

# Regulatory Enforcement Actions in Advertising Practices: 2020 Update

## Recent CFPB, FTC, and Prudential Banking Enforcement Actions

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## Agenda

- Overview
- Recent CFPB Enforcement Actions
- Recent FTC Enforcement Actions
- Recent FTC Litigation Actions
- Impact of Coronavirus (COVID-19) on Enforcement
- Best Practices for Navigating 2020

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## Overview

- Notwithstanding the current pandemic, regulators are continuing their oversight
  - CFPB
    - Still moving cases forward: litigation and investigations
    - Still conducting examinations
  - FTC
    - Still moving investigations forward
  - Prudential Banking Regulators (OCC, FDIC, FRB, NCUA)
    - Still moving litigation
    - Still conducting examinations
  - All of the above are continuing regulatory work started or planned prior to COVID-19 and issuing COVID-19-specific guidance and regulations as necessary

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## Recent CFPB Enforcement Actions

- Cottonwood Financial, Ltd. (Cash Store)
  - April 2020 consent order or settlement where the CFPB alleged the following:
    - Small dollar lender violated the CFPA (UDAAP), FCRA, and TILA stemming from marketing, servicing, and collecting on high-interest payday, auto-title, and consumer installment loans
    - The company made deceptive representations in TV ads and telemarketing calls by promoting 50% off all its loan fees but then failed to ultimately provide a discount
  - Outcome:
    - Monetary: The company agreed to pay more than \$285,000 in restitution and \$1.1 million in civil money penalties
    - Injunctive: CFPB's standard injunctive and a prohibition against certain collection practices

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## Recent CFPB Enforcement Actions

- Upstate Law Group LLC and various individuals
  - February 20, 2020 lawsuit filed with the South Carolina AG and Arkansas AG for allegedly violating the CFPA (UDAAP) and Substantial Assistance Provision related to marketing and offering high-interest credit to disabled veterans, among others
  - Notable that this case stems from a case the Bureau settled in 2019

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## Recent CFPB Enforcement Actions

- Think Finance Entities
  - On February 5, 2020, the CFPB settled a lawsuit filed in November 2017 alleging the following:
    - Company entities operated as a common enterprise with affiliated Tribal Lenders to offer and collect installment loans and payday loans online
      - If you are going to help a company that advertises that it can lend in any state, make sure that is accurate pursuant to the CFPB's continued regulation through enforcement initiative related to Tribal Lending
    - Company made deceptive demands and unlawfully took money from consumers' bank accounts that the consumers did not owe because the loans were either partially or completely void under state law
    - Company provided Substantial Assistance to two debt collection companies
  - Outcome:
    - Monetary: Company and each entity has to pay a \$1 civil money penalty; bankruptcy estate likely will have more than \$39 million for consumer redress
    - Injunctive: Company cannot directly nor through others offer or collect on loans that violate state law in the states where it operated

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## Recent CFPB Enforcement Actions

- Monster Loans, Lend Tech Loans, and Student-Loan Debt Relief
  - January 9, 2020 lawsuit filed against various companies for allegedly violating the FCRA to obtain consumer-report information to be used to offer mortgage loans when providing information to student debt-relief company marketing
  - Also alleges CFPA (UDAAP) and TSR violations by misrepresenting services, interest rate reduction, and credit score improved
  - Litigation ongoing in U.S.D.C. for C.D. Cal.

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## Recent FTC Enforcement Actions

- Ponte Investments
  - April 17, 2020, Complaint filed to stop its owner and president for violating FTCA Section 5 (UDAP)
  - Allegations:
    - Defendants, d/b/a SBA Loan Program, falsely claim to be an approved lender for the CARES Act PPP loans
    - Calling small businesses directly and making misrepresentations on its website to solicit PPP loan applications (or likely the information within it)
  - Litigation ongoing in the U.S.D.C. for RI / FTC seeks standard monetary and injunctive relief
- SLAC, Inc.
  - March 30, 2020, settlement with 3 student loan debt relief companies and their owner related to advertising, marketing, and sales practices (false promises to lower or eliminate student loans in return for an illegal upfront fee and failure to disclose positive BBB reviews were paid customers)
  - Outcome:
    - Monetary: Turn over \$470,000 in assets with a \$23.9 million suspended judgment
    - Injunctive: Ban against debt relief and TSR fencing-in language, plus other standard FTC compliance requirements
  - Judge in U.S.D.C. for C.D. Cal has submitted order, but has suspended taking any action for 60 days related to COVID-19 pandemic

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## Recent FTC Enforcement Actions

- BoostMyScore
  - March 9, 2020, settlement with credit repair company and its owner
  - Allegations:
    - Misled consumers by promising to “drastically and immediately” improve credit scores by guaranteeing customers that they could “piggyback” on other consumers’ good credit in order to inflate their own credit score and get a mortgage, in exchange for an illegal upfront fee (UDAP, CROA, and TSR)
  - Outcome:
    - Monetary: Turnover of \$65K with a \$6.6 million suspended judgment
    - Injunctive: TSR advance fee, sale of tradeline, telemarketing, and claims restrictions, plus standard compliance provisions
- LendEDU
  - February 5, 2020, settlement with operators of a lead generation website that compares student loans and other financial products
  - Allegations:
    - Misled consumers into believing that they provided objective information when they offered higher rankings and ratings to companies that paid them
  - Administrative settlement that would require the company to pay \$350,000 and injunctive relief

