that economic fraud and advertising would be among his top priorities.

On July 1, 2009, Director Vladeck used his first press conference as head of the Bureau of Consumer Protection to announce a nationwide, joint federal/state law enforcement initiative against scammers attempting to take advantage of consumers made vulnerable by the economic downturn. Thus far, "Operation Short Change" includes 15 FTC cases, 44 law enforcement actions by the Department of Justice, and actions by at least 13 states and the District of Columbia. In its cases, the FTC alleged that defendants made false and unsubstantiated claims via the Internet, infomercials, telemarketing, robocalls, or print advertisements to market get-rich-quick and other similar schemes.

At the press conference, Director Vladeck noted that "[t]housands of people have been swindled out of millions of dollars by scammers who are exploiting the economic downturn." To increase consumer awareness of the potential risks, the FTC also produced a consumer education video on the subject.

## $3.7 Million Penalty for Violations of the FTC and CAN-SPAM Acts

On July 2, 2009, the FTC announced that the U.S. District Court for the Northern District of Illinois had ordered participants in an international Internet spam ring to relinquish $3.7 million in profits for making false or unsubstantiated claims about the health benefits of certain products in violation of the FTC Act and the CAN-SPAM Act. *FTC v. Spear Systems, Inc., et. al.* (Case. No. 07 C 5597) (N.D. Ill. Jan. 29, 2009)).

Originally filed in 2007, the case was brought by the FTC against eight U.S. and foreign Defendants. In 2008, the FTC settled with Spear Systems, Inc. and two individual Defendants. In 2009, the U.S. District Court entered an order against the remaining five Defendants: three corporations, 9151-1154 Quebec, Inc., 9064-9252 Quebec, Inc., and HBE, Inc., and two individuals, Xavier Ratelle and Abaragidan Gnanendran.

The FTC Act prohibits false and unsubstantiated representations in advertisements. The CAN-SPAM Act (Controlling the Assault of Non-Solicited Pornography And Marketing Act of 2003) set standards for the sending of commercial e-mail, including requirements that commercial e-mail contain an unsubscribe or opt-out mechanism, that the e-mail content be accurate (including subject lines and from lines), and that certain sending behavior requirements are followed.

The FTC alleged that Defendants used deceptive advertising to promote false or unsubstantiated claims for their weight-loss products made from the hoodia gordonii plant and “human growth hormone” (HGH) anti-aging products. Regarding the weight-loss products, the FTC charged that Defendants falsely represented that their products caused rapid and substantial weight loss, caused users to safely lose three or more pounds per week for multiple weeks, and caused permanent weight loss. Regarding the anti-aging products, the FTC charged that Defendants falsely represented that their products contained HGH, caused a meaningful increase in a consumer’s growth hormone levels, and/or reversed the aging process.

The FTC further alleged that Defendants used spammers to drive Internet traffic to Web sites selling their products, and that Defendants sent e-mail with deceptive subject lines “from” false addresses, and with no physical postal address or opt-out link as required.

It is also noteworthy that this case was the first in which the FTC invoked the US SAFE WEB Act (Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers Beyond Borders Act of 2005) during its investigation. The US SAFE WEB Act was enacted to enhance the FTC’s ability to exchange information with foreign government agencies in order to protect consumers from cross-border online issues such as spam, spyware, and Internet fraud and deception.

In addition to the monetary penalty, the court also issued a permanent injunction prohibiting Defendants from further violations of the CAN-SPAM Act. Additionally, the court ordered five years of compliance reporting and eight years of record keeping.

---

*If you have questions regarding any of these issues, please contact one of the attorneys listed below or any member of your Mintz Levin team.*

**Bruce D. Sokler**
(202) 434-7303
BDSokler@mintz.com

**Harvey Saferstein**
(310) 586-3203
HSaferstein@mintz.com

**Cynthia J. Larose**
(617) 348-1732
CJLarose@mintz.com

**Michele Floyd**
(650) 251-7723
MFloyd@mintz.com

**Robert G. Kidwell**
(202) 661-8752
RGKidwell@mintz.com

**Farrah Short**
(202) 585-3518
FShort@Mintz.com