Warning Letters & Related Enforcement Approaches

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APEC Privacy Enforcement Workshop
July 2013
The Policy Toolkit
Enforcement Pyramid

- Criminal Sanctions
- Bans, license suspension and license revocation
- Cease-and-desist orders
- Civil penalties
- Warning letters
- Persuasion
Federal and State Agencies Crack Down on Mortgage Modification and Foreclosure Rescue Scams

FTC, State Enforcers Sue Scammers, Warn Others; Announce Education Campaign Designed to Reach Borrowers Directly

The Federal Trade Commission today announced a crackdown on fraud and deception by mortgage modification and home foreclosure rescue companies. The FTC is seeking to halt the proliferation of these mortgage relief scams – which target distressed and vulnerable consumers who are delinquent or facing foreclosure – through increased law enforcement, consumer outreach, and close coordination with federal, state, and non-profit partners.

At a joint press conference today, Treasury Secretary Timothy Geithner, Attorney General Eric Holder, Department of Housing and Urban Development Secretary Shaun Donovan, and, on behalf of state enforcers, Illinois Attorney General Lisa Madigan, joined FTC Chairman Jon Leibowitz in warning consumers about these types of scams and in encouraging consumers to seek out free, HUD-approved housing counselors for help with their mortgages. The FTC and Attorney General Madigan also announced enforcement actions and initiatives.

“Scammers are taking advantage of people in a difficult situation – people who are trying to modify their home mortgages or those who are trying to avoid foreclosure. We’re enforcing the law against these scam artists; we’re putting others on notice that unless they change their ways, they’re next; and we’re working with other government agencies, non-profits, and mortgage companies to reach out to our neighbors in distress with the details of how to get help,” said Chairman Leibowitz.

The FTC announced five law enforcement actions against operations using deceptive tactics to market their mortgage modification and home foreclosure relief services, including firms that marketed their “services” by giving the false impression they were affiliated with the federal government. This brings to 11 the number of loan modification and mortgage foreclosure rescue scams brought by the FTC in the last year. More than 20 state law enforcers also have taken actions against companies engaged in these types of deception, including 22 brought by Illinois Attorney General Madigan.

The FTC also announced today that it has sent warning letters to 71 companies who may be deceptively marketing mortgage loan modification or foreclosure rescue services. The FTC identified these companies through a nationwide review of Internet and other advertisements and warned these companies that their ads may violate federal law. State law enforcers also have sent warning letters to companies that are potentially engaging in such illegal practices, including more than 60 warning letters sent by Attorney General Madigan.

Finally, the FTC joined forces with a wide array of government, non-profit and mortgage industry members to launch a new consumer education campaign to help those in financial trouble avoid becoming the victims of a loan modification or foreclosure rescue scam.
Warning Letters

FTC Warns Data Broker Operations of Possible Privacy Violations

Letters Issued As Part of Global Privacy Protection Effort

The Federal Trade Commission sent letters to ten data broker companies warning that their practices could violate the Fair Credit Reporting Act (FCRA) after a test-shopping operation by the FTC indicated the companies were willing to sell consumer information without abiding by FCRA requirements.

The test-shopping operation was part of a worldwide privacy protection effort. FTC staff members posed as individuals or representatives of companies seeking information about consumers to make decisions related to their creditworthiness, eligibility for insurance or suitability for employment.

Data broker companies that collect, distribute or sell this information are considered consumer reporting agencies under the FCRA, meaning they must reasonably verify the identities of their customers and make sure that these customers comply with the law. They also need to ensure that the privacy of sensitive consumer report information is protected.

The FTC issued the letters this week in conjunction with an international privacy practice transparency sweep conducted by the Global Privacy Enforcement Network (GPEN). The network includes privacy enforcement authorities and supports cooperation in cross-border cases where there is a concern about laws protecting privacy. Several GPEN members from countries around the world have taken steps this week to ensure that companies meet their obligations related to the privacy of consumers' personal information.

The ten companies receiving the warning letters from the FTC include:
- Two companies that appeared to offer “pre-screened” lists of consumers for use in making loan offers of credit: ConsumerBase and ResponseMakers;
- Two companies that appeared to offer consumer information for use in making insurance decisions: Brokers Data and US Data Corporation; and
- Six companies that appeared to offer consumer information for employment purposes: Creditcheck.com, 411Nannies, U.S. Information Search, People Now, Case Breakers, and USA People Search.

The letters are not an official notice by the Commission that any of the named companies is subject to the requirements of the FCRA, nor do the letters lay out any formal complaints against the companies. Instead, they serve to remind the companies to evaluate their practices to the companies. Instead, they serve to remind the companies to evaluate their practices to the truthfulness of their representations and to the accuracy and completeness of their reports.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online Complaint Assistant or call 1-877-FTC-HELP (1-877-382-4357).

United States of America
Federal Trade Commission
Washington, D.C. 20580

May 2, 2013

Via Federal Express
Signature Requested

To: Alfred Diberadario
103 Arbor Place Dr.
Columbia, SC 29229-7522

Dear Mr. Diberadario:

This letter concerns recent test-shopping contacts with your company by non-attorney staff of the Federal Trade Commission (“FTC”), a federal agency that enforces consumer privacy laws, including the Fair Credit Reporting Act (“FCRA”). These test-shopping contacts indicated that your company may be selling consumer information for use in determining eligibility for insurance, which may violate the FCRA. We want to make you aware of the requirements of this law so that you can ensure that your practices comply with it.

If you assemble or evaluate information on consumers and provide it to third parties so that they can establish consumers’ eligibility for insurance or adjust their insurance premiums, you are a consumer reporting agency (“CRA”) that is required to comply with the FCRA. 

If you place a disclaimer on your website indicating that your data must not be used for insurance or other FCRA-covered purposes, you may still be a CRA. Be sure to explain the purposes for which you will and will not sell information, you should also provide consumers with information about the importance of not selling your data to third parties.

If you are a CRA, the FCRA requires you to take several steps to ensure the accuracy and confidentiality of the consumer reports that you provide. For example, you must take reasonable steps to ensure that the information you provide is accurate and that you provide a copy of the report to the person to whom you provide a copy of the consumer report.

In the event that you are a CRA, the FCRA requires you to take several steps to ensure that the information you provide is accurate and that you provide a copy of the report to the person to whom you provide a copy of the consumer report. For example, you must inform each person to whom you provide a copy of the consumer report of the right to review the report and to request that the information be corrected.

If you have any questions about this letter, please contact the Federal Trade Commission at 1-877-FTC-HELP (1-877-382-4357).
Warning Letters

For Release: 04/03/2013

FTC Warns Data Brokers That Provide Tenant Rental Histories They May Be Subject to Fair Credit Reporting Act

The Federal Trade Commission has warned the operators of six websites that share information about consumers' rental histories with landlords that they may be subject to the requirements of the Fair Credit Reporting Act (FCRA).

The letters inform the recipients that if they meet certain criteria, namely collecting information on tenants and their rental history and providing that information to landlords so they can make judgments about renting to those tenants, they are considered credit reporting agencies and are subject to certain legal requirements.

Among the requirements cited in the letter are the companies' obligation to protect the privacy of tenants whose information they collect, including ensuring that those requesting information about tenants inform the information they collect. The company in the letter reminds the companies of their obligation to ensure that the information they provide is accurate, to provide consumers with a copy of the information that they have on request, and to allow consumers to dispute information they believe to be inaccurate. The letters also note that the companies must notify landlords of their requirements, if accurate, to use the data to deny housing to a tenant, and to notify the sources of their information of the requirement that they provide accurate information.

Companies receiving the letters are The BlueChip Group LLC (www.donotrent.com), M & R Rental Properties (www.bachapartmentforsale.com), and Tenancy Bureau Inc. (www.tenancybureau.org).

The letters state that the FTC has made no determination whether the companies have violated the law but encourages them to review their business practices to ensure that they comply with the law. The FTC acknowledges the assistance of the Privacy Rights Clearinghouse in this matter.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spotting, stop, and avoid them. To file a complaint, visit the FTC’s online Complaint Assistant or call 1-877-FTC-HELP. The FTC also enforces complaints into Consumer Sentinel, a secure, online database available to more than 2,000 civil and criminal law enforcement agencies in the U.S. The FTC’s website provides free information on a variety of consumer topics, including scams. The FTC’s website provides free information on a variety of consumer topics.
COPPA Update

For Release: 05/15/2013

FTC Sends Educational Letters to Businesses to Help Them Prepare for COPPA Update

More Than 90 Letters Issued to App Developers in Advance of July 1 Implementation Date

As part of an ongoing effort to help businesses comply with the requirements of the updated Children’s Online Privacy Protection Rule, the Federal Trade Commission sent educational letters to more than 90 businesses that may be affected by the changes.

The letters went to companies both in the U.S. and abroad whose online services, including mobile applications, appear to collect personal information from children under 13, as defined by mobile applications. The letters do not reflect an official evaluation of the companies’ practices under the revised rule. While the letters do not reflect an official evaluation of the companies’ practices under the revised rule, they are designed to help businesses come into compliance with the rule’s requirements when they go into effect July 1.

The FTC adopted final amendments to the COPPA Rule in December 2012. Under the revised rule, the definition of “personal information” has been expanded to include photos, videos and images that are captured by electronic devices and recorded by users of a mobile application. The rule also requires businesses to obtain parental consent before collecting personal information from a child under 13.

The rule applies not only to information collected by the apps themselves, but also to any information collected by third parties like advertising networks within the apps.

The FTC issued one letter to domestic companies that may be collecting images or sounds of children and another letter to domestic companies that may be collecting persistent identifiers of children. In addition, the agency issued similar versions of both letters to foreign companies whose content is directed to children in the U.S.

The FTC recently issued updated frequently asked questions about the revised COPPA rule, and staff maintain an e-mail hotline, COPPAHotLine@ftc.gov, where companies can ask questions about how to comply with the revised rule.

United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Privacy and Identity Protection

Rino X:

NAME, TITLE
COMPANY
ADDRESS
CITY

May 15, 2013

One or more of your mobile apps may be directed to children, and may collect a persistent identifier, such as a mobile device identifier or IP address. Important changes to the Children’s Online Privacy Protection Rule take effect on July 1, 2013. The staff of the Federal Trade Commission, the federal agency that implements and enforces the Children’s Online Privacy Protection Act (COPPA), wants to help ensure you are aware of those changes and your compliance responsibilities.

Please note that we have yet evaluated your apps or your company’s practices to determine if they comply with COPPA as it is now — or as it will be starting July 1, 2013. We are sending you this letter to both alert you to the upcoming COPPA Rule changes and to encourage you to review your apps, your policies, and your procedures for compliance.

The revised COPPA Rule requires developers of apps that are directed to children under 13 — or that knowingly collect personal information from children under 13 — to post accurate privacy policies, provide notice, and obtain verifiable parental consent before collecting, using, or disclosing any “personal information” collected from children.

Until now, “personal information” has included categories such as a first and last name, a date of birth, a physical address, an e-mail address, telephone number, and Social Security number. But as of July 1, 2013, the definition expands. “Personal information” will include persistent identifiers, such as cookies, IP addresses and device IDs, that can recognize users over time and across different websites or online services.

To collect a persistent identifier covered by the Rule after July 1 — even if you don’t collect a name, e-mail address, or any other information — you must provide notice and obtain parental consent. To learn more about the revised COPPA rule and how to comply with the requirements, please access the Commission’s FAQs at: https://www.ftc.gov/opa/2013/05/coppa-update-

[End of letter]
Thank you!

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The views expressed here are the presenter’s, and are not necessarily those of the U.S. Federal Trade Commission or any of its Commissioners.