The FTC in 2010

Federal Trade Commission Annual Report, April 2010





LEFT TO RIGHT: Chairman Jon Leibowitz and Commissioners Julie Simone Brill, Edith Ramirez, J. Thomas Rosch, and William E. Kovacic

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Federal Trade Commission

Jon Leibowitz, Chairman
William E. Kovacic, Commissioner
J. Thomas Rosch, Commissioner
Edith Ramirez, Commissioner
Julie Simone Brill, Commissioner

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The online version of this report contains hyperlinks to news releases, reports, cases, campaigns, and other information referenced in this report. The report is available at www.ftc.gov/os/2010/04/ChairmansReport2010.pdf.



Fred R. Conrad/The New York Times/Redux

We proudly present this year's Annual Report, which describes the Federal Trade Commission's activities and initiatives since last March. To be sure, this past year the continuing financial downturn has presented unprecedented challenges for many Americans – and for our agency. Yet thanks to the tremendous talent and commitment of our staff, the FTC has worked harder than ever to protect consumers and promote competition.

The Commission has stepped up efforts to stop fraud that targets financially distressed consumers. In a series of nationwide sweeps, the FTC joined with a number of states and other federal agencies to collectively file hundreds of law enforcement actions against: mortgage modification and foreclosure "rescue" scams; phony debt reduction and credit repair operations; abusive debt collectors and payday lenders; and con artists who guarantee nonexistent jobs, get-rich-quick schemes, and bogus government grants.

This year, the FTC also brought a number of actions against national companies that should ensure greater benefits for consumers. Lawsuits against Ticketmaster, LifeLock, Kellogg, MoneyGram, and others challenged deceptive marketing or unfair practices. And cases against prerecorded "robocalls" hawking extended auto "warranties" and interest-rate reduction programs should help silence unwanted telemarketing calls, especially during the dinner hour.

In difficult times, consumers need to know that markets are working for them, not against them. Vigorous antitrust enforcement is especially important in down cycles, to ensure that consumers have choices that fit their needs, because every dollar must stretch farther. Despite a decline in merger activity, the Commission has maintained a robust merger review program that resulted in a near record number of enforcement actions to preserve competition in the health care, technology, chemical, and retail sectors. These cases impact consumers young and old, involving products and services ranging from drug treatments for premature babies to funeral and cemetery services.

The FTC also has targeted anticompetitive practices to help ensure that consumers can benefit from lower prices and better quality goods and services. For example, the agency initiated an administrative action against a computer chip manufacturer (*Intel*) and issued a Commission opinion and order to stop restrictive policies in real estate services (*RealComp II*).

A top priority is putting an end to "pay-for-delay" patent settlements between brand-name and generic drug companies. In a first-of-its-kind study, FTC staff found that these sweetheart deals keep lower-cost generic drugs off the market for an average of 17 months longer than when no such agreements exist, and will cost consumers and taxpayers $35 billion over the next ten years. The Commission continues to press its antitrust claims against these agreements in federal court and actively supports legislation to ban these unconscionable pay-for-delay deals in Congress.

Letter from Chairman Jon Leibowitz

In addition to rigorous law enforcement, the Commission embarked on several important policy initiatives in the past year. Some examples:

- the FTC initiated a series of **privacy roundtables** to explore the challenges posed by 21st century technology and business practices that collect and use consumer data, such as social networking, cloud computing, online behavioral advertising, and mobile marketing;
- the FTC and the U.S. Department of Justice (DOJ) undertook a review of the **1992 Horizontal Merger Guidelines**, encouraging wide participation through public comments and workshops across the country. We are now seeking additional comments on proposed revisions to ensure that the Merger Guidelines bring clarity and enhanced compliance with the merger standards the agencies use to promote competitive markets; and
- the FTC has been holding **news media workshops** to consider a range of economic and policy issues relevant to how journalism will survive the Internet age.

The increasingly online and global marketplace requires increased international cooperation and convergence. The FTC plays a strong leadership role in multilateral organizations to establish best practices in antitrust and consumer protection policy and enforcement. The FTC's December 2009 report to Congress details the agency's experience using its powers under the U.S. SAFE WEB Act of 2006 to build international enforcement cooperation. And this year, the FTC and DOJ signed the first-ever direct agency-to-agency Memorandum of Understanding with the Russian Federal Antimonopoly Services, which establishes a framework for cooperation and communication among the agencies.

As always, we work to educate consumers on how to protect themselves and avoid being victims of the next scam. This year the Commission produced, in English and Spanish, websites, publications, radio PSAs, and videos on a variety of financial scams. We also developed *Net Cetera: Chatting with Kids About Being Online*, a booklet that helps parents talk to their children about issues like cyberbullying, sexting, mobile phone safety, and protecting the family computer. In all these efforts, we work with our many private and public partners to ensure these resources get wide distribution.

All of us at the Commission are proud of our agency's work this year on behalf of American consumers. It is an honor and a privilege to be part of the more than 1,100 employees of the FTC, whose determination and skill in protecting consumers is unmatched. We are also thrilled to welcome our two newest Commissioners, Julie Brill and Edith Ramirez. With my fellow Commissioners, our outstanding staff, and our dedicated law enforcement partners both here and abroad, we will do our best to ensure a competitive marketplace and informed choice for American consumers.



FOCUS ISSUE:

FTC in the Health Care Marketplace

Promoting competition, stopping false and deceptive health claims, and ensuring consumers have good information to make choices about health care products and services are top priorities at the FTC – and with good reason. According to the U.S. Department of Health and Human Services, health care expenditures climbed to $7,681 per person in 2008, taking a bigger bite out of consumer spending every year. Whether dealing with a difficult health crisis or simply adopting healthy lifestyle choices, consumers need options and the information to know which products or services will help them to lead a long, healthy life.

Bloomberg.com

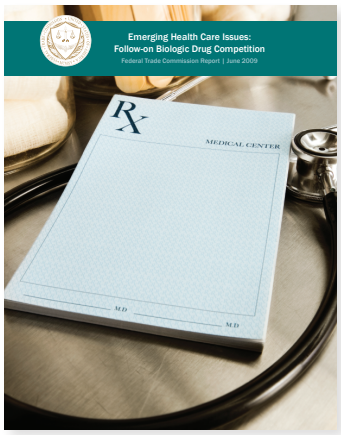
FTC to Challenge Thoratec's Proposed HeartWare Buyout (Update1)

By Simeon Bennett
July 29 (Bloomberg) – The United States Federal Trade Commission will file a complaint in the U.S. Federal District Court to challenge Thoratec Corp.'s proposed $282 million acquisition of HeartWare International Inc.

The FTC uses every tool – enforcement, study, advocacy, and education – to advance policies that promote competition and truthful information in health care markets. And this year was no exception. Health care highlights include:

Support for Ban on Pay-For-Delay Agreements: The FTC's longstanding commitment to ending these anticompetitive, anti-consumer deals between branded and generic drug companies – whether in the courts or by legislative means – remains one of the Commission's highest priorities. Pay-for-delay patent litigation settlement agreements deprive consumers of lower-cost generic drugs, to the tune of $3.5 billion each year. In June 2009, the Commission released a first-of-its-kind study estimating savings of $35 billion over the next decade if these deals were banned. As it presses for relief in two federal court actions involving pay-for-delay agreements, the Commission also supports legislation to ban these agreements in the future, to finally put an end to these costly, anticompetitive deals.

Promoting Competition for Innovative Treatments: Every year, the Commission reviews dozens of proposed acquisitions between health care companies working on cutting-edge medicines and devices. The Commission is particularly attentive to these markets, where eliminating competition among existing firms may reduce incentives to introduce new treatments or drugs. Competition among innovating health care companies helps reduce costs, improve outcomes, and expand access. Again this year, the FTC brought several significant enforcement actions to preserve competition between two firms with innovative health care products, or to prevent a company with an existing product from purchasing a company with a new, potentially competing product in development. For instance, the FTC blocked



a proposed $3.1billion merger between two leading producers of plasma-derivative protein therapies and another merger between the maker of a life-saving heart device and the only company positioned to obtain FDA approval for a competing device.

Taking on Deceptive Health and Safety Claims: The Commission has a long history of challenging false or unsupported claims that products can prevent, treat, or cure various ailments, including serious diseases, or help consumers lose weight or stop smoking. The Commission is particularly concerned about false claims relating to serious diseases, because consumers may forgo medical treatment when using products that do not perform as promised. For example, a 'surf' of public websites by the FTC and other members of the International Consumer Protection Enforcement Network (ICPEN) resulted in warning letters to website operators to remove or correct claims about certain products – dietary supplements, homeopathic remedies, air filtration devices, and cleaning agents – if there was no scientific support for claims that the products could prevent, treat, or cure the H1N1 virus. For consumers looking for up-to-date information on how to prevent or treat the swine flu, the FTC directed consumers to information on FDA-approved antiviral drugs and to tips from the Centers for Disease Control.

In-Depth Study of Emerging Health Care Issues: The FTC plays an important role in studying trends and topics in the health care industry from its unique perspective as a consumer protection and competition enforcement agency. This year alone, the FTC issued studies on the following health care topics: authorized generics, smokeless tobacco, follow-on biologics, the cost of anticompetitive pay-for-delay patent settlement agreements, as well as annual reports on cigarette advertising and certain agreements between branded and generic pharmaceutical companies. The agency also shares its expertise on health care topics with industry members and policy makers. For instance, the FTC hosted a public forum to address food marketing to kids and childhood obesity. The FTC testified before Congress three times on health care topics, and filed six comments with federal, state, and local officials. Commission staff offered guidance in the form of an advisory opinion to a physician-hospital organization seeking to clinically integrate its operations, lower its costs, and improve the quality of care its members provide.



The FTC will continue to devote significant resources to promote the interest of consumers in health care markets.



FOCUS ISSUE:

Protecting Consumers in the Economic Downturn

Tough times call for a tough approach at the FTC to protect the millions of consumers struggling to make ends meet in the economic downturn. Confronted with a significant uptick in fraudulent schemes targeting financially stressed consumers, the Commission stepped up its efforts – combining forces with other law enforcement authorities to stop egregious practices quickly before more consumers were harmed. ***Operation Short Change***, launched in July, and ***Operation Bottom Dollar***, launched in February, targeted false promises of employment, job placement, work-at-home schemes, get-rich-quick plans, government "grants," and fraudulent debt relief programs that often pushed consumers even further into debt. These law enforcement "sweeps" resulted in more than 20 FTC cases, more than 80 actions filed by the Department of Justice, and more than 30 state actions.

Of particular concern was last year's wave of mortgage foreclosures, which spawned a number of fraudulent mortgage relief or loan modification scams aimed at consumers struggling to keep their homes. One bogus operation – shut down as a result of FTC action – went so far as to impersonate legitimate government assistance programs by using websites with names resembling those of official sites. ***Operation Loan Lies***, initiated in July, and ***Operation Stolen Hope***, announced in November, cracked down on many such operations with nearly 300 enforcement actions brought by federal and state agencies. To deal with the problem in the long term, the Commission initiated a rulemaking proceeding proposing to prohibit companies from charging fees for loan modification before services are rendered, to bar them from making misleading claims, and to require them to make disclosures about the real nature of their services.

> *"This company sent me a check claiming I had won a sweepstakes through a computer generated ballot system. I want to report this scam. These are tough economic times and some may be very tempted to deposit this check."*
>
> *- Consumer in Roanoke, VA*

The FTC is also taking action to discourage payment processors from aiding scammers in taking money from unwitting consumers. Working with Canadian law enforcement officials, the FTC charged that ***MoneyGram International***, the second-largest money transfer service in the United States, knowingly allowed its system to be used to defraud people and that in some cases its agents in Canada actually participated in these schemes. Consumers, who were bilked out of tens of millions of dollars, were falsely told they had won a lottery, were hired for a secret shopper program, or were guaranteed loans. All of these schemes required payment of upfront fees by consumers. Con artists prefer to use money transfer services because they can pick up transferred money

immediately; the payments are often untraceable; and victimized consumers have no chargeback rights or other recourse. Targeting processors, therefore, is an effective way to disable fraud operations.

To help consumers identify and avoid fraudulent schemes, the Commission distributes education materials, in English and Spanish, both directly to consumers and through a network of partnerships with other organizations. These materials – offered on websites, in videos and print, and through radio spots – offer information on how to avoid getting ripped off and where to look for legitimate sources of help. For instance, ***Real People, Real Stories*** is an FTC video telling the stories of people who actually saved their homes from foreclosure. ***Fraud: An Inside Look*** features a convicted, former fraudulent telemarketer disclosing the secrets of his success and warning consumers about the "tricks" they should not fall for.



Consumers everywhere are trying to stretch their dollars, and the FTC is holding the line on marketplace rules that help consumers struggling to get along on a limited income. The FTC brought a near-record number of competition enforcement actions this year to prevent anticompetitive mergers or conduct that could drive prices higher for already-struggling consumers. For example, the Commission is working to break down obstacles that reduce options for convenient, low-cost health care services. This year, the Commission counseled state policy makers in Louisiana to reject proposals that would impose costs on portable and mobile dental offices that bring dental services directly to Medicaid-eligible children in a school setting. FTC staff also raised concerns about a Kentucky proposal to restrict the number of limited service clinics, arguing that the restrictions are likely to increase the cost of health services for consumers, particularly the uninsured. These clinics, which are located in supermarkets or pharmacies, offer consumers basic health care services with valuable benefits such as convenient locations, shorter wait times, longer operating hours, and lower prices.



FOCUS ISSUE:

The Digital Marketplace

Everywhere you go you see Americans connected to the Internet – in coffee shops, riding the train, and even walking down the street. More people are online to read emails, check the weather, or update their social networking page. Businesses too have adopted low-cost online methods to track deliveries, hire workers, and reach new customers. Consumers are driving the evolution to new business models that rely on digital technology, and businesses must adapt, which raises the stakes for both antitrust and consumer protection enforcement.

For example, as more home buyers seek information online, home sellers want their homes listed there. The antitrust laws prevent existing competitors from working together to create rules that disadvantage new ways of doing business in order to keep newcomers from offering products or services that consumers prefer. This year, the FTC ruled that certain policies of a Multiple Listing Service (MLS) unfairly kept non-traditional and discount brokers off publicly available websites listing homes for sale. The FTC found that ***Realcomp II***, a Detroit-area MLS whose members are predominately traditional, full service realtors, restricted consumers' access to information about homes listed by non-traditional discount brokers, ones who offered lower commission rates or less than a full range of professional real estate services. The FTC found that Realcomp's policies impeded competition from discount brokers and restricted consumer choice.

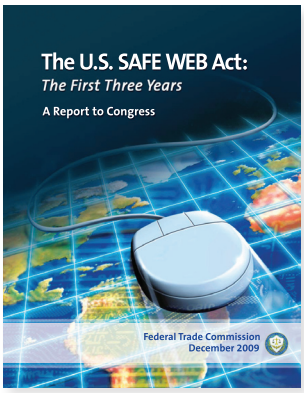
A similar technological revolution is underway in the news industry. This year, the FTC hosted a series of workshops, **"How Will Journalism Survive the Internet Age?"** to explore how the Internet has affected the delivery of the news. As traditional journalism meets up with new media methods of delivering the news, old business models are challenged, and new ways of funding the news are being explored. The implications of this revolution are far reaching, as excessive concentration in media markets goes to the very core of whether we are able to maintain an informed, democratic society. Do the Internet and new technology enhance the ability to deliver news or undermine its integrity or its very existence? Is it "creative destruction" or just destruction? Perhaps only time will tell, but the FTC will continue to discuss the implications of new media in the news industry.



Representative Henry Waxman, Chairman Leibowitz, Arianna Huffington, and panelists at FTC workshop on December 1, 2009.

New online technologies also provide new means by which scammers peddle old-fashioned schemes to part consumers from their money. Con artists have gone high-tech, using the Internet to defraud consumers in a variety of clever ways. Scammers are just a click away from launching emails with false promises about earnings, hijacking consumers' modems, or cramming hefty long-distance charges onto their phone bills. The FTC must act quickly to deal with these cyber scams. This year, for example, in ***3FN***, the FTC shut down a rogue Internet

Service Provider that allegedly distributed illegal malicious and harmful content, including child pornography, spam, spyware, viruses, trojan horses, phishing, and botnets. And these threats can come from anywhere in the world. The FTC is working to protect U.S. consumers from scams originating in other countries, as demonstrated by its settlement with ***Cash Today, Ltd.*** resolving charges that the international Internet payday lending operation failed to provide consumers with key loan terms in writing and used unfair and deceptive collection tactics from its base in the United Kingdom.



While the global digital marketplace can provide great benefits and convenience for consumers, it can also entail some risk to consumers' privacy, their identity, and in some cases, their financial future. The FTC works with its international law enforcement partners to keep pace with these cyber threats, making use of the important tools provided by the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers Beyond Borders Act of 2006 (the U.S. SAFE WEB Act). The U.S. SAFE WEB Act enhanced the FTC's ability to cooperate with foreign law enforcement authorities on cross-border consumer protection enforcement matters, and the FTC has recommended that Congress make the Act a permanent part of the FTC's law enforcement toolkit. The FTC also hosted an OECD conference on **"Empowering E-consumers: Strengthening Consumer Protection in the Internet Economy"** for over 250 governmental officials, business leaders and consumer advocates from around the world to explore global cooperation on a whole host of consumer Internet issues.

Of particular concern is how best to protect our youngest consumers when they go online. This year the FTC published a report, ***Virtual Worlds and Kids: Mapping the Risks***, detailing the explicit sexual and violent content available in virtual worlds and the ease with which minors gain access to it, and recommending ways to reduce the risks to children. The FTC created ***Net Cetera: Chatting with Kids About Being Online***, an easy-to-use guide that prepares parents to talk to their kids about the dangers of inappropriate conduct, contact, and content on the Internet, including sexting, and cyberbullying. The FTC also is investing in the future by teaching tomorrow's consumers how to avoid marketplace risks today, meeting them where they live – online in a virtual shopping mall. The FTC opened a new area of its website for kids, **YouAreHere**, with lessons to help kids protect their privacy, spot frauds and scams, and avoid identity theft. To help deal with ads that are all around them, the FTC launched a media literacy campaign to teach children ages 8-12 critical thinking skills to decode the ads that surround them. **Admongo.gov** uses games to teach "tweens" to answer important questions when they see a product logo – Who is responsible for the ad? What is the ad actually saying? What does the ad want me to do? The next generation may be 'tech-savvy,' but they also need to be savvy consumers.





Section One: Competition Mission

This year, the FTC continued its vigorous program to protect consumers from anticompetitive mergers and business conduct that can rob them of lower prices and better quality goods and services. Through enforcement, study, advocacy, and education, the FTC's competition mission is to protect consumers by ensuring that markets work well. Even in times of economic downturn, the Commission's priority is to adhere to time-tested standards, which take into account current market conditions. To maintain competition through down cycles and into the future, the FTC enforces the antitrust laws to prevent business conduct or structural changes that can have long-lasting adverse effects in the marketplace.



In September 2009, the FTC and Department of Justice (DOJ) announced that they would solicit public comment and hold public workshops to explore updating the 1992 Horizontal Merger Guidelines. The goal of the workshops was to evaluate whether the Guidelines accurately reflect the current merger review practice at the FTC and DOJ, as well as to take into account legal and economic developments that have occurred since the last significant Guidelines revision. The review process was headed by senior enforcement officials from both agencies, and included public comments in response to a set of initial questions, as well as five workshops held in Washington, D.C., New York, Chicago, and Stanford, California. At these workshops, nearly 100 panelists engaged in a wide-ranging discussion of topics, such as the use of more direct forms of evidence of competitive effects; market definition; the relevance of large buyers; efficiencies; entry; and the non-price effects of mergers. The agencies plan to issue revised joint guidelines later this year.

The FTC is first and foremost a law enforcement agency, dedicated on the competition side to stopping and preventing anticompetitive mergers and business conduct. The Commission reviews premerger notification filings, trade press articles, business and consumer complaints, and other industry information to uncover evidence of acquisitions and business practices that unreasonably restrain competition. When necessary, the Commission acts to stop harmful conduct or prevent business arrangements that threaten the competitive process.

FTC Antitrust Enforcement Actions							
Fiscal Year	Nonmerger Enforcement Actions			Merger Enforcement Actions			
	Total	Consents	Part 3 Complaints and Injunctions	Total	Consents	Part 3 Complaints and Injunctions	Abandoned
2005	4	4	0	14	9	1	4
2006	6	5	1	16	9	0	7
2007	11	9	2	22	14	3†	5
2008	4	3	1	21	13	2‡	6
2009	7	6	1	19	9	7	3
2010*	4	3	1	11	9	0	2

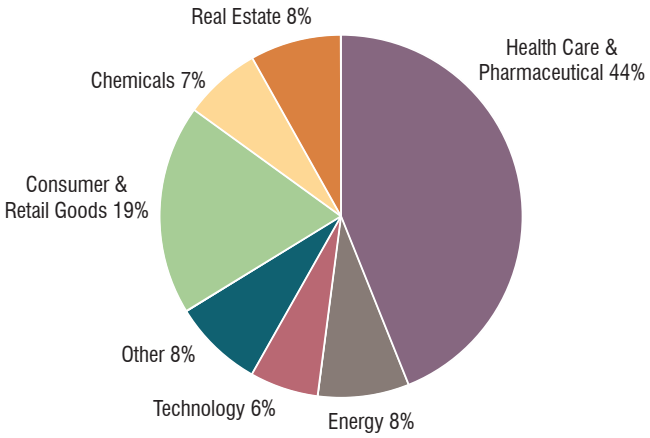
* October 1, 2009 to March 31, 2010
† In FY 2007, the Commission authorized staff to file an administrative complaint and a federal court action in three matters. To avoid double counting these matters are included only once.
‡ In FY 2008, in one matter the Commission authorized staff to file an administrative complaint and a federal court action. To avoid double counting this matter is included only once.

Mergers: The FTC's merger review program is critical to maintaining competitive markets, and despite a drop in merger filings, the Commission has kept pace with previous years in the number of mergers challenged. The breadth and variety of markets reviewed reinforces the importance of rigorous market analysis in merger review and demonstrates the critical importance of applying antitrust principles consistently in defense of lower prices, better service, more choices, and more innovation.

Anticompetitive conduct: This year, the FTC focused especially on harmful conduct in the health care, pharmaceutical, technology, retail goods, and real estate sectors where consumer spending is high. Some actions were resolved by consent agreements, putting an end to the unlawful conduct, while in others, the Commission is seeking relief in federal court or via its administrative process. Through these enforcement actions, the FTC remains at the forefront of developing antitrust standards for competitor collaboration, vertical restraints, and single-firm conduct.

The Commission focuses on industries that most directly affect consumers, such as health care, technology, energy, retail goods, and chemicals, so that the FTC's compe-

Enforcement Actions by Sector
FY 2006 Through FY 2010*



* Represents Fiscal Year 2010 through March 31, 2010.

tition work has a direct impact on consumers by maintaining competition for the products and services they buy. From generic drugs and computer chips to eyeglasses and portable batteries, the Commission seeks to prevent the kinds of anticompetitive mergers and conduct in markets large and small that affect consumers every day.

Chapter 1: Health Care Markets

During the national debate on the future of health care policy, there was consensus on one key point: competition throughout the health care system is critical to reduce costs and encourage innovation. The Commission is working to promote competition among health care companies on many fronts. For instance, the Commission stepped up efforts to stop pay-for-delay agreements, which cost consumers, employers, and the government an extra $3.5 billion each year by forestalling the entry of lower-cost generic drugs. The Commission supports legislation to ban these agreements, as it continues to vigorously prosecute antitrust claims against such agreements in federal court. The Commission has used its enforcement authority to undo agreements among health care providers to fix reimbursement rates with payers. And again this year, the Commission intervened in a number of potentially harmful mergers that threatened to raise prices for important pharmaceutical and medical treatments.

> *"Antitrust enforcement improves health care in two ways. First, by preventing or stopping anticompetitive agreements to raise prices, antitrust enforcement saves money that consumers, employers, and governments otherwise would spend on health care. Second, competition spurs innovation that improves care and expands access... [T]he FTC has been a cop on this beat for the past 30 years."*
>
> *– Richard Feinstein, Director, BC, testimony before the Senate Committee on Commerce, Science, and Transportation, Subcommittee on Consumer Protection, Product Safety, and Insurance, July 16, 2009.*

A. Stopping Anticompetitive Pay-for-Delay Agreements

One of the Commission's top priorities is putting an end to anticompetitive pay-for-delay patent settlement agreements**.** These settlements involve payments from brand-name pharmaceutical manufacturers to generic drug manufacturers to delay marketplace entry, usually within the framework for generic entry established by the Hatch-Waxman Act. More than two decades ago, Congress passed the Hatch-Waxman Act, which was designed to make it easier for generic drugs to enter the market, while giving brand-name manufacturers the patent protection they need to encourage lifesaving research. While the legislation initially worked as intended, resulting in significantly lower prices for consumers through the rollout of generic drugs, drug companies eventually found they could delay

generic entry by raising patent disputes and obtaining pay-for-delay agreements to settle the patent dispute.

Elizabeth Schneirov, Bureau of Economics



Since joining the Bureau of Economics in 1997, Elizabeth has provided economic analysis in a number of competition matters in a wide variety of industries, from medical devices and pharmaceuticals to consumer products and retail drug stores. Most recently, she has been instrumental in analyzing the effects of pay-for-delay patent settlements, serving as staff economist on several major investigations and estimating the harm to consumers caused by these settlements. Elizabeth is also involved in the Commission's international technical assistance program, through which she served as a long-term technical advisor to competition officials in South Africa, and completed many other short-term missions.

Enforcement

The Commission continues to pursue two matters in federal court in which brand-name drug companies allegedly paid generic rivals to delay the introduction of a generic formulation. The FTC also brought its first civil penalty action to enforