

US ANNUAL REPORT FOR 2002

The US government approach to protecting consumers relies on a combination of enforcing existing legal protections and encouraging private sector initiatives. The main US federal government enforcement agency that protects consumers from fraud and deception is the Federal Trade Commission. This report is not a complete summary of the FTC's activities. Instead, it contains highlights designed to present a representative sample of its work. Additional information about these activities is available on the FTC website, www.ftc.gov.

Part I focuses primarily on the FTC's efforts to combat fraud and deception through enforcement of existing laws. Part II discusses the FTC's efforts to educate both consumers and businesses, through reports, workshops, and websites. Part III summarizes public policy initiatives to combat fraud and deception, which range from amending existing laws to undertaking additional cooperation with international and foreign counterparts. Part IV lists complementary initiatives undertaken by the private sector.

I. COMBATING FRAUD, DECEPTION AND UNFAIRNESS

To identify the most serious forms of fraud and deception in the marketplace, the FTC is making greater use of technology, expanding complaint databases, and sharing data with increasing numbers of law enforcement partners. In the past year, FTC databases have grown dramatically and FTC staff has recruited a large number of new law enforcement partners at home and abroad.

A. Identifying Fraud & Deception

Identifying egregious cases of fraud or deception depends on accurate information, much of which is obtained directly from consumers through database contributions or through targeted internet searches:

Consumer Response Center. The FTC has a toll-free number (1-877-FTC-HELP), as well as a website, to facilitate the filing of consumer complaints. In fiscal year 2002, the CRC added 680,000 complaints and inquiries to the FTC's database, raising the total number of entries to 2.3 million.

Consumer Sentinel. Consumer Sentinel, the fraud database established by the FTC in 1997, is available online to over 650 law enforcement agencies across the U.S., Canada and Australia. It receives fraud complaints from the FTC's Consumer Response Center as well as from a growing number of other organizations in the U.S. and Canada. Limited statistical information from this database is also available on a publicly accessible website, Public Sentinel. In 2002, Consumer Sentinel was one of 25 finalists to receive the "Excellence.gov" award, which recognizes government programs demonstrating excellence in e-government innovation.

FTC Internet surfs. In 2002, the FTC conducted five internet “surfs”, during which FTC partners searched the web for types of deceptive practices. Each surf focused on a specific topic, including the following: 1) unsubscribing from spam (i.e., whether the “remove me” option was honored); 2) e-tailer holiday shopping; 3) medical test kits; 4) energy saving products; and 5) harvesting e-mail addresses for the purpose of sending spam to those addresses. After each surf, warning letters were sent to violators.

ICPEN Surf. Additionally, the FTC participated in an ICPEN surf day regarding questionable health claims and which identified over 1,400 questionable sites. While the FTC focused on websites specifically marketing products and therapies for arthritis, cancer, and HIV/AIDS, other surfing partners searched for sites promoting questionable products for weight loss and sexual performance enhancements. Other participating countries included Australia, Austria, Belgium, Canada, Denmark, Ireland, Finland, France, Hungary, Japan, Korea, New Zealand, Norway, Poland, Portugal, Switzerland, Sweden, and the United Kingdom.

econsumer.gov. In September 2002, the FTC and its international partners launched a redesigned “econsumer.gov” website.

B. Enforcement

1. Health Claims

FTC v. Electronic Products Distribution, L.L.C, et al. (Abdominal Exercise Belts).

The FTC filed complaints in federal district courts regarding three electric abdominal exercise belts: AB Energizer; AbTronic; and Fast Abs. The FTC challenged claims made during commercials for and on the packaging of the belts, which asserted that users could obtain “six pack” abs without exercise. The FTC is seeking permanent injunctions in each of these cases to prohibit the defendants from making false or deceptive advertising claims, as well as remedies for consumer redress.

FTC v. Blue Stuff. The FTC reached a \$3 million settlement regarding the sales and marketing of Blue Stuff and Super Blue Stuff topical creams with Blue Stuff, Inc., McClung Advertising, Inc., and their president, Jack McClung. Using television infomercials and a website, the defendants claimed that these creams provided significant relief from severe pain; the FTC alleged that these statements were unsubstantiated. In addition to consumer redress, the settlement requires the defendants to possess reliable scientific evidence before making future claims about the health benefits, safety, or efficacy of their products.

FTC v. Biopulse International, Inc., et al. The FTC also settled a case with Biopulse International regarding its advertisements of safe and effective “alternative” treatments for cancer. As part of the settlement, the defendants are permanently barred from misrepresenting the safety of “insulin-induced hypoglycemic sleep therapy” (IHT) or any similar treatment, as well as from making any unsubstantiated safety or efficacy claims for IHT, “Acoustic Lightwave Therapy” (ALW) or any dietary supplement, food,

drug, device, or any health-related service.

2. Privacy and Security

In the Matter of Eli Lilly and Company. Eli Lilly and Company agreed to settle FTC charges regarding the unauthorized disclosure of sensitive personal information collected from consumers through its Prozac.com website. The FTC complaint alleged that Lilly's privacy assurances were deceptive due to a lack of appropriate internal measures to protect sensitive consumer information. The settlement bars similar misrepresentations regarding the treatment of consumers' personal information and compels Lilly to establish appropriate security measures to protect consumer privacy, including a four-stage security information program. These steps include a four-stage information security program.

In the Matter of Microsoft Corporation. Microsoft Corporation settled FTC charges concerning the privacy and security of personal information collected from consumers through its "Passport" web services. According to the Commission's complaint, Microsoft falsely represented: (1) its internal measures protecting the privacy and confidentiality of consumer information collected through its Passport and Passport Wallet services; (2) the comparative security of purchases made with Passport Wallet; (3) the information collected by Passport in its privacy policy; and (4) parental control over information participating websites could collect from children under the Kids Passport program. The settlement prohibits any misrepresentation of information practices in connection with Passport and other similar services. It also requires Microsoft to implement and maintain a comprehensive information security program that is certified as meeting or exceeding the standards in the consent order by an independent professional every two years.

3. Spam¹

FTC v. BTV Industries, et. al. The FTC filed a complaint against a promoter of spam who claimed consumers had won a free Sony Play Station 2 but "hijacked" them when they responded to an adult Internet site via a 900-number modem connection that charged up to \$3.99 per minute. In its complaint, the FTC sought a permanent injunction and other equitable relief, including consumer redress.

FTC v. TLD Network, Ltd. The FTC settled charges with unaccredited domain name registrars using deceptive spam messages to sell domain names, including ".usa", and ".brit". The settlement bars the defendants from misrepresenting the usability of domain names, requires the disclosure of conditions surrounding domain names, and bars the operators from selling their customer lists. A U.S. district court had previously ordered an asset freeze; consequently, according to the terms of the settlement, as

¹The FTC has brought over 53 enforcement actions involving fraudulent or deceptive spam. Two examples are mentioned here.

much as \$300,000 is also available for consumer redress.

4. Cross-Border Telemarketing

U.S. – Canadian Cross-Border Telemarketing Fraud Sweep. In June, 2002, the FTC and Canadian partners announced a law enforcement sweep aimed at Canadian telemarketers who target U.S. citizens for cross-border fraud. The schemes targeted include illegal international lottery scams, phony advance-fee credit card offers, and bogus credit card loss-protection programs. Many of the individual cases involved extensive cooperation between Canadian and U.S. law enforcement agencies - including coordination in accumulating evidence, collecting victim statements, and initiating civil and criminal proceedings.

FTC v. Pacific First Benefit, LLC. The FTC received an injunction in its case against Pacific First Benefit LLC, a Toronto-based company who allegedly failed to deliver advance-fee credit cards to U.S. consumers with no credit or bad credit. Instead, the FTC alleged, consumers received packages containing information about obtaining credit, repairing credit, and avoiding credit card fraud. According to the terms of the injunction, the defendants were prohibited from making deceptive claims and assets were frozen to preserve the possibility of consumer redress. In bringing this case, the FTC received assistance from members of the Toronto Strategic Partnership, a cross-border fraud law enforcement effort including the Ontario Provincial Police, the Toronto Police Service Fraud Squad, the Ontario Ministry of Consumer Business Services, and the U.S. Postal Inspection Service.

FTC v. Icon America, Inc. The FTC settled its claim against Icon America, Inc., Canadian-based defendants, who allegedly defrauded hundreds of consumers through telephone sales of essentially worthless credit card protection insurance. The defendants allegedly told consumers that their credit card numbers were available on the Internet, thus putting them at risk of liability for unauthorized charges unless they had an insurance policy. The terms of the settlement bar defendants from making the misrepresentations alleged in the complaint and selling or transferring their customer lists. The order also contains a suspended judgment for \$1.5 million and requires the defendants to pay \$25,000 that the Commission may use for consumer redress.

FTC v. R & R Consultants, Inc., et al. Consumers defrauded by a Montreal, Canada-based telemarketer and his related businesses will receive more than \$111,000 in consumer redress under the terms of a court settlement with the FTC. According to the FTC, the defendants cold-called tens of thousands of U.S. consumers in an attempt to sell them bogus identity theft protection services and advance-fee, low-interest credit cards. The order also bars them for life from all marketing of credit-related goods or services and protection services.

FTC v. BSI Premium Bonds (Canada Prepaid Legal Services, Inc.). The FTC has settled charges with Canadian telemarketing companies who targeted elderly U.S. citizens in a lottery scam. In addition to providing for the payment of over \$1 million

U.S.D. for consumer redress, the settlement bars the defendants from selling chances, tickets, shares, or registrations in any lottery or bond program to U.S. citizens. It also prohibits the defendants from illegally billing consumers' credit cards, selling or sharing that credit card information, and misrepresenting limitations or conditions to purchase, receive, or use any product or service. Additionally, the defendants are barred from providing assistance or support to sellers who they know, or should know, are violating the Telemarketing Sales Rule (TSR), which includes making false or misleading statements about cash awards, falsely claiming that the defendants would not charge consumers' credit cards without authorization, and failing to disclose that the sale of the bonds is a federal crime.

II. EDUCATING CONSUMERS AND BUSINESSES TO MAKE MARKETS WORK MORE EFFECTIVELY

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. Our activities last year include the following:

Weight-Loss Advertising Workshop. In November, 2002, the FTC held a workshop for scientific and medical experts, industry members, and representatives of media organizations to discuss the current science of weight loss, deceptive weight-loss advertising, and possible ways for the media to screen weight-loss ads more effectively. This workshop was a follow-up to the FTC's report *Weight-Loss Advertising: An Analysis of Current Trends*, which analyzed 300 weight-loss ads that ran in 2001.

Protecting Consumer Information. In April, 2002, the FTC held a roundtable discussion with representatives from universities, health care providers, creditors, and banks to discuss the steps they could take to reduce the likelihood of ID theft in their institutions and steps that can be taken following a compromise of personally identifying information to mitigate the victim's loss and inconvenience.

Hard Shell on Information Security. In September, 2002, the FTC launched a consumer and business education initiative for information security. The program features Dewie (the e-turtle) and highlights the FTC's English and Spanish-language consumer and business publications regarding security, e-commerce, spam, online privacy, children's online privacy, and identity theft. The corresponding website, www.ftc.gov/infosecurity, links to FTC press releases on security and other security-related websites for children. The site registered 10,000 hits through the end of 2002, placing it in the top 16 FTC pages visited.

Public Workshop on Consumer Information Security. The FTC hosted a two-day public workshop to explore issues related to the security of consumers' computers and the personal information stored in them or in company databases. The workshop took place in Washington, D.C. on May 20 and 21, 2002.

III. POLICY INITIATIVES

Five Point-Plan for Fighting Cross-Border Fraud. On October 31, 2002, Chairman Muris presented the FTC's Five-Point Plan for attacking cross-border fraud. Speaking before the Fordham Corporate Law Institute's 29th Annual Conference on International Antitrust Law and Policy in New York, Chairman Muris outlined that, under the Five-Point Plan, the FTC will: 1) advocate adoption of an OECD recommendation on cross-border fraud; 2) seek legislative changes to improve the FTC's ability to fight cross-border fraud; 3) hold a workshop on public/private sector cooperation to combat cross-border fraud; 4) enter into new multilateral and bilateral agreements and strengthen existing arrangements to combat cross-border fraud through cooperation and coordinated enforcement activities; and 5) provide targeted technical assistance to developing countries.

Amendments to the Telemarketing Sales Rules. The FTC announced a series of amendments to the Telemarketing Sales Rule (TSR) including the development of a national "do not call" registry that empowers consumers to stop most unwanted telemarketing calls. The other amendments include new provisions that will crack down on unauthorized billing by telemarketers; impose tight new restrictions on the practice of "call abandonment" - where a consumer rushes to answer the phone, only to find "dead air;" and require telemarketers to transmit Caller-ID information. All changes to the TSR took effect March 31, 2003, with the exception of the do not call amendments, which will take effect in approximately October 2003.

Technical Assistance: The FTC conducted training missions in Budapest, Hungary (April, 2002) and Ljubljana, Slovenia (November, 2002). These sessions were funded by the U.S. Agency for International Development (USAID) and trained over 100 government officials from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Hungary, Latvia, Macedonia, Poland, Romania, the Slovak Republic, and Slovenia on such issues as basic consumer credit, advertising principles, advertisement interpretation, and advertising substantiation.

Bilateral Meeting with Canada. The FTC and Canada's Competition Bureau have formalized a plan for sharing consumer complaints and investigation information to facilitate the pursuit of those who perpetrate cross-border fraud. The protocol will streamline and enhance cooperation procedures from prior agreements (particularly the 1995 agreement in which the U.S. and Canadian governments agreed to use best efforts to do the following: cooperate in the detection of deceptive marketing practices; inform each other of investigations and proceedings involving cross-border deceptive marketing practices; share information relating to enforcement; and, in appropriate cases, coordinate enforcement.) The new protocol is not a single document. Instead, it features a joint work plan stressing increased communication and setting information sharing and cooperation priorities, guidance to staff on what information can be shared under applicable law and rules, and a template that each agency will use for information requests.

Bilateral Meeting with United Kingdom. The U.S. and U.K. also expressed a desire for improved cooperation in the 2000 Memorandum Of Understanding On Mutual Enforcement Assistance In Consumer Protection Matters Between The FTC Of The United States of America And Her Majesty's Secretary of State for Trade And Industry And The Director General Of Fair Trading In The United Kingdom. Participants in the bilateral meeting agreed that issues of continuing interest to both countries relate to enhanced information sharing, broader jurisdiction of consumer protection agencies in particular areas, the common goal of stopping fraudulent and deceptive conduct through injunctions and the importance of consumer redress in this area.

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. APEC last year approved consumer protection guidelines and is currently working on privacy guidelines.

IV. PRIVATE SECTOR INITIATIVES

ABA Task Force on Alternative Dispute Resolution. The American Bar Association (ABA) formed a Task Force on E-Commerce and Alternative Dispute Resolution to study the various types of online dispute resolution (ODR) methods and the ways in which these may effectively be used to settle B2C and B2B disputes. The Task Force released its final report and recommendations for best practice in September, 2002. The report is available online at <http://www.law.washington.edu/ABA-eADR/documentation/2002.09.05doc.html>.

Global Trustmark Alliance. The Global Trustmark Alliance (GTA) was formed to provide a forum for resolving problems associated with international e-commerce for countries certifying international e-commerce sites. Led by BBB *OnLine* (the internet shopping mall certification agency of the Council of Better Business Bureaus), other participating members include the Korea Institute for Electronic Commerce (KIEC), the Chinese Consumer Association, Commerce Trust Limited of Singapore, Secure Online Internet Shopping Association of Taiwan, Trust UK, and the EU Direct Marketing Association.