DECEPTIVE FINANCIAL PRACTICES, MILITARY LENDING, AND THE FTC'S RECENT INITIATIVES

Carole Reynolds  
Senior Attorney  
FTC Division of Financial Practices

ABA LAMP CLE PROGRAM  
October 27, 2016

DISCLAIMER

These are my views and do not necessarily reflect the views of the Federal Trade Commission or any individual Commissioner
TOPICS

- FTC Financial Practices Authority
- Deceptive and Unfair Practices
- Military Lending
- Electronic Fund Transfer Act
  - Compulsory Use
  - Authorization – Pre-authorized Transfers
- FTC Resources

FTC’S FINANCIAL PRACTICES AUTHORITY

- Enforces a wide variety of consumer laws and regulations, including
  - FTC Act - prohibits unfair and deceptive acts or practices
  - Truth in Lending Act
  - Consumer Leasing Act
  - Electronic Fund Transfer Act
  - Equal Credit Opportunity Act
  - Fair Debt Collection Practices Act
  - Fair Credit Reporting Act
  - Military Lending Act and Department of Defense Rule
  - FTC Rules – such as Holder Rule, Credit Practices Rule
**FTC’S FINANCIAL PRACTICES AUTHORITY**

- Jurisdiction over most non-bank entities – includes persons, partnerships, corporations and others such as
  - Auto dealers
  - Finance companies and other lenders
  - Advertisers, ad agencies, lead generators
  - Student lending and marketing companies
  - Debt collectors and phantom debt collectors

**FTC AND AUTO DEALERS**

- Dodd-Frank Wall Street Reform and Consumer Protection Act made the FTC the primary federal enforcement agency for many auto dealers
- Under Dodd-Frank, the FTC has
  - Exclusive enforcement jurisdiction over many dealers – generally dealers that routinely assign financing to unaffiliated third parties (franchise dealers)
  - Concurrent jurisdiction with CFPB over “buy here pay here” dealers and non-bank lenders
  - Rulemaking authority in the auto finance area (via the Administrative Procedure Act)
FTC ENFORCEMENT - REMEDIES

- FTC has diverse remedies available
  - Depends on facts and case
  - Can include, for example
    - Cease and desist orders (administrative actions) – 20 years duration
    - Equitable relief – rescission, consumer redress, injunctions (federal court)
    - Frozen assets and sale of assets – bank accounts, asset accounts, condos, planes, boats, cars
    - Bans from business
    - Civil penalties – for example, order violations, various rule violations
      - Up to $40,000 per violation (as of Aug. 2016)
      - Every ad, every medium, every day can be a separate violation
    - Can include liability for companies and individuals

FTC’S UDAP AUTHORITY

- FTC Act, Section 5 (15 U.S.C. § 45)
  - Unfair or deceptive acts or practices in or affecting commerce are unlawful
  - Deception
    - Representation, omission or practice, and
    - That would be material to consumers, and
    - That would mislead consumers acting reasonably under the circumstances
  - Unfairness
    - Act or practice causing substantial injury, and
    - Not reasonably avoidable by consumers, and
    - Not outweighed by benefits to consumers or competition
DECEPTIVE REPRESENTATIONS OR CONDUCT

- Do NOT need to establish actual reliance or consumer injury for a violation to exist
- Conduct is deceptive even if it only has a tendency or capacity to deceive a significant minority of consumers

DECEPTIVE AND UNFAIR AUTO FINANCE AND LEASE PRACTICES

- Operation Ruse Control – deceptive auto-related ads for financing and leasing and other unlawful practices
  - 252 enforcement actions, with 6 new FTC cases
  - FTC and DOJ, state AGs, DMVs, and other consumer protection agencies
  - FTC cases - deceptive advertising (such as, claiming 0 down, 0 payments, 0 interest), deceptive add-on fees, deceptive auto loan modifications
- Planet Hyundai/Planet Nissan – deceptive ads for financing and leasing; Vegas car dealers, military rebates
  - Offered low prices and payments – complaint charges were not generally available to consumers; discounts required military active duty, college grad, and trade-in as valued prior owner
  - “Purchase not a lease” – complaint charges it was a lease
  - “$0 down” – complaint charges not $0 down, consumers must turn in a qualifying vehicle with trade-in value of at least $2,500
- Operation Steer Clear – 10 cases for deceptive credit/lease ads; auto dealers across nation; offered low payments or low upfront payments and hid balloon payments or second payment streams or several thousand dollars due upfront
- Sage (9 LA dealerships and their owners) – in litigation; charges include
  - Yo Yos – First FTC yo yo case; deceptive or other unlawful pressure tactics to coerce consumers who signed contracts and drove off dealership lots, to accept a different deal
  - Includes financially distressed consumers and non-English speaking consumers
  - Add-ons – packing extra, unauthorized charges into deals that consumers financed
  - Offering low payments and prices when they are leases
  - Dealers threatened lawsuits, repos, or criminal arrest for stolen vehicles
  - Phony online reviews posted by reviewers without disclosure of ties to dealership
OPERATION STEER CLEAR – PARAMOUNT KIA
LOW PAYMENTS WITH HIDDEN SECOND PAYMENT STREAM

