Hot Topics in Consumer Finance Law and FTC Military Consumer Resources

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DISCLAIMER

These are my views and do not necessarily reflect the views of the Federal Trade Commission or any individual Commissioner.
SAMPLE HOT TOPICS AND FTC MILITARY CONSUMER RESOURCES

• Deception in Education Marketing and Student Loan Debt Relief
• Deceptive and Unlawful Practices in Auto Financing and Leasing
• Credit Repair Scams and CROA
• FTC’s Credit Practices Rule Protections
• “Checkout” Payment Plans and Online-Mobile Financing Alternatives
• FTC Military Consumer Resources
DECEPTION IN EDUCATION MARKETING
AND STUDENT LOAN DEBT RELIEF

• Military and other consumers are targeted by marketers of education products, and for student loan debt relief
• Increased complaints in these areas, related to deceptive and unfair practices and other financial law issues
• FTC coordinates with DoD and U.S. Dept of Education
• Could involve ads in print, Internet, TV, social media, and sometimes telephone calls
• These are ongoing issues to watch for.
DECEPTION IN EDUCATION MARKETING

Education Marketing:
• Victory Media – FTC released an administrative complaint and proposed settlement last week; resolves allegations of misrepresentations, and failure to disclose adequately that some of its endorsements only promoted schools that paid for the promotions; alleged deceptive practices in violation of FTC Act
  • Reached servicemembers through its magazines (e.g., GI Jobs, Guide to Military Friendly Schools, and Military Spouse), web sites (e.g., militaryfriendly.com) and social media; offered an online “Matchmaker” tool that purported to search schools it deemed “military friendly”
  • Complaint alleged deceptive conduct with respect to the Matchmaker tool and specific articles, emails, and social media posts
  • Based on the complaint, the Matchmaker tool only included schools that paid the company - whether or not they were “military friendly”; it also endorsed schools in some articles, emails and social media discussing educational opportunities without disclosing adequately that, in many instances, the schools paid the company for the endorsements in those materials
  • The proposed settlement prohibits various misrepresentations regarding the scope of its Matchmaker search tool and about any paid promotional content, and requires disclosures in connection with its endorsements, about all material connections it has with the schools being promoted
• The proposed agreement is subject to public comment for 30 days, after which the Commission will decide whether to make the proposed consent order final.
DECEPTION IN EDUCATION MARKETING
VICTORY MEDIA

MAXIMIZE YOUR GI BILL MONEY WITH THE
#1 COLLEGE TOOL FOR VETERANS

G.I. JOBS

Visit the G.I. Jobs School Matchmaker today and take
the guesswork out of finding the perfect school.

GIJOBS.COM/SCHOOLS
DECEPTION IN EDUCATION MARKETING

- DeVry University – $100 million settlement entered in Fed. district court (C.D. Cal.); checks began going to consumers starting in July 2017.
  - FTC complaint alleged false or misleading claims, deceptive practices in violation of Section 5 of FTC Act
    - Offers claimed 90 percent of graduates actively seeking employment landed jobs in their field within 6 months of graduation
    - Also claimed graduates had 15 percent higher incomes 1 year after graduation on average than graduates of all other colleges or universities
  - Settlement of $100 million: $49.4 million to FTC for partial refunds to students and $50.6 million in debt relief (forgiveness of full balance of $30.35 million on private unpaid student loans to undergraduates from 2008-2015 and $20.25 million in student debts for tuition, books, lab fees).
DECEPTION IN EDUCATION MARKETING

• Two separate diploma mill settlements released in 2017: Capitol Network Distance Learning Programs and Stepping Stonez Development – complaints had alleged false claims of accreditation
  • Targeted military consumers, falsely claiming their online “high schools” were accredited and their diplomas would be accepted by employers, colleges and the armed forces
    • Capitol Network’s claims included that its programs follow DoD SCORM (Sharable Content Object Reference Model), web standards and specs for education technology - but the companies and programs are not SCORM-certified or SCORM-compliant
    • Stepping Stonez’s claims included that the military accepts their diplomas as valid high school equivalency credentials - but it does not and has rejected applicants on this basis
  • Complaints charged false or misleading practices in violation of Section 5 of FTC Act
  • Settlements ban defendants from marketing or selling any academic degree or certification program; also ban them from misrepresentations about any product or service; both settlements entered in Federal district court (D. Ariz.).
DECEPTION IN STUDENT LOAN DEBT RELIEF

Student loan debt relief:

• Major Federal-state crackdown on student loan debt relief scams announced Oct. 2017: Operation Game of Loans
• FTC and 11 states and D.C. – coordinated enforcement sweep to combat these issues; a total of 36 actions against dozens of defendants charged with taking over $95 million in illegal fees, from consumers struggling to make their next student loan payment
• FTC filed 5 new cases against 30 defendants, and in each obtained temporary restraining orders halting the scams and freezing defendants’ assets; sweep included 2 additional FTC cases against 11 other scammers, in which the Federal courts entered significant orders (summary judgment and stipulated preliminary injunction)
• Companies striving to capitalize on large student-loan borrowing population (over 42 million), with aggressive marketing tactics and deceptive or unfair practices for debt relief, including claiming to be affiliated with the government, promising to reduce or eliminate student loan debt, instructing consumers not to communicate with their loan servicers, claiming consumers were “pre-approved” or “pre-qualified” and pressuring them to sign up for programs on-the-spot, requiring steep advance fees, promising $0 monthly payments, or “We can solve your student loan problem. 100% guaranteed”
• In fact, the companies usually did nothing to meet their promises, and required illegal advance fees of up to $1,500
• FTC is continuing to work with U.S. Dept. of Education to heighten awareness about these schemes and ensure borrowers know to visit StudentAid.gov/repay, for information about repayment and forgiveness programs available at no cost.
DECEPTION IN STUDENT LOAN DEBT RELIEF

- Strategic Student Solutions is one case in the sweep – included military consumers
  - Fed. court (S.D. Fla.) entered a stipulated preliminary injunction and also froze defendants’ assets, halting the operation; the court also appointed a receiver to control the business, as FTC litigation continues.
  - FTC complaint alleges defendants took over $11 million from consumers, by falsely promising to reduce or eliminate their student loan debt (and offer nonexistent credit repair services, discussed further below); charged with deceptive practices in violation of FTC Act, Telemarketing Sales Rule violations, and other Fed law violations
  - This case involved significant information from military consumers adversely impacted by the scam, including an affidavit by a U.S. Army Major, attached to the FTC’s filing for the TRO (which was granted). This type of information is very important in cases challenging these practices.

- Watch for companies
  - Posing as affiliated with the Dept. of Education, Fed. government or loan servicers, in social media, phone calls or mail – especially using official looking seals
  - Sending text messages to borrowers offering to help with student loans
  - Seeking personal information that you use to access your financial aid application (your FSA ID); this information can be used to bypass your loan servicer and change your contact information
  - Requiring fees in advance and trying to charge you to access government programs that manage your student loans – you can deal directly with the government or your servicer for free
  - Claiming guaranteed results – only scammers promise fast loan forgiveness.
DECEPTIVE AND UNLAWFUL PRACTICES IN AUTO FINANCING AND LEASING

- Autos are generally the second largest financial transaction for consumers.
- Credit balances in auto area reached a record high in Q2 2017 – over $1.1 trillion, according to Experian.
- 60-day delinquency rates have been deteriorating (although 30-day delinquency rates have improved slightly).
- New car and used car credit maturities are on the increase: over 68 months (average for new car), over 60 months (average for used car).
- Elongated maturities are driven by increased car prices, and the quest for lower or more affordable monthly payments; average new car price was $34,442 in June 2017, according to Kelly Blue Book.
- Flip side: increased long-term cost.
- And the combination of increasing car prices, and extended financing maturities, can lead to negative equity: more consumers may be “upside down” when they look for another car.
- This is an area of ongoing concern. Be on the lookout for these issues, which can lead to deceptive practices, and potential violations of the Truth in Lending Act (TILA) (credit) or Consumer Leasing Act (CLA) (leases). The FTC has brought several cases against negative equity deception, and over twenty-five cases challenging deception in auto ads and sales in past few years; still a large focus.
- Auto complaints have been in the FTC’s Top Ten Complaints for many years (including for military).
DECEPTIVE AND UNLAWFUL PRACTICES IN AUTO FINANCING AND LEASING

• Sage Auto (Universal City Nissan and others) – $3.6 million settlement (C.D. Cal.) in 2017, for deceptive and unfair sales and financing practices, deceptive advertising and online reviews
  • 9 LA dealerships, holding and management companies, and most owners
  • Complaint charged deceptive and unfair practices in violation of the FTC Act; and violations of TILA and CLA for failing to clearly disclose required credit or lease information in ads
  • Charges include:
    • Deceptive or unlawful pressure tactics to coerce consumers into accepting another deal, after they already signed contracts and drove off the dealership lot
      • After consumers signed contracts, defendants falsely represented they must sign a new contract with different terms; told some consumers their contracts were cancelled and falsely represented that defendants could keep consumers’ down payments or trade-ins; told some consumers that they would be liable for legal actions, such as lawsuits, repossessions or criminal arrest for a stolen vehicle
    • Packed extra, unauthorized charges (add-ons or aftermarket products and services)
    • Enticed consumers - including financially distressed and non-English speaking consumers - to dealerships using misleading claims; print, radio, TV, Internet ads; claimed low prices, financing with low monthly payments or low down payments
    • Claimed consumers can finance the purchase of vehicles - but they were lease offers
    • Claimed defendants would pay off consumers’ trade-in vehicles - but consumers were responsible for paying off amounts owed on trade-ins (negative equity)
    • Used phony online reviews touting their dealerships and discrediting negative reviews about their unlawful practices
  • Settlement - consumer redress of $3.6 million; bars misrepresentations about advertising, add-on products, financing, and endorsements or testimonials; bars engaging in other unlawful conduct when a sale is cancelled – including failing to return any downpayment or trade in, or seeking legal actions unless the action is lawful and defendants intend to take action; bars violations of TILA and CLA.
DECEPTIVE AND UNLAWFUL PRACTICES IN AUTO FINANCING AND LEASING
PAY OFF YOUR TRADE – SAGE AUTO

Universal City Nissan
3550 Cahuenga Blvd. West | Los Angeles | CA 90068

What if you currently have a vehicle?

• We can pay off your trade-in even if you owe on a loan or lease.**
• You will have no payments until July 2016.
• You will receive a check for up to $9,800 to spend as you wish!*  

*Up to $9,800 factory cash back available on select models on approved credit. 1st payment due in July 2016 on approved tier 1 or 2 & 60 months or less through NMAC. Minimum loan amount finance offer of $4,000. **Negative equity may be added to new loan or lease balance. 0 Down. 0 Interest, 0 Payments for 90 day available on approved credit. *On select models.
DECEPTIVE AND UNLAWFUL PRACTICES IN AUTO FINANCING AND LEASING

- Auto sales, financing and leasing is an area of continuing FTC focus – particularly consumer complaints about deceptive or unfair practices.
- Important to carefully read through the entire contract before signing. If the terms are not clear, or you question your ability to afford the deal, walking away is an option.
  - It is a mistake to agree to trade-in a vehicle first, before finding out the value offered and considering the full cost of the car being considered for purchase or lease; negotiate all the terms.
  - Taking a much longer maturity can substantially increase cost, even if it lowers the monthly payments.
  - Check to ensure low monthly payments do not end with a huge balloon payment, in credit contracts.
  - Watch out for negative equity – adding it to the deal for another car can also greatly increase cost; consider paying down the prior financing first.
- Shop for financing or leasing, not just the car.
  - FTC Military Consumer Workshop in July 2017 discussed this problem, including in deployment context.
  - Wants vs. needs and how this can impact military consumers’ end results.
  - Consider all funding sources – military sources, banks, credit unions, and compare with the dealer’s offer; the dealer may “improve” an initial offer.
QUICK REVIEW OF UDAP ELEMENTS

• Unfair or deceptive acts or practices in or affecting commerce are unlawful

• Deception
  • Representation, omission or practice
  • That would be material to consumers, and
  • That would mislead consumers acting reasonably under the circumstances

• Unfairness
  • Act or practice that causes or is likely to cause substantial injury to consumers
  • Not reasonably avoidable by consumers, and
  • Not outweighed by benefits to consumers or competition.
QUICK UDAP CHECK-UP

• Deception
  • Which of the following is NOT required for deception:
    • A representation, omission or practice
    • Intent to violate the law
    • Materiality
    • Something that would mislead consumers acting reasonably under the circumstances

• Unfairness
  • Which of the following IS required for unfairness:
    • A consumer reported the problem to the FTC or CFPB
    • A practice that has the tendency to mislead consumers acting reasonably under the circumstances
    • A practice that has no benefits to competition
    • An act or practice that causes or is likely to cause substantial injury.
FTC Mobile-Friendly Videos Help Consumers Shop for Cars

FOR YOUR INFORMATION

July 8, 2016

TAGS: Automobiles | Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing | Credit and Finance

New or used, cars are big-ticket items. Four new 60-second videos from the Federal Trade Commission can help buyers shop with confidence. The mobile-friendly videos, in English and Spanish, offer important information for every stage of the car-buying process.

Buying a Used Car

Getting the facts about a used car before you buy can help avoid trouble down the road:

• Spotting Deceptive Car Ads: warns that some car ads promise low payments, no interest, or zero down, but may come with a catch. Researching a dealer’s reputation before visiting the dealership can help consumers steer clear of problems.
CREDIT REPAIR SCAMS AND CROA

• The Credit Repair Organizations Act (CROA) prohibits untrue or misleading representations; requires affirmative disclosures in the offer or sale of “credit repair” services
  – Bars credit repair services from demanding advance payment
  – Requires contacts to be in writing
  – Provides consumers with contract cancellation rights

• CROA bars credit repair organizations from
  – Misrepresenting the ability of such organizations to remove negative items from credit reports and
  – Seeking to have the consumer create a new consumer identity by obtaining a new EIN and thus a new credit file in which the prior debt will not appear

• A credit repair offer is probably a scam if it
  – Insists on payment before any work is done on the consumer’s behalf
  – Tells the consumer to avoid contact with the credit reporting company directly
  – Tells the consumer to dispute accurate information in a credit report or give false information in a credit application

• Credit repair offers have been on the upswing, including with student loan and other debt relief offers
  – FTC’s recent Strategic Student Solutions case (discussed above) includes credit repair issues – charges of basically non-existent credit repair services; many other FTC credit repair cases
    • Defendants claimed their programs improve consumers’ FICO/credit scores or credit history
    • In some instances, their telemarketers also offered credit repair services
    • Defendants were charged with violating CROA by
      – Making false representations that consumers’ credit will be improved as a result of defendants’ program, and
      – Charging or receiving money or other valuable consideration for performance of credit repair services that defendants agreed to perform before such services were fully performed
    • Defendants are now subject to a preliminary injunction, and asset freeze; a receiver controls their business for the remainder of the litigation.
FTC’s CREDIT PRACTICES RULE PROTECTIONS

• The FTC’s Credit Practices Rule
  – primary requirements
    • prohibits creditors for using four contract provisions determined to be unfair
    • also requires creditors to inform cosigners about their potential liability
    • prohibits some late charges (pyramiding of late fees)
  – applies to creditors under FTC jurisdiction
  – applies to consumer credit transactions – but not those involving the purchase of real estate
• Four prohibited contract provisions
  – confessions of judgment
  – waivers of exemption
  – wage assignments
  – security interests in household goods (non-purchase money)
• Cosigner rule – If the creditor requires a cosigner, in order to grant credit to an applicant, the creditor must inform each cosigner of their potential liability, using the following notice:
Notice to Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for debt.
FTC’s CREDIT PRACTICES RULE COSIGNER PROTECTIONS

• Be cautious before cosigning – substantial liability could occur, and impact on your credit report

• A "cosigner" is different from a co-buyer, co-borrower, or co-applicant. A cosigner receives no tangible benefit from the agreement, but undertakes liability as a favor to the borrower who would not otherwise qualify for credit.

• A co-buyer (one who shares in the purchased goods), a co-borrower (one who shares in the loan proceeds), or a co-applicant or co-cardholder (a person who is authorized to use a credit card account) do receive benefits. They are not cosigners under the Rule.
“CHECKOUT FINANCING” AND ONLINE-MOBILE PAYMENT PLANS

• Increasing offers of loans or payment plans, at “checkout” in mobile or online retail purchases; report problems to FTC at www.ftc.gov
  – After you select items for purchase, payment options may appear online: credit cards, debit cards, prepaid cards, and “add a loan” or “add a payment plan” to cart
  – Separately may receive pitches for retail or alternative payment plans that invite applications to websites

• Some issues to consider:
  – What is the payment plan being offered
    • Open-end credit
    • Closed-end credit - personal loans or installment credit plans
    • Consumer lease
    • Rent-to-own (RTO) – offered for furniture, appliances, electronics, name brand or designer clothes, other items
  – How costly is this plan
    • Review the Disclosures if provided, and Terms and Conditions
      – Decide if this plan works with your budget
      – Examine it carefully – before, not after, clicking to agree
  – What legal rights apply to the plan – each of the above categories has separate legal protections
    • But RTOs are not covered by Federal disclosure law
    • RTOs still could involve UDAPs under the FTC Act or state law, or could be subject to state rental-purchase agreement requirements
  – What if you have a dispute about your purchase
    • Is there a timeframe for disputing the purchase
    • Who do you contact
    • Can you cancel the purchase or contract without further cost during a particular time period
    • What is the return policy for the items purchased
FTC MILITARY CONSUMER RESOURCES

- New FTC Military Task Force
  - New Task Force Web Page
    www.ftc.gov/policy/advocacy/military-task-force
    Lists FTC cases, many activities, frequently updated resource
- FTC Economic Liberty Task Force
  www.ftc.gov/policy/advocacy/economic-liberty
- FTC Military Consumer Workshops
  - Protecting Military Consumers: A Common Ground Conference - Los Angeles – September 2017
    www.ftc.gov/news-events/events-calendar/military-consumer-workshop
- FTC Military Consumer Webpage
  - Updated regularly; tips, many free materials
    www.militaryconsumer.gov/
- File complaints and obtain diverse free FTC materials at www.ftc.gov.
QUESTIONS?