

Client Alert

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FTC Targeting Deceptive Advertising of Mortgage Lead Generators

By Donald Lampe and Michael Raines

The Federal Trade Commission's (FTC) recent complaint against Intermundo Media, LLC (Intermundo) alleging deceptive marketing tactics under the FTC Act and Mortgage Acts and Practices – Advertising Rule (MAP Rule) re-emphasizes the ongoing need for mortgage lead generators and mortgage companies that use them to be cautious when advertising the terms and conditions of mortgage products.

The FTC previously issued warning letters to 20 companies, including lead generators, in November 2012. The letters advised companies that their advertisements may be violating the FTC Act or the Mortgage Acts and Practices – Advertising Rule (MAP Rule) by misrepresenting an affiliation with government agencies, offering unqualified low rates or monthly payments, suggesting that no fees or costs were associated with mortgage products or guaranteeing approval for mortgage products. The FTC urged these companies to review their advertisements to ensure compliance with the FTC Act and MAP Rule, but the FTC evidently did not bring enforcement actions against lead generators until earlier this year.

In September 2014, the FTC filed a [complaint](#) against Intermundo Media, LLC (Intermundo) alleging FTC Act and MAP Rule violations based on Intermundo's design and distribution of deceptive mortgage refinancing advertisements. According to the FTC, Intermundo placed online advertisements claiming that consumers could lower their mortgage payments and save up to \$2,000/year through refinancing. Intermundo's advertisements were allegedly based on a general statement issued by President Obama estimating the potential savings refinancing could have and not the terms of any specific mortgage refinancing offer that was actually available to consumers. The FTC also alleged that Intermundo advertised that consumers could refinance at specific, fixed-interest rates, but the products actually offered to consumers were at much higher rates or were in fact variable rate loans. Further, the FTC claimed that Intermundo's advertisements represented that refinancing was a free service with no hidden costs when the mortgage products ultimately offered to consumers actually carried significant closing costs. According to the FTC, Intermundo's advertisements also stated that offers were not subject to credit checks, which the FTC alleged was misleading consumers to believe the refinancing offers were pre-approved or not subject to the borrower's credit history.

Intermundo entered into a [settlement agreement](#) with the FTC requiring a civil penalty of \$500,000. The settlement also prohibited Intermundo from misrepresenting any term of a mortgage product, including the ability of any mortgage product to reduce payments or a consumer's likelihood of obtaining any particular mortgage product or term. Under the terms of the settlement, Intermundo was required to destroy all customer information obtained prior to the settlement and is prohibited from disclosing, using, or benefitting from such consumer information. Finally, the settlement also required that Intermundo submit a compliance report, submit to monitoring, and notify the FTC of corporate changes that may affect compliance with the settlement over the next 10 years.

The FTC filed a similar action against GoLoansOnline.com, Inc. (GoLoans), an online lead generator, in May 2014.

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The complaint alleged violations under the FTC Act and MAP Rule by, among other things, advertising fixed-rate mortgage loans that were in fact adjustable-rate mortgages. GoLoans' settlement with the FTC required GoLoans to pay a civil penalty of \$225,000, prohibited GoLoans from misrepresenting the terms of any mortgage product, and required GoLoans to destroy consumer data obtained prior to the settlement.

At a recent conference for lead generators, representatives of the FTC and CFPB discussed the heightened scrutiny of lead generator advertising. In connection with their cooperation under the Federal Consumer Protection Working Group, both agencies are enhancing their focus on Internet consumer fraud through deceptive advertising. The FTC clarified that it will not pursue deceptive marketing claims that are the result of simple mistakes. Rather, the FTC stated that it is interested in cases in which the company knew it was intentionally defrauding consumers.

To date, the CFPB has not announced any actions brought directly against lead generators, perhaps because of the agency's lack of direct jurisdiction over advertising media. This is not to say that the CFPB will not take action against financial services companies utilizing lead generators or placing advertising or promotional content on lead generator sites. The CFPB takes mortgage advertising seriously and, for example, recently reached a punitive settlement with a mortgage originator for allegedly deceptive advertising.

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