UNITED STATES

Annual Report on Consumer Policy Developments 2001

The U.S. government approach to protecting consumers relies on a combination of government enforcement of existing legal protections and private sector initiatives. The main U.S. federal government enforcement agency that protects consumers from fraud and deception is the Federal Trade Commission. Part I of this report focuses primarily on the FTC's efforts to combat fraud and deception. Part II focuses on the FTC's consumer education initiatives. Part III focuses on U.S. public policy initiatives in the consumer protection area, and Part IV focuses on private sector initiatives.

I. FTC's Efforts to Combat Fraud and Deception

A. Identifying Fraud & Deception

To identify the most serious forms of fraud and deception, the FTC relies on its complaint databases, which are accessible to increasing numbers of law enforcement partners. In the past year, FTC databases have grown dramatically, and the FTC staff has recruited many new foreign and domestic law enforcement partners. Some examples of shared databases include:

- ***Consumer Response Center (CRC):*** The CRC is now responding to over 15,000 inquiries and complaints a week. Consumers use the FTC's toll-free number (1-877-FTC-HELP), file complaints online, and send letters. Last fiscal year, the CRC added 350,000 complaints to the FTC's database.

- ***Consumer Sentinel:*** Established by the FTC in 1997, *Consumer Sentinel* is available online to law enforcement agencies across the U.S. and Canada. It receives fraud complaints from the FTC's CRC and from a growing number of other organizations in the U.S. and Canada. *Consumer Sentinel* now contains over 500,000 complaints, and is the richest source of consumer fraud data available to law enforcement agencies. In the last year, the FTC recruited 240 new law enforcement partners, bringing the total number of *Sentinel* users to over 400 different agencies. Consumers also can access this website and find a wealth of statistics about fraud. Visitors to the public page of *Sentinel* can view data that shows: the scams that garner the most frequent consumer complaints; the scams that cost consumers most; the location of companies complained about; the number of identity theft complaints; the types of identity theft most frequently reported; and how to spot and avoid fraud and deception online and off.

- ***econsumer.gov:*** In April 2001, 15 countries and the OECD launched econsumer.gov, a public website where consumers can file cross-border e-commerce complaints with law enforcement agencies around the world, access education materials about e-commerce, and contact consumer protection agencies. The site is available to consumers in English, French, German and Spanish.

- ***Spam Database:*** Since 1998, the FTC has maintained a special electronic mailbox to which Internet customers can forward spam. Consumers are encouraged to send spam to uce@ftc.gov. This database currently receives, on average, 26,000 new pieces of spam every day. The total number of spam has grown from 700,000 in the first year to over 10 million today. The database is searchable, allowing FTC staff to track trends and identify law enforcement targets.

- ***Surf Days:*** First used in 1996 to look for online pyramid schemes, the law enforcement "Surf Day" has become a popular tool for the FTC and other agencies to identify online scams of all kinds. The FTC identifies a type of deceptive practice that warrants investigation and then recruits partners to search the Web for a specified period of time using a protocol tailored to the Surf Day's subject matter. An efficient tool, the law enforcement surf accomplishes two objectives: it provides a window to learn about online practices, and it provides an opportunity to alert new website providers – some of whom are new entrepreneurs unaware of existing laws – if their sites appear to violate the law. In the last year, the FTC has conducted five surfs with over 70 partners, focusing on claims about unsubscribing from spam, bioterror protection devices, cures or preventative products for anthrax and other bioterror-related diseases, e-tailer holiday shipping, and ultrasonic pest-control devices.

B. Law Enforcement Actions

Drawing on *Consumer Sentinel* data and Surf Days, the FTC staff is targeting the most pervasive types of fraud and deception. In four sweeps targeting Internet health fraud, cold-call telemarketing, and Internet scams, the FTC and 12 partners brought over 60 law enforcement actions since May 2001. Since then, the FTC obtained judgments ordering more than $97 million in consumer redress.

Using the Internet, fraud promoters can mimic legitimate business and reach vast numbers of consumers. The FTC's cases reflect the broad range of illegal activity online, from traditional scams like pyramids, health fraud, and bogus investments to high-tech frauds that take advantage of the technology itself to scam consumers. In the past year, the FTC brought over 60 cases involving fraudulent or deceptive marketing practices related to the Internet, bringing the total number of Internet cases filed since 1994 to more than 225.

In addition to online fraud, the FTC continues to pursue other, more traditional deceptive schemes including telemarketing fraud, franchise fraud, business opportunity and work-at-home scams, advance-fee loan and credit card loss protection schemes, and false and unsubstantiated claims for health and weight-loss products.

Some of the case highlights from this year include:

- ***Netforce Regional Sweeps*** In 2000 and 2001, the FTC conducted a comprehensive Internet Fraud Investigations Training program for local, state, federal, and international law enforcement agencies. To follow up on this Training Program, the FTC created a series of regional "Netforces" comprised of those law enforcement agencies that participated in our training. On April 2, 2002, the FTC announced the first of these efforts by joining eight state law enforcers in the northwest United States and four Canadian agencies in an initiative targeting deceptive spam and Internet fraud. Together these agencies brought 63 law enforcement actions against Web-based scams ranging from auction fraud to bogus cancer cure sites, and have sent more than 500 letters warning people about sending deceptive spam, which is illegal.

- ***FTC v. Verity International, Ltd.*** The FTC charged Verity and its principals with misusing the international telephone billing system to charge consumers for "videotext" services – Internet-based "adult" entertainment – that the consumers never purchased or authorized. The charges for these services appeared as international calls to Madagascar. On April 1, 2002, the District Court issued an opinion and a preliminary injunction against defendant Automatic Communications Limited – an Australian corporation that contracted with AT&T and Sprint to bill line subscribers for videotext services. ACL sought dismissal, in part, by claiming that it was a common carrier, and therefore outside of the FTC's jurisdiction. The Court, in its opinion, held that, while ACL may be a common carrier for some purposes, it was not acting as a common carrier here, and therefore was not exempt from the FTC's jurisdiction.

- ***FTC v. Skybiz.Com, Inc., et al.*** The Federal Trade Commission filed suit in U.S. District Court to stop defendants from promoting a work-at-home business opportunity, which may have conned consumers around the world out of approximately $175 million. In in-person sales presentations, seminars, teleconferences, Web site presentations and in other marketing materials, the defendants touted the opportunity to earn thousands of dollars a week by recruiting new "Associates" into the program. The cost to join the SkyBiz Program is $125, ostensibly used to buy an "e-Commerce Web Pak," but in reality was to purchase the right to receive compensation for recruiting additional participants. The FTC charged that the claims that consumers who invested in SkyBiz would make substantial income were false; that failure to disclose that most people in pyramid schemes lose money is deceptive; and that SkyBiz was actually an illegal pyramid scheme. The court temporarily halted all unlawful activities of the SkyBiz operation, froze the defendants' assets to preserve them for consumer redress, and appointed a receiver. In January 2002, the court ordered Skybiz to return the assets, including tens of millions of dollars in an account in Ireland, to the U.S., for possible use as consumer redress. On January 14, 2002, the FTC announced that one defendant in the alleged pyramid scheme agreed to settle FTC charges that the scheme violated federal law. The settlement bars Ronald E. Blanton, who was president of one of the affiliated corporations, from engaging in illegal marketing schemes in the future and requires that he pay $15,000 in consumer redress. The other defendants are awaiting trial.

- ***FTC v. Access Resource Services, Inc.*** In February 2002, the FTC obtained a stipulated preliminary injunction in a federal district court action against the promoters of "Miss Cleo" psychic services. The FTC's complaint alleges that the defendants misrepresented the cost of services both in advertising and during the provision of the services, billed for services that were never purchased, and engaged in deceptive collection practices. The FTC estimates that the defendants billed consumers at least $360 million in connection with this alleged scheme.

- ***Bioterrorism Project*** Following the tragedy of September 11 and subsequent events, the FTC initiated its Bioterrorism Project targeting individuals who purported to sell products and therapies to treat or cure bioterrorism-related diseases and health conditions. The FTC staff, along with the Food and Drug Administration, and more than 30 state Attorneys General conducted an Internet surf on October 25-26, 2001, and sent warning letters to 121 websites that were using various bioterror claims to market products ranging from oregano oil to gas masks. To date, over 70 of the 121 warned sites have eliminated suspect claims. On February 27, 2002, the FTC announced settlements with the marketers of a home test kit for anthrax (*FTC v. Vital Living Products*), and an online seller of a colloidal silver product purported to treat anthrax (*In re Kris A. Pletschke, individually and doing business as Raw Health*).

- ***Cure.All*** Internet health fraud continues to plague consumers looking for solutions to serious illnesses. In June 2001, as part of an ongoing and comprehensive law enforcement and consumer education campaign begun in 1997, the FTC announced the latest round of enforcement actions against online purveyors of health products to cure serious diseases. The FTC challenged unfounded claims for a DHEA hormonal supplement, St. John's Wort, various multi-herbal supplements, colloidal silver and a variety of electrical therapy devices. Operation Cure.All is a coordinated effort with the U.S. FDA, Health Canada, and various state Attorneys General. Commissioner Sheila F. Anthony recently gave a speech before the Food and Drug Law Institute titled *"Combating Deception in Dietary Supplements – The FTC Approach"* (April 16, 2002). This speech discussed our recent actions in this area and called for a strengthened self regulatory response and more media responsibility to address the wide spread problem of deceptive and unsubstantiated health claims for dietary supplement products.

- ***Fraudulent Lending Practices*** In March 2002, the FTC, six states, AARP, and class action and individual plaintiffs settled charges that First Alliance Mortgage Company and its chief executive officer violated federal and state laws in making home mortgage loans to customers. Specifically, the complaint alleged that defendants misled consumers about the existence and amount of origination fees for their loans (which were typically 10% to 25% of the loan) and the interest rate and monthly payments of their adjustable rate mortgage ("ARM") loans. As a result, according to the complaint, consumers believed they were borrowing less money at lower interest rates than they actually were. The settlement, which requires court approval, creates a consumer redress fund that will include all of the remaining assets of First Alliance and its affiliates, now being liquidated in bankruptcy court, as well as a payment of $20 million from principal Brian Chisick and his wife, Sarah Chisick. Nearly 18,000 borrowers could receive as much as $60 million dollars in redress.

- ***Wonder Bread*** In March 2002, the FTC announced a settlement with the marketers of Wonder Bread over allegedly deceptive ads claiming that Wonder Bread containing added calcium could improve children's brain function and memory.

- ***Palm, Inc.*** Palm, the leading manufacturer of Personal Digital Assistants (PDAs), agreed to a settlement concerning its claims that its PDAs come with built-in wireless access to the Internet and e-mail, as well as other common business functions - claims that the FTC alleged were not true for many models of the popular PDAs. The settlement, announced in March 2002, requires Palm to disclose, clearly and conspicuously, when consumers have to buy add-ons in order to perform advertised functions.

- ***FTC v. John Zuccarini*** In October 2001, the FTC filed an action against the perpetrators of a scheme involving the use of more than 5,500 Web addresses to divert surfers from their intended Internet destinations to one of the defendant's sites, and hold them captive while the defendant pelted their screens with a barrage of ads. According to the FTC, the defendant registered Internet domain names that were misspellings of legitimate domain names or that incorporated transposed or inverted words or phrases. Surfers looking for a site who misspelled its Web address or inverted a term were taken to the defendant's sites. They were then bombarded with a rapid series of windows displaying ads for goods and services ranging from Internet gambling to pornography.

- ***FTC v. Diversified Marketing Service Corp.*** A federal court held a magazine subscription telemarketing group in contempt of court and ordered it to pay $39 million in consumer redress for violating the terms of a 1996 FTC settlement. The FTC's 1996 order barred the defendants from: misrepresenting the cost or duration of the magazine subscriptions; misrepresenting the reason they obtained consumers' account information; charging consumers' accounts without authorization; refusing to cancel subscriptions; misrepresenting consumers' right to cancel telemarketing contracts under state law; and threatening to harm consumers' credit ratings. To facilitate the redress claims process, the FTC established a special hotline for consumers who think they may have been improperly billed by the defendant companies.

- ***FTC and State of New York v. The Crescent Publishing Group, Inc.*** The FTC and the New York Attorney General's office brought this joint action, alleging that defendants promoted scores of adult entertainment website as "free" and purportedly required credit card numbers from consumers only to prove that they were adults. In fact, according to the complaint, thousands of consumers were charged recurring monthly membership fees ranging from $20 to $90, and consumers who tried to dispute the charges were met with a variety of barriers. On November 5, 2001, the FTC announced that defendants agreed to pay $30 million to settle the case. The settlement bars the illegal practices in the future, and requires that the defendants post a bond – $2 million for the corporate defendants and $500,000 each for the individual defendants – before they are allowed to continue to market adult entertainment on the Internet.

- ***Dialing for Deception*** In April 2002, the FTC announced the filing of 11 federal district court complaints against defendants engaged in "inbound" telemarketing fraud - where consumers call companies based on classified ads, Internet banners, or other promotions. Among those charged were the purveyors of advance-fee loans and credit cards, at-home medical billing programs, work-at-home envelope stuffing schemes, and a "consumer protection" agency that was, in reality, no more than a shill for a vending machine business opportunity. In each case, the FTC charged the defendants with violating the FTC Act, the Telemarketing Sales Rule, or both. In all 11 complaints, the FTC is either seeking - or has received - relief ranging from temporary restraining orders to preliminary or permanent injunctions, as well as a freeze of the defendants' assets and the appointment of a receiver to oversee their finances pending trial, where appropriate.

C. International Fraud and Deception

The FTC is increasing its efforts to counter fraud that transcends borders. Our development and participation in cross-border partnerships is central to our law enforcement strategy. In particular, our partnerships with Canadian officials allow the FTC to respond more effectively to the pervasive telemarketing scams emanating from Canada. The FTC has forged partnerships to coordinate our law enforcement efforts in two specific cities: the *Ontario Strategic Partnership,* coordinated by the FTC's Midwest Regional office to focus on Toronto-based telemarketing, and *Project Emptor,* coordinated by the Northwest Regional office and British Columbia officials to target Vancouver-based operations.

Since May 2001, the FTC, drawing on these partnerships, has brought five actions and obtained two judgments in cases involving cross-border fraud. In one of those cases, the FTC and the U.S. Attorney's Office in Los Angeles teamed with the British Columbia Ministry of Public Safety and Solicitor General to attack a foreign lottery scam operating in British Columbia (*FTC v. Dillon Sherif*). In February 2002, the FTC alleged that defendants targeted elderly consumers to sell them shares in foreign lottery tickets or claiming that consumers had won millions in an Australian or Spanish lottery. The British Columbia authorities had sued these defendants in October 2001, and froze more than $1 million of their assets. The U.S. Attorney in Los Angeles has charged Dillon Sherif with mail and wire fraud and is seeking his extradition to the U.S. to face these charges.

In addition, the International Marketing Supervision Network (an organization of consumer protection agencies from 29 countries), under the presidency of the U.S., issued "Findings on Cross-Border Remedies" outlining obstacles to cross-border enforcement of consumer protection laws and suggestions for overcoming these obstacles.

D. Internet Training

To help expand anti-fraud efforts throughout the U.S. and abroad, FTC staff provided Internet investigation training to other law enforcement agencies. Since FY 2001, the FTC has educated more than 1,750 law enforcement personnel from more than 20 countries, 38 states, 23 U.S. federal agencies, and 19 Canadian agencies.

II. Education

Consumer and business education is the first line of defense against fraud and deception. With each major consumer protection enforcement initiative, the FTC launches a comprehensive and creative education campaign. Between May 2001 and the end of March 2002, the FTC issued 83 consumer protection publications: 74 for consumers and nine for businesses. Of those publications, 51 are new and 32 are revisions, 14 are translations into Spanish, and six are joint efforts between the public and private sectors.

Between May 2001 and the end of March 2002, the FTC distributed more than 4.5 million print publications to the public, and received more than 10.7 million accesses of publications on the BCP site of the FTC website.

Among our most significant activities over the last year:

- ***National Consumer Protection Week*** For the fourth consecutive year, the FTC took the lead in organizing National Consumer Protection Week, this year focusing on privacy. Other participants were the National Association of Consumer Agency Administrators, AARP, the National Consumers League, the Council of Better Business Bureaus, the Consumer Federation of America, the U.S. Postal Service, the U.S. Postal Inspection Service, the National Association of Attorneys General, and the U.S. Department of Justice.

- ***Hispanic Outreach Program*** To reach the expanding population of Hispanic consumers in the U.S., we instituted an Hispanic Outreach Program in January 2002. This effort includes the creation of a dedicated page on the FTC website, *Proteccion para el Consumidor*, that will mirror the English page; and translation of 14 consumer publications, printed or posted to the Web. We also translated the FTC Consumer Complaint Form. The FTC is conducting media outreach and providing interviews in Spanish where possible.

- ***www.consumer.gov*** The FTC continues to manage www.consumer.gov and to recruit new members to participate in the site, which offers one-stop access to federal consumer information. In the past year, the number of members has grown from 135 to 178 agencies.

- ***Response to September 11*** In the wake of the September 11 terrorist attacks on the World Trade Center and the Pentagon, the FTC worked with other agencies and organizations to alert consumers to possible fund-raising fraud. The FTC issued a Consumer Alert, *Helping Victims of the Terrorist Attacks: Your Guide to Giving Wisely*. This publication was released on September 21st, at a New York City press conference with the New York Attorney General, New York Better Business Bureau, and FTC Northeast Regional Office participating.

III. Policy Initiatives

- ***Marketing Violent Entertainment to Children*** In December 2001, the FTC released a follow-up report to its September 2000 report, Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries. The report found that the movie and electronic game industries had made continued improvements and that the music industry had made some progress in disclosing parental advisory label information in its advertising. The FTC's review of advertising placement showed that the music industry had not altered its marketing practices since the FTC's initial September 2000 report. The December report also described the results of a second underage shopper retail compliance survey. The FTC will release a third follow-up report this summer.

- ***Hague Conference on Private International Law***: The U.S. State Department leads the U.S. Delegation to the Hague Conference of Private International Law, which is negotiating a convention on recognition and enforcement of judgments. The FTC and Department of Commerce provide expertise on consumer and other matters in the Hague Convention negotiations.

- ***Free Trade Area of the Americas:*** The Department of Commerce, FTC and other U.S. Government agencies participate in the Free Trade Area of the Americas (FTAA) Joint Committee of Experts on Electronic Commerce which has highlighted the importance of consumer confidence online. The group has identified key elements for building consumer confidence in electronic commerce, such as protection from fraud, and from misleading and unfair conduct, and effective means of dispute resolution. The Joint Committee also recognizes the importance of international cooperation in this area. Consumer protection has been a priority agenda item for the current round of discussions. The Joint Committee has also begun work to complete a survey of online consumer protection-related laws, regulations and policies of the 34 member nations, which is due to be completed by October 2002.

- ***Asia-Pacific Economic Cooperation***: The Department of Commerce and the FTC are actively working with other economies in the Asia-Pacific Economic Cooperation (APEC) forum to promote consumer protection for the online environment through information-sharing activities. The APEC Electronic Commerce Steering Group is currently working to complete guidelines for consumer protection by the Ministerial Meeting in October 2002.

- ***FTC / DOC Report on Esign***: The Electronic Signatures in Global and National Commerce Act (ESIGN), enacted on June 30, 2000, was intended to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the legal effect of contracts entered electronically. Two reports were submitted to Congress in 2001 pursuant to ESIGN. First, the Federal Trade Commission and the U.S. Department of Commerce's (Commerce) National Telecommunications and Information Administration (NTIA) released a report they prepared jointly at the request of Congress regarding the benefits and burdens of ESIGN's "reasonable demonstration" requirement of the consumer consent provision in the Electronic Signatures in Global and National Commerce Act (). ESIGN authorizes the use of an electronic record to send legally required information to consumers if the consumer consents or confirms consent *"in a manner that reasonably demonstrates that the consumer can access the information . . . ."* The report states that "it is reasonable to conclude that, thus far, the benefits of the consumer consent provision of ESIGN outweigh the burdens of its implementation on electronic commerce. . . . It preserves the right of consumers to receive written information required by state and federal law. The provision also discourages deception and fraud by those who might fail to provide consumers with information the law requires that they receive." The report further concludes that ESIGN's reasonable demonstration requirement "appears to be working satisfactorily at this stage of the Act's implementation," and recommends that Congress take no action at this time to amend the statute. NTIA also issued a report, pursuant to ESIGN, on the effectiveness of electronic mail in the delivery of records, as compared with the delivery of records via the United States Postal Service and private express mail services. NTIA analyzed the effectiveness of electronic and non-electronic delivery, looking at such factors as universal access, reliability, authentication, and privacy and security. The assessment demonstrated that both delivery mechanisms continue to be necessary and complement each other.

- ***Disclosure Exposure: Effective Disclosures in Advertising: An FTC-NAD Workshop*** Accuracy of advertising claims and compliance with truth-in-advertising laws are long-standing principles that have achieved general public acceptance. Recently, however, there has been growing concern about the use of disclosures in print ads, radio spots, and television commercials. Although the legal standard is well-established – advertising disclosures must be clear and conspicuous – law enforcers and self-regulatory bodies have noted an increase in the number of cases involving ads that appear to fall short of this principle. The FTC alone brought more than a dozen cases last year challenging complicated "mouseprint" disclosures in print ads, broadcast ads, and online. It's also a frequent issue in competitor challenges before the National Advertising Division (NAD), a self-regulatory advertising group. Discussions with industry members suggest that while the legal principles may be clear, there is some confusion about how to apply them in specific situations and what guidelines are available to help advertisers make these judgments. To talk about creative approaches to this recurring problem, the FTC, the NAD, marketing executives, brand managers, ad agencies, state law enforcers, and consumer advocates gathered at FTC Headquarters in Washington, DC on May 22, 2001 at a conference entitled, "Disclosure Exposure: An FTC-NAD Workshop on Effective Disclosures in Advertising." An impressive roster of experts in the field and over 150 attendees engaged in an interesting and exciting discussion concerning what companies can do to market their products aggressively while complying with the "rules of the road" about clear and conspicuous disclosures.

- ***FTC Workshop Educates Public on Risk of Office Supply Fraud*** Cost to Businesses Estimated at $200 Million a Year. Participants at the Federal Trade Commission's workshop on office supply fraud identified employee education and training as a top priority for combating the estimated $200 million a year problem often referred to as "toner-phoner" fraud. Audience members at the FTC workshop held on November 8, 2001, listed several key steps to avoid such fraud, which typically involves the sale of office and cleaning supply products at greatly inflated prices. Specifically, these recommendations included: 1) training employees about the vendors from which they can and should buy supplies, the specific supplies they are permitted to buy, and what the prevailing prices are for such goods in the local area; 2) having an approved supplier list and/or the specific name of a supplier contact that can be called when making purchases; 3) designating employees who can make purchases or specify that only purchasing/procurement staff are authorized to buy such supplies; and 4) training new employees on company practices regarding supply purchases and repeat this training often to keep current with staff in the organization. Currently, the FTC is on pace to receive about 3,500 complaints about office supply fraud. More than 13,000 complaints related to office supply fraud have been registered since 1997.

IV. Private Sector Initiatives

The American Bar Association (ABA) formed a Task Force on E-Commerce and Alternative Dispute Resolution that is studying various types of online dispute resolution (ODR) methods and ways in which ODR may effectively be used to settle B2C and B2B disputes. The ABA proposed draft Guidelines for ODR.

In April 2001, BBBOnLine, the Federation of European Direct Marketing (FEDMA), and Eurochambres, the Association of European Chambers of Commerce and Industry, announced their intention to develop a new international seal or 'trustmark' program based on specific business standards, including dispute resolution. Later in 2001, BBBOnline announced a joint initiative with self-regulatory organizations in Japan and Korea to create a reciprocal trustmark program.