Ashworth College - settled
- Complaint charged misrepresentations to students that they'd get training/credentials to switch careers or get new job and that the credits would transfer to other schools
- Many programs failed to meet basic education requirements by state licensing boards, no supporting data that credits would transfer; claims often not true
- Didn't accept student loans and students must pay tuition; targeted military and accepted GI Bill payments, pitched ads to servicemembers and families
- Programs costs hundreds and thousands of dollars per student
- $11 million settlement with injunctive relief, judgment suspended based on institution's inability to pay

DeVry University – in litigation
- Complaint alleges ads deceived consumers about likelihood students would find jobs in their fields of study, and earn more than those graduating with bachelor's degrees from other colleges or universities
-Defs. claimed 90% of its graduates actively seeking employment got jobs in their field within 6 months of graduation
-Defs. claimed its graduates had 15% higher incomes one year after graduation on average than grads of all other colleges or universities
- Ad targets include military (servicemembers and veterans)
- Complaint alleges claims are false or unsubstantiated

STUDENT LENDING AND MARKETING
REPRESENTATIONS OR CONDUCT
DECEPTIVE REPRESENTATIONS IN COLLECTIONS AND PHANTOM LOANS

- Numerous FTC cases addressing debt collection and deceptive practices, and cases against collectors of phantom loan debts including
  - Broadway Global
    - Consumers either didn't owe defendants or didn't owe at all
    - Over 2.7 million calls to at least 600,000 different phone numbers nationwide, fraudulently collected over $5.2 million from consumers
    - Pretended to be US law enforcement such as “Officer Mike Johnson” or fake government agencies like “Federal Crime Unit of the Department of Justice”
    - Threatened to take away children, have consumer arrested, inform employer and relatives - if consumers didn't pay
    - Collected information about consumers and used it for collections – We just saw you walk into your office building (and then listed the consumer's correct office address)
    - Pressured consumer to use a prepaid debit card, other debit or credit card, or Western Union to pay
    - FTC worked with DOJ and Secret Service
    - Case resulted in court halting operation, banning defendants from debt collection, individual def. pled guilty to mail and wire fraud and was sentenced to prison, obtained over $4.3 million judgment (suspended upon payment of $608,500 due to inability to pay); FTC provided redress checks to consumers of approximately $600,000

DoD AMENDED MILITARY LENDING RULE

- DoD Amended Rule issued July 2015; DoD interpretative guidance issued August 2016
- Generally compliance by Oct. 3, 2016; credit cards compliance by Oct. 3, 2017
- Covers active-duty servicemembers (includes active duty Guard and Reserves) and covered dependents
- Broadly expands coverage to most credit – generally follows Truth in Lending Act coverage with some exceptions
  - MLA and Rule exclude residential mortgages; vehicle and personal property purchases on credit secured by that item; a few others
  - 36% rate cap for Military Annual Percentage Rate
  - Includes most fees, like finance charges, credit insurance premiums or fees, add-on products, other fees, some exceptions
  - Limits numerous credit practices, like
    - Arbitration, and other mandatory waivers of consumer protection laws
    - Mandatory allotments
    - Prepayment penalties
    - Requires disclosures
    - Civil liability
    - Administrative liability
- FTC and several other Federal agencies are on DoD Interagency Task Force for MLA and Rule
ELECTRONIC FUND TRANSFER ACT AND REGULATION E  
PREAUTHORIZED TRANSFERS

- EFTA and Regulation E – preauthorized transfers from a consumer’s account
  - Definition: Preauthorized transfers are EFTs authorized to recur in advance at substantially regular intervals
  - 1. No compulsory use of preauthorized transfers as a condition of credit
  - 2. Need consumer’s assent, and advance clear notice of terms for preauthorized transfers
    - Need a writing signed or similarly authenticated by the consumer (e.g., can be electronic)
    - Authorization must be readily identifiable, and terms must be clear and readily understandable, to the consumer; authorization must evidence consumer’s identity and assent
  - Consumer must get a copy of the authorization
  - Company must have authorization before initiating preauthorized EFTs, and must provide copy to consumer
  - Violations of EFTA/Reg E are cited in numerous FTC cases, including for short-term lending (payday loans), Internet marketing and selling products/services, Internet lending

ELECTRONIC FUND TRANSFER ACT AND REGULATION E  
PREAUTHORIZED TRANSFERS

- Preauthorized transfers are an area for potential fraud and issues
  - Can lead to erroneous number or amount of debits
  - Can drain consumer's account quickly
  - Can lead to claims of unauthorized use (EFTA/Reg E)
- Extensive FTC cases on this topic
  - Installment lending (AMG, CWB)
  - Internet transactions (Iworks)
  - Collections
  - Free trials, with buried information about ongoing automatic debits if you don't cancel, in fine print or hyperlinked pages distant from bold claims, or not disclosed at all – can involve deceptive practices and EFTA/Reg E violation
FTC COMPLAINT PROCESS AND FTC RESOURCES

- Online complaint forms at www.ftc.gov
- Annual FTC DATA BOOK summarizing complaints
  - On website – includes list of military complaints, by service branch
  - Top military complaints include
    - ID theft
    - Imposter scams
    - Debt collection
    - Education
    - Auto
- Debt collection rights and information available at www.ftc.gov and at www.military.consumer.gov
- Identity Theft resources on FTC website at www.IdentityTheft.gov