

Staying Current with Consumer Protection: Practical Lessons from Recent Enforcement Actions

MODERATOR:

- Jonathan Pompan, Partner, Venable LLP

SPEAKERS:

- Roberto Anguizola, Assistant Director, Division of Marketing Practices, FTC, Bureau of Consumer Protection, Federal Trade Commission
- Alexandra Megaris, Attorney, Venable LLP
- David Morgan, Chief Revenue Officer, PerformLine
- Natalie Williams, Assistant Litigation Deputy, Office of Enforcement, Consumer Financial Protection Bureau

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This presentation does not represent any undertaking to keep recipients advised as to all or any relevant legal developments.



Introductions

- Roberto Anguizola, Assistant Director, Division of Marketing Practices, FTC



- Natalie Williams, Assistant Litigation Deputy, Office of Enforcement, CFPB



- David Morgan, Chief Revenue Officer, Performline



- Alexandra Megaris, Esq.



FTC and CFPB Differences and Similarities



Federal Trade Commission Bureau of Consumer Protection

FTC Bureau of Consumer x

www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection

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PROTECTING AMERICA'S CONSUMERS

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Bureaus & Offices

BUREAU OF COMPETITION

BUREAU OF CONSUMER PROTECTION

Our Divisions

About the Bureau of Consumer Protection

Organization Chart

Careers in the Bureau of Consumer Protection

Summer Law Clerk Program

BUREAU OF ECONOMICS

OFFICE OF CONGRESSIONAL RELATIONS

OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

OFFICE OF INTERNATIONAL AFFAIRS

OFFICE OF THE EXECUTIVE DIRECTOR

OFFICE OF THE GENERAL COUNSEL

OFFICE OF POLICY PLANNING

REGIONAL OFFICES

OFFICE OF ADMINISTRATIVE LAW JUDGES

OFFICE OF PUBLIC AFFAIRS

Bureau of Consumer Protection

TAGS: Bureau of Consumer Protection

FEATURED

File a Complaint

ROBOCALLS

Fighting Scams and Fraud

As the nation's consumer protection agency, the FTC takes complaints about businesses that don't make good on their promises or cheat people out of money. We share these complaints with our law enforcement partners and use them to investigate fraud and eliminate unfair business practices. Each year, the FTC also releases a report that provides information about the number and type of complaints we receive.

Robocalls

People are getting more robocalls than ever. Technology is the reason. Companies are using auto-dialers that can send out thousands of phone calls every minute for an incredibly low cost. So what's the FTC doing to stop these illegal robocallers? And what can you do to limit the number of robocalls you receive? Find out.

LATEST NEWS [More News >](#)

AUG 8, 2014
FTC Mails Refund Checks Totalling Approximately \$800,000 to Consumers
Victimized by Alleged Mortgage Relief Scams

AUG 8, 2014
FTC Announces Agenda for Upcoming Big Data Workshop

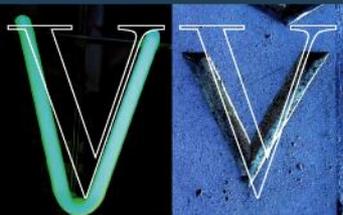
AUG 7, 2014
FTC Sues Online 'Yellow Pages' Operation for

LATEST BLOG POSTS [More Posts >](#)

APR 21, 2014
Getting around town in the share economy

MAR 27, 2014
A good deal

JAN 2, 2014
A New Year's message for 2014

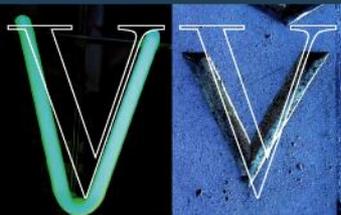


FTC and Lead Generation

The screenshot shows the FTC website search results for the query "lead generation". The page features the FTC logo and navigation menu at the top. The search results are displayed in a white box with a blue background. The search bar contains the text "lead generation" and a "Search" button. Below the search bar, there are several search results, each with a title and a brief description. The results include:

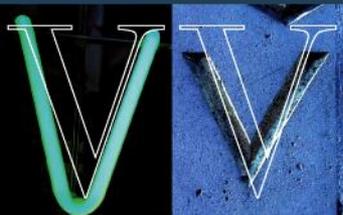
- Mortgage Lead Generator will Pay \$225,000 to Settle FTC Charges That It Deceptively Advertised Mortgage Rates**: must be truthful." The FTC charged that GoLoansOnline.com, a Houston, Texas-based lead generator ...
- FTC Reaches Settlement With Home Security Company that Called Millions of Consumers on the National Do Not Call Registry**: generators. The lead generators claimed that those consumers had given VMS permission to contact them about ... that the lead generators were engaged in illegal telemarketing practices. For example, many consumers contacted ... to receive a robo-call. Despite mounting complaints, VMS continued buying leads from the same lead generators ...
- FTC Charges Operation with Selling Bogus Debt Relief Services**: website ads, promotional videos and marketing companies that acted as lead generators, according ...
- FTC to Examine Effects of Big Data on Low Income and Underserved Consumers at September Workshop**: and mortar retailers, lead generators, and service providers may use big data in the following ways: ...
- Big Data: A Tool for Inclusion or Exclusion?**: institutions, online and brick and mortar retailers, lead generators, and service providers may use big data ...

On the right side of the search results, there are filters for "Sort by" (Title, Relevancy), "Filter by site" (Federal Trade Commission (5)), "Filter by date" (2014, September 2014 (1), May 2014 (1), March 2014 (1), June 2014 (1), April 2014 (1)), and "Filter by content type" (Press Release (4), Public Event (1)).



Consumer Financial Protection Bureau

The screenshot shows the website www.consumerfinance.gov. At the top, there is a navigation menu with links: HOME, INSIDE THE CFPB, GET ASSISTANCE, PARTICIPATE, LAW & REGULATION, and SUBMIT A COMPLAINT. Below the navigation is a main banner with the heading "Everyone has a story" and a sub-heading "Did you know that your stories and complaints help inform the work we do to create a fairer marketplace?". To the right of the text is a graphic of the United States map composed of blue squares. Below the banner, there are three columns of content. The left column features an article titled "Consumer advisory: Virtual currencies and what you should know about them" with a sub-heading "While virtual currencies offer the potential for innovation, a lot of big issues have yet to be resolved. You may have heard about virtual currencies like Bitcoin, XRP, and Dogecoin. But what are they and what risks should you be aware of? Check out our consumer advisory to learn more about virtual currencies." The middle column features an article titled "Alerting colleges about secret banking contracts" dated AUG 6. The right column features an article titled "Your Money, Your Goals: Financial empowerment tools for social services" dated JUL 30. Below the articles, there is a "GET ASSISTANCE" section with three buttons: "SUBMIT A COMPLAINT", "TELL YOUR STORY", and "PAY FOR COLLEGE".



CFPB and Lead Generation

The screenshot shows a web browser window with the address bar containing the search URL: `search.consumerfinance.gov/search?utf8=✓&input-form=advanced&affiliate=cfpb&query=&query-quote=lead+generation&query-or=&query-i`. The page title is "lead generation" - C x. The browser's address bar also shows navigation icons (back, forward, refresh, home) and search, star, and menu icons.

The CFPB logo is visible at the top left of the page, with the text "Consumer Financial Protection Bureau" and "An official website of the United States Government" to its right. A phone number "(855) 411-2372" is also present.

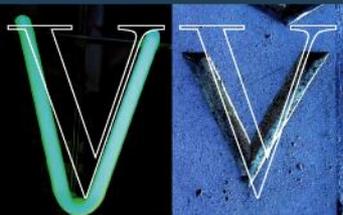
The search bar contains the text "lead generation" and a green search button. Below the search bar, it indicates "6 results" and a link to "Advanced Search".

On the left side of the search results, there is a navigation menu with the following items: "Everything", "Ask CFPB", "Blog", "Newsroom", and "Reports".

The search results include the following items:

- CFPB > Consumer Financial Protection Bureau**
www.consumerfinance.gov
Our vision is a consumer finance market place that works for American consumers, responsible providers, and the economy as a whole.
- PDF: CFPB Education Examination Procedures Loan**
www.consumerfinance.gov/f/201212_cfpb_exam-procedures_educatio...
procedures, in conjunction with the compliance management system review **procedures**, to conduct an education loan examination. ... **Lead Generation**
- Hollister K. Petraeus Before the Senate Committee on ...**
www.consumerfinance.gov/newsroom/hollister-k-petraeus-before-t...
... joined Kentucky Attorney General Jack Conway in filing suit against a company called Quin Street that had a number of **lead-generation** websites. ...
- Remarks by Hollister K. Petraeus at the Department of ...**
www.consumerfinance.gov/newsroom/remarks-by-hollister-k-petrae...
We've worked with state Attorneys General to tackle deceptive college **lead-generation** websites, ...
- Hollister K. Petraeus before the U.S. Senate Committee on ...**
www.consumerfinance.gov/newsroom/hollister-k-petraeus-before-t...
... and there have been concerns about **lead-generation** websites with URLs or names that use "GI Bill" or "Military" in their titles in order to market ...
- PDF: CFPB Education Examination Procedures Loan**
www.consumerfinance.gov/f/201212_cfpb_educationloanexamprocedu...
Examination Procedures Loan ... Lead Generation. Examiners should engage in several steps to assess potential violations of law in connection with

The Bing logo is visible at the bottom right of the search results area.



FTC and CFPB Coordination

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CONSUMER FINANCIAL PROTECTION BUREAU AND

THE FEDERAL TRADE COMMISSION

I. Parties

The Consumer Financial Protection Bureau ("CFPB") and the Federal Trade Commission ("FTC") (collectively "the parties"), recognizing that effective cooperation is critical to protect consumers, prevent duplication of efforts, provide consistency and ensure a vibrant marketplace for Consumer Financial Products or Services, hereby enter into this Memorandum of Understanding ("MOU").

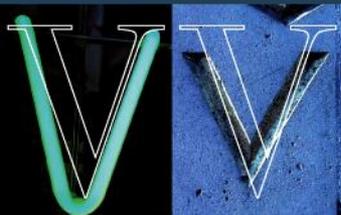
The CFPB was established by the Consumer Financial Protection Act of 2010 ("CFP Act"), 12 U.S.C. § 5481 *et seq.* The CFPB is an independent agency with the authority to implement and enforce Federal consumer financial law for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that the markets for consumer financial products and services are fair, transparent, and competitive.

The Federal Trade Commission ("FTC") was established by the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 41 *et seq.* It exercises its authority under the FTC Act and other laws to prevent business practices that are anticompetitive, deceptive, or unfair to consumers, and to enhance informed consumer choice and public understanding of the competitive process. The Commission's jurisdiction in the financial marketplace extends to financial products and services offered or provided to consumers by persons other than banks, thrifts, federal credit unions, bona fide non-profit organizations, and others exempt from the FTC's jurisdiction under the FTC Act. For purposes of this MOU, FTC includes FTC staff.

II. Definitions

For purposes of this Memorandum of Understanding:

- A. "Confidential Supervisory Information" shall mean any information the CFPB collects through its supervision of an MOU Covered Person.
- B. "Consumer Financial Product or Service" shall have the same meaning as under Section 1002(5) of the CFP Act.
- C. "Consumer Sentinel Network" shall mean the secure and searchable Internet-

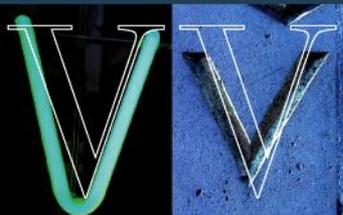


Federal Consumer Protection Working Group

- Goal: Coordination of efforts to regulate and combat consumer fraud.
- Focus: consumer fraud, including **payday lending and other high pressure telemarketing or Internet scams, business opportunity schemes, for-profit schools, and third-party payment processors**
- Attorney General Eric Holder said that the partnership “will strengthen our collective efforts, enhance civil and criminal enforcement of consumer fraud and educate the public in an effort to prevent consumers from being victimized in the first place.”
- Members:
 - Department of Justice
 - Federal Trade Commission
 - Consumer Financial Protection Bureau
 - Department of Treasury
 - Federal Banking Agencies
 - State Attorneys General



Challenges – Investigations and Enforcement



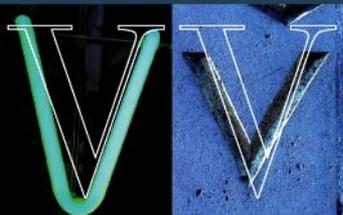
Common Triggers of Investigations

- Violation of Federal Consumer Protection Law
- Risk to consumers
- Consumer complaints to the FTC, CFPB and third-parties
- Government agency referrals and complaints
- Whistleblower complaint (e.g., employee or ex-employee)
- Media coverage
- Targeted market
- Low history of supervision
(pre-CFPB to present)

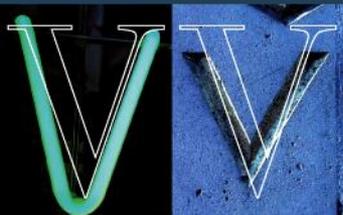


Compliance Checklist

- ❑ Develop a Gov't Investigation Response Plan
 - ❑ Investigatory Demands
 - ❑ Examination Requests
 - ❑ Enforcement Actions
 - ❑ Due Diligence Requests from Vendors/Customers
- ❑ Comply with all applicable laws
- ❑ Develop written policies, procedures, and practices
- ❑ Due diligence, reporting, and monitoring of internal practices and third-party relationships
- ❑ Review all advertising and marketing for compliance
 - ❑ Claim substantiation
 - ❑ Avoid deceptive disclosures
 - ❑ Use of testimonials
 - ❑ Digital advertising
 - ❑ Social Media
 - ❑ Telemarketing (e.g., scripts, dialing)
 - ❑ Market specific laws and guidance
- ❑ Consumer facing terms and conditions (arbitration?)
- ❑ Payment Terms and Portals
- ❑ Review and revise B2B contracts to take in account regulatory environment.
 - ❑ Reporting and Monitoring (activities, compliance and complaints)
 - ❑ Regulatory examinations
 - ❑ Notice of third party subpoenas, examinations and investigations
 - ❑ Indemnity
 - ❑ Representations and Warranties
- ❑ Implement a complaint handling process
- ❑ Update website terms and conditions, privacy disclosure, and implementation of legal obligations.
- ❑ Don't ignore market specific laws and regulations.
- ❑ State laws and regulations



What's on the Horizon?



FTC Telemarketing Sales Rule Review

The screenshot shows a web browser window with the URL www.ftc.gov/news-events/press-releases/2014/07/ftc-seeks-public-comment-its-telemarketing-sales-rule. The page header includes the FTC logo, the text "PROTECTING AMERICA'S CONSUMERS", and a search bar. A navigation menu contains links for "ABOUT THE FTC", "NEWS & EVENTS", "ENFORCEMENT", "POLICY", "TIPS & ADVICE", and "I WOULD LIKE TO...".

The main content area features the following text:

Home » News & Events » Press Releases » FTC Seeks Public Comment on Its Telemarketing Sales Rule

FTC Seeks Public Comment on Its Telemarketing Sales Rule

Comments Must be Submitted by October 14, 2014

FOR RELEASE
July 31, 2014

TAGS: do not call | Bureau of Consumer Protection | Consumer Protection | Telemarketing

As part of its ongoing review of the rules and regulations it enforces, the Federal Trade Commission is seeking public comment on its Telemarketing Sales Rule (TSR).

As detailed in the Federal Register notice announcing the rule review, the TSR has been updated regularly since 2000, leading to amendments in 2003 to create the national Do Not Call (DNC) Registry for telemarketers, as well as in 2008 and 2010, when the rule was amended to more specifically address pre-recorded telemarketing calls and debt collection services, respectively. In addition, last year, the Commission proposed amendments to the TSR to ban telemarketers from using certain payment methods often used in defrauding consumers.

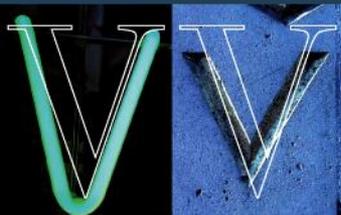
The Commission relies on public comments in considering whether and how to amend and improve the TSR and other rules. In the notice, the FTC explains specific changes in the marketplace and legal landscape since the TSR was last amended, focusing on: 1) the use and sharing of pre-acquired account information in telemarketing, and 2) issues raised by the use of negative-option and free-trial offers in combination with general media ads designed to generate inbound telemarketing calls from consumers. In addition, the notice seeks suggestions for specific changes to the rule that will reduce DNC enforcement obstacles encountered when trying to obtain call records from telemarketers.

The notice includes a comprehensive list of questions regarding the TSR, posed in soliciting public comment. Examples include the following:

- Has the Rule provision related to "express informed consent" been effective in preventing the use of pre-acquired information for unauthorized billing of consumers' accounts? If so, why? If not, why not, and how has the prohibition been inadequate?
- Should the Commission consider a prohibition on any use of pre-acquired account information in external upsells? If so, why? If not, why not, and what costs and burdens would such a requirement imposed on businesses and consumers?
- Should telemarketers and sellers who receive inbound calls from consumers in response to general media ads for a negative-option product or service receive the same disclosures currently required for outbound telemarketing calls? Why or why not?

Background of the TSR. The FTC's TSR became law in 1995 and applies to virtually all "telemarketing" activities, both in the United States and sales calls from abroad to U.S. citizens. With several notable

On the right side of the page, there is an "EVENTS CALENDAR" button and sections for "Related Actions" (16 CFR Part 310: Telemarketing Sales Rule; Federal Register Notice: Review Request for Public Comments as Part of the FTC's Systematic Regulatory Review), "For Consumers" (The Telemarketing Sales Rule; National Do Not Call Registry; Stopping unwanted sales calls), "For Businesses" (Blog: TSR: Time for Some Rethinking; Telemarketing), and "Media Resources" (Our Media Resources library provides one-stop collections of materials on numerous issues in which the FTC has been actively engaged. These pages are especially useful for members of the media).



FTC and Robocalling

FTC Zapping Rachel | Federal Register | www.ftc.gov/zapping-rachel

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PROTECTING AMERICA'S CONSUMERS

100 YEARS

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Zapping Rachel

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DEFCON V. RACHEL THE ROBOCALLER
A CONTEST TO COMBAT ROBOCALLS

Zapping Rachel

Help the FTC zap robocallers by participating in these three contests at DEF CON 22 in Las Vegas, NV, August 7-10, 2014.

- Creator:** Build a robocall honeypot by Friday, 8/8, at noon PDT
- Attacker:** Identify a honeypot's security vulnerabilities by Saturday, 8/9, at noon PDT
- Detective:** Analyze data from an existing robocall honeypot by Saturday, 8/9, at 7 pm PDT

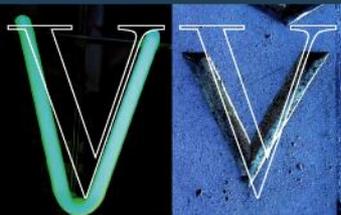
\$17,000 in Total Cash Prizes

CONTEST DETAILS

"Rachel from Cardholder Services" is one of the most notorious — and most annoying — robocallers ever. The FTC is challenging the tech-savvy public to help us zap Rachel and her robocall buddies by creating the next-generation robocall honeypot at DEF CON 22. A robocall honeypot is an information system designed to attract robocallers, which can help researchers and investigators understand and combat illegal calls.

Contestants may participate in one, two, or all three phases:

- 1. CREATOR**
The first phase is a honeypot building contest. Contestants will build honeypots that can identify inaccurate information in the calls they receive, such as spoofed caller IDs. The honeypots should also catalog calls and identify those that are likely robocalls.
Deadline: noon PDT on August 8, 2014
- 2. ATTACKER**
The second phase is a honeypot circumvention challenge. Contestants will develop methods to prevent honeypots from collecting accurate data about calls that they place to the honeypot —



Examples of CFPB Focus on Advertisements in Specific Markets



Student debt
repayment assistant

Know your options

Know
Before You Owe
student loans



**Servicemembers
and veterans**

Plan your future and
protect your finances



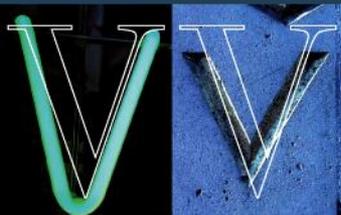
**Older
Americans**

Navigate financial
challenges safely



Is there room for self regulation?

The screenshot shows a web browser window with the URL www.asrcreviews.org/2013/01/advertising-watchdog-expands-inquires-to-include-lead-generation-companies-review-of-telemarketing-scripts/. The page features the ASRC logo at the top, which includes the text "ASRC" and "A service of the advertising industry and Council of Better Business Bureaus". Below the logo is a navigation menu with links: Home, Self-Regulation: Support & Leadership, Events, Press Releases, Online Archive, ASRC Procedures, Contact Us, CARU, ERSP, NAD, NARB, and The Accountability Program. A breadcrumb trail reads: Home » ASRC Press Releases » Advertising Watchdog Expands Inquires to Include Lead-Generation Companies, Review of Telemarketing Scripts. The main heading of the article is "Advertising Watchdog Expands Inquires to Include Lead-Generation Companies, Review of Telemarketing Scripts". The article text begins with: "New York, NY – Jan. 28, 2013 – The Electronic Retailing Self-Regulation Program (ERSP) today reported on its first full year of activity under an expanded program to review advertising claims made for lead-generation businesses, as well as the review of telemarketing scripts and calls." It continues: "ERSP is an investigative unit of the advertising industry's system of self-regulation. It is administered by the Council of Better Business Bureaus and funded by the Electronic Retailing Association." and "ERSP, founded in 2004, has earned the respect of the direct-response industry through its expeditious, fair and even-handed review of core truth-and-accuracy advertising claims made by electronic retailers." The final sentence is: "In 2011, companies in the lead-generation marketplace approached ERSP to develop a self-regulatory". On the right side of the page, there is a "Follow Us!" section with icons for Facebook, Twitter, RSS, and YouTube. Below that is an "ASRC Digests" section with the text: "Click below to download ASRC digests, excerpts from industry-specific cases." and two categories: "Cosmetics" and "Dietary", each with a small icon.



Thank you – Panelists and Audience.

For additional information about lead generation legal and regulatory issues visit:

www.ftc.gov

www.consumerfinance.gov

www.performline.com

* * *

For an index of articles and presentations, see:

www.venable.com/leads/publications.

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