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Self-Regulation and the Lead Generation Market

LeadsCon Las Vegas 2015
Mirage Resort & Casino
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***In recent years there has been
increasing attention given to
Lead Generation Advertising and
Marketing....***



Laws and Regulations

- FTC Act Section 5 (UDAP)
- CFPA – UDAAP
- Telemarketing Sales Rule
- FTC and CFPB Guidance
- State UDAP Laws
- Specific Laws
 - Title IV/HEA
 - RESPA
 - TILA
 - State Laws re Mortgage, Lending, Insurance, etc.



Education...

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End of the Beginning
July 31, 2012 - 10:00am
By Paul Fain

WASHINGTON — Sen. Tom Harkin's two-year investigation of for-profit...

'GI Bill' Site Called Misleading Closed Settlement
By Carol O'Grady - Jan 27

For-Profit Colleges Get Scathing Indictment In Senate Report
By Chris Kirkhart

The Opinion Pages
WORLD U.S. INT. AFFAIRS BUSINESS TECHNOLOGY SCIENCE HEALTH SPORTS OPINION

Closer Scrutiny of For-Profit Schools
Published August 2, 2012

The last several weeks have not been particularly restful for the lucrative for-profit education industry.

False Promises
Published July 12, 2012

It has long been clear that an oily subgroup of for-profit schools were doing very well for themselves by recruiting students who had no real chance of graduating, pocketing their federal financial aid and leaving the students with worthless credentials — or none at all — and piling debt.

Senate committee report blasts for-profit colleges
Published July 30, 2012 | Associated Press

A Senate Democratic committee report says for-profit colleges place revenues above education and charge students high tuition and excessive loan rates. It says that top officials running the schools enrich themselves.

The report found students often leave these schools after four months, deeply in debt from loans and unable to find a job.

The report said veterans are especially vulnerable to encountering these problems, since for-profit colleges receive the largest share of military educational benefit programs.

Eight of the top 10 recipients of GI bill money since the Sept. 11, 2001 attacks are for-profit education companies. The report said reaching an enrollment quota was the highest priority for recruiters.

Student performance was found to be poor. In 2008-2009, an estimated 54 percent left without a degree or certificate.

RUBY SPARKS NOW PLAYING



Mortgage Lending...

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ABOUT THE FTC | NEWS & EVENTS | ENFORCEMENT | POLICY | TIPS & ADVICE

News & Events » Press Releases » Mortgage Lead Generator Will Pay \$500,000 to Settle FTC Charges That It Deceptively Advertised

Mortgage Lead Generator Will Pay \$500,000 to Settle FTC Charges That It Deceptively Advertised Mortgage Refinancing

According to FTC, Defendant Failed to Disclose Fees, and Worked to Avoid Penalties

FOR RELEASE

September 12, 2014

TAGS: Bureau of Consumer Protection | Consumer Protection | Enforcement | Mortgage Lending

An Internet-based operation that finds potential borrowers for mortgage companies will pay a \$500,000 civil penalty to settle Federal Trade Commission charges that it deceived consumers about the terms of the mortgages.

"An ad that says you can refinance your mortgage before you sign on the dotted line," said Jessica Rich, Director of the Bureau of Consumer Protection, "is a deceptive practice because consumers need to understand that federal law requires that mortgage rates be locked at the time the mortgage is originated. If the rates change, the borrower will have to pay more for their mortgage."

The FTC charged that the Colorado-based Internet-based operation designed and distributed the deceptive refinancing ads. When consumers clicked on the ads, they were sent to a website where they ultimately passed on to providers of mortgage refinancing.

Delta Prime Refinance made deceptive and unfair claims in its ads that consumers could reduce their payments if they refinanced, and how easy it would be for them to refinance. The company also claimed there were no hidden fees, and that the interest rates were available when they were not.

The complaint charges Delta Prime Refinance with violating the FTC's Unfair and Deceptive Practices Advertising Rule, or "MAP" Rule.

Under the terms of the settlement, in addition to the civil penalty, the defendant must:

cfpb Consumer Financial Protection Bureau

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HOME > NEWSROOM > CFPB ORDERS AMERISAVE TO PAY \$19.3 MILLION FOR BAIT-AND-SWITCH MORTGAGE LENDING

AUG 12 2014

CFPB Orders Amerisave To Pay \$19.3 Million For Bait-And-Switch Mortgage Lending

Patrick Markert to Pay Additional \$1.5 Million for Deceiving Consumers

Today, the Consumer Financial Protection Bureau (CFPB) has ordered Amerisave Mortgage Corporation, its affiliate, Novo Appraisal Services, and the owner of both companies, Patrick Markert, for their bait-and-switch mortgage-lending scheme that harmed tens of thousands of consumers. The Bureau found that Amerisave lured consumers by offering low interest rates, locked them in with costly up-front fees, failed to disclose the true cost of the mortgages, and then illegally overcharged them for affiliated "third-party" services. Amerisave and Novo will provide \$14.8 million in refunds to harmed consumers and pay a \$19.3 million civil penalty. Patrick Markert, as an individual, will pay an additional \$1.5 million civil penalty.

Consumers were misled by deceptive advertising, trapped them with costly up-front fees, and illegally overcharged them for services from an undisclosed third-party. "By the time consumers could have refinanced, the low rates were too good to be true, they had already lost hundreds of dollars to Amerisave. Today's action puts an end to this bait-and-switch scheme and holds Patrick Markert accountable for his illegal actions."

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ABOUT THE FTC | NEWS & EVENTS | ENFORCEMENT | POLICY | TIPS & ADVICE

NEWS & EVENTS » PRESS RELEASES » MORTGAGE LEAD GENERATOR WILL PAY \$500,000 TO SETTLE FTC CHARGES THAT IT DECEPTIVELY ADVERTISED

Mortgage Lead Generator will Pay \$225,000 to Settle FTC Charges That It Deceptively Advertised Mortgage Rates

Offered Low-Interest-Rate Mortgages as "Fixed," when Rates Were Adjustable and Could Increase

FOR RELEASE

May 8, 2014

TAGS: Deceptive Lending | Finance | Housing | Interest Rates | Real Estate and Mortgages | Bureau of Consumer Protection | Consumer Protection | Credit and Finance | Debt Collection

An online operation in the business of finding potential borrowers for mortgage companies will pay a \$225,000 civil penalty to settle Federal Trade Commission charges that it deceived consumers about the terms of the mortgages.

"Buying a home is one of the most important financial decisions a consumer can make," said Jessica Rich, Director of the FTC's Bureau of Consumer Protection. "When companies deceive consumers about the true cost of the mortgages they offer, and consumers take on a mortgage they can't afford, the harm can last a long time. The FTC's message is clear: Mortgage advertising must be truthful."

The FTC charged that Delta Loan Online, a Houston, Texas-based lead generator that operates several websites that advertise mortgages, advertised low interest rate loans as fixed-rate mortgages, when in fact they were adjustable-rate mortgages that could become more expensive for borrowers over time. The company also allegedly failed to include important disclosures, such as the annual percentage rate, amount of downpayment, and repayment terms that figure into the advertised payment amounts and interest rate. According to the FTC's complaint, ads appearing on the company's website said:

Low FHA Fixed Rates 2.25%
Low Rates. Free Quotes. No Hidden Costs!

and

Find Your Best Rate
Fixed Rates as Low as

2.25%



Small Dollar Lending...



Consumer Financial Protection Bureau



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HOME > NEWSROOM > CFPB SUES ONLINE PAYDAY LENDER FOR CASH-GRAB SCAM

SEP 17 2014

CFPB Sues Online Payday Lender for Cash-Grab Scam

The Hydra Group Uses Phony Payday Loans to Illegally Access Consumer Bank Accounts

WASHINGTON, D.C. – Today, the Consumer Financial Protection Bureau (CFPB) announced its action to halt the operations of an online payday lender, the Hydra Group, which it believes is running an illegal cash-grab scam. The lawsuit alleges that the Hydra Group uses information bought from online lead generators to access consumers' checking accounts to illegally deposit payday loans and withdraw fees without consent. The Hydra Group then uses falsified loan documents to claim that the consumers had agreed to the phony online payday loans. At the request of the CFPB, a U.S. District Court Judge has temporarily ordered a halt to the operation and frozen its assets. The lawsuit also seeks to return the ill-gotten gains to consumers and levy a fine on the company.

"The Hydra Group has been running a brazen and illegal cash-grab scam, taking money from consumers' bank accounts without their consent," said CFPB Director Richard Cordray. "The utter disregard for the law shown by the Hydra Group and the men controlling it is shocking, and we are taking decisive action to prevent any more consumers from being harmed."

The complaint against the Hydra Group can be found at:
http://files.consumerfinance.gov/f/201409_cfpb_complaint_hydra-group.pdf

The CFPB's lawsuit names Richard F. Moseley, Sr., Richard F. Moseley, Jr., and

ABOUT THE FTC | NEWS & EVENTS | ENFORCEMENT | POLICY | TIPS & ADVICE

News & Events » Press Releases » FTC Action Halts Payday Loan Scheme That Bilked Tens of Millions From Consumers By Trapping Them Into Loans They Never Authorized

FTC Action Halts Payday Loan Scheme That Bilked Tens of Millions From Consumers By Trapping Them Into Supposed "Loans" They Never Authorized

FOR RELEASE
September 17, 2014

TAGS: Bureau of Consumer Protection | Consumer Protection | Credit and Loans | Debt Collection | Consumer Privacy

At the Federal Trade Commission's request, a U.S. district court in Missouri has temporarily halted an online payday lending scheme that allegedly bilked consumers out of tens of millions of dollars by trapping them into loans they never authorized and then using the supposed "loans" as a pretext to take money from their bank accounts.

The court imposed a temporary restraining order that appoints a receiver to take over the operation. The court order gives the FTC and the receiver immediate access to the companies' premises and documents, and freezes their assets.

"These defendants bought consumers' personal information, made unauthorized payday loans, and then helped themselves to consumers' bank accounts without their authorization," said Jessica Rich, Director of the FTC's Bureau of Consumer Protection. "This egregious misuse of consumers' financial information has caused significant injury, especially for consumers already struggling to make ends meet. The Federal Trade Commission will continue to use every enforcement tool to stop these unlawful and harmful practices."

Over one eleven-month period between 2012 and 2013, the defendants issued \$28 million in payday "loans" to consumers, and, in return, extracted more than \$46.5 million from their bank accounts, the FTC alleged.

In its complaint, the FTC alleges that Timothy Coppinger, Frampton (Ted) Rowland III, and a web of companies they owned or operated, used personal financial information bought from third-party lead generators or data brokers to make unauthorized deposits of between \$200 and \$300 into consumers' bank accounts. Often, the scheme targeted consumers who had previously submitted their personal financial information – including their bank account numbers – to a website that offered payday loans.



What is Self-Regulation and how can it help?



Self Regulation - Theory

- **Purposes:**
 1. **As a substitute for Government Intervention**
 2. **As a complement to Government Regulation**

- **“The best self-regulatory programs carry several hallmarks.**
 - First, they clearly **address the problems** they seek to remedy.
 - Second, they are **flexible** and able to adapt to new developments within the industry.
 - Third, they are **widely followed** by affected industry members.
 - Fourth, they are **visible and accessible** to the public.
 - Fifth, they are administered in a fashion that **avoids conflicts of interest** between the regulated firms, on the one hand, and the body doing the regulating, on the other hand.
 - Finally, they **objectively measure member performance and impose sanctions for noncompliance.**”

(Speech by FTC Commissioner J. Thomas Rosch)



What is a self-regulatory program?

- Self-regulatory programs can be **voluntary programs** that may complement existing government regulation or serve as the primary regulation in areas where no government regulation exists.
- Self-regulatory **programs can address a broad spectrum of regulatory activities**, including company and product certification, public education, development of industry standards and codes of conduct, and complaint resolution
- The Federal Trade Commission recognizes “the **important role that effective self-regulation** can play and has worked with many industry groups to develop sound self-regulatory initiatives.”



What lawmakers and regulators look for in self-regulation programs....

1. More **prompt, flexible, and responsive** than traditional statutes and regulations.
2. Process and outcomes are likely flexibly **adapted to the realities of the market**.
3. Compliance can be just as high, or higher, under a coordinated self-regulatory system as under government regulation, because the member firms participate in the construction of the system and will have “bought into” the regulatory process
 - **If sufficiently objective and transparent, it permits the public to judge the integrity of the program and participants**
4. The review system and increases **confidence in self-regulation**.
5. **Financial incentives** to ensure the success of industry self regulation.



A spectrum of self-regulator programs...

<p><i>Most Comprehensive</i></p> <p>↓</p>	<ol style="list-style-type: none"> 1. Mandatory SRO Based on Delegation of Statutory Authority <ol style="list-style-type: none"> a. Regulates all aspects of a particular industry and has authority to issue binding rules and regulations. b. Membership required by law and conditioned on compliance with SRO rules and regulations. c. Stringent enforcement, including application of monetary penalties. d. Ex. The Financial Industry Regulatory Authority (“FINRA”) regulates all securities firms doing business in the United States.
<p>↓</p>	<ol style="list-style-type: none"> 2. Voluntary SRO with Binding Code of Conduct and Mechanism to Enforce Customer Complaints <ol style="list-style-type: none"> a. Membership conditioned on compliance with Code of Conduct. b. Enforcement of customer complaints through internal or external enforcement mechanism. c. Ex. Electronic Retailer Association’s Electronic Retailing Self-Regulation Program is enforced by the National Advertising Review Council (NARC). d. Ex. Beer Institute refers advertising complaints to the third-party Code Compliance Review Board (CCRB). e. Ex. Network Advertising Initiative refers unresolved customer complaints to its Board of Directors.
<p>↓</p>	<ol style="list-style-type: none"> 3. Voluntary SRO with Binding Code of Conduct but No Mechanism to Enforce Customer Complaints <ol style="list-style-type: none"> a. Although membership is conditioned on compliance with Code of Conduct, the lack of a customer complaint enforcement mechanism limits SRO effectiveness. b. Ex. Mobile Marketing Association (the MMA has indicated that it is working to set up an enforcement mechanism). c. Ex. Alliance for Lifelong Learning.
<p><i>Least Comprehensive</i></p>	<ol style="list-style-type: none"> 4. Voluntary Trade Association that has developed Non-Binding Best Practices <ol style="list-style-type: none"> a. Lack of formal SRO program but development of best practices to guide industry. b. Ex. USTelecom Association has developed voluntary best practices to limit distribution of child pornography on the Internet.





BBB/Advertising Self-Regulatory Council ASRC System Overview

- The self-regulatory system developed by ASRC supports advertiser compliance by focusing on three goals:
 - Provide a fast, flexible alternative to government regulation.
 - Maintain a level playing field for settling disputes among competing advertisers.
 - Increase public Trust in the credibility of advertising
- Examples: NAD, ERSP, CARU, and others (www.asrcreviews.org)



ASRC Example: Electronic Retailing Self Regulation Program (ERSP); 2004 – Present

- Types of Advertising:
 - Testimonials/Endorsements
 - Before and After Depictions
 - Weight Loss
 - Health and Safety
 - Establishment Claims
 - Disclosures
 - Social Media
 - Puffery
 - Demonstrations
 - New Areas
- Goals:
 - Improve/restore consumer confidence in electronic retailing
 - Provide a quick and efficient mechanism for reviewing direct response advertising campaigns
 - Demonstrate to the regulatory agencies, the direct response industry's commitment to strong self-regulation and compliance with legal requirements



Some examples...



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