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## Recent FTC Enforcement Actions

- Grand Teton Professionals
  - January 17, 2020, settlement with credit repair companies from June 2019 Complaint
  - Allegations:
    - Falsely claimed to substantially improve consumers' credit scores by removing all negative items and "hard" credit scores while also charging unlawful upfront fees
  - Outcome:
    - Monetary: \$14 million suspended judgment upon payment by various parties of approx. \$3.5 million
    - Injunctive: Permanently banned from operating or promoting any credit repair service and standard FTC other relief and compliance reporting
- Consumer Defense, LLC
  - December 2019 granting of summary judgment where FTC alleged the following:
    - Debt relief companies falsely claimed to make mortgages more affordable to financially distressed homeowners, charged illegal upfront fees, and told consumers not to pay their mortgages or communicate with their lenders
  - Ordered:
    - Monetary: Judgment of \$18.5 million with assets turned over and liquidated
    - Injunctive: Ban from debt relief products and services, fencing-in requirements, and FTC standard other provisions and compliance reporting

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## Recent FTC Litigation Actions

- FleetCor Technologies
  - Allegations: Among other things, that the company charged consumers hundreds of millions of dollars in hidden fees on fuel cards after promising to help consumers save on fuel costs, failed to post customer payments, and waited to charge fees for many months to obfuscate the consumer seeing the charges
  - Filed in December 2019, ongoing in U.S.D.C. for the Northern District of Georgia
- Lending Club
  - Allegations: Falsely promised consumers loans with no hidden fees, but actually deducted hidden upfront fees from the loans
    - The FTC amended its complaint in November 2018 to add additional details regarding the harm to consumers
  - Filed in April 2018, ongoing in U.S.D.C. for the Northern District of California

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## Prudential Bank Regulators Updates

- OCC – Wells Fargo
  - Ongoing OCC administrative litigation following the 2016 revelations that employees opened up fake accounts in order to meet unrealistic sales goals
  - January 2020, OCC announced settlements with 3 senior executives, including former Chairman and CEO John Stumpf, which included a \$17.5 million fine and a lifetime ban from the banking industry
  - OCC issued notice of charges (administrative complaint) against five additional senior executives, including the former General Counsel, alleging a failure to adequately perform their duties and responsibilities
- FDIC
  - February 2020, requested input regarding potential revisions to its sign and advertising rules to reflect the continued evolution of deposit-taking via physical branch, digital, and mobile banking channels
  - April 16, announcement to temporarily postpone efforts to modernize the sign and business requirements

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## Impact of Coronavirus (COVID-19) on Enforcement

- **Not stopping, but priorities may shift accordingly**
  - Paper-based requests are continuing – e.g., CIDs, subpoenas
  - Litigation is continuing
  - Some courts have granted stays or delays, but others are allowing anything that can go forward on the documents or with modified procedures (e.g., video depositions) to continue
  - May see a focus on offerings to healthcare workers, elderly, and servicemembers
- **Advertising during the COVID-19 Pandemic**
  - On March 9, 2020, FTC and FDA issue joint warning letters to 7 companies for allegedly selling unapproved products that they claim treat coronavirus
  - State Attorneys General Offices, including New York, Missouri, and California, have issued warnings to individuals and companies for COVID-19-related scams
  - States have issued warnings and are taking action related to false representations related to prevention, testing, treatment, cures, and vaccinations
  - Potential for some to become criminal cases due to sensitivity surrounding the pandemic
- **Payment Processing during the COVID-19 Pandemic**
  - Processors, ISOs, and Acquiring Banks should pay extra attention to processing payments for online merchants that misrepresent COVID-19-related products, test kits, treatments, cures, vaccinations, access to CARES Act funding (PPP or other), or other, related unlawful activity

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## Best Practices for Navigating 2020

- Recognize and adjust accordingly to the COVID-19 pandemic and its impact on everyone
  - Monitor all regulatory updates and publications for allowable changes – e.g., prepaid card and compulsory use, mortgage and payments / appraisals / closings, and student loan payments being deferred
- Review all advertising if any terms change in relation to the COVID-19 pandemic
  - Consider updating with a temporary COVID-19 clause
- Regardless of COVID-19, review all advertising to make sure it matches your company's current terms & conditions / terms of service
  - If you are not actively doing something that had been part of last year's practices (or any time in the past), consider removing that information from your T&C/ T&S
- Continue to monitor your lead generation network and affiliate marketing practices – you may be liable for whatever is published to get the consumer into the business or user experience flow
- Ensure all disclosures for consumer financial products and services are easily readable to consumers (and in compliance with relevant laws)
- Continue monitoring and responding to consumer complaints

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## Questions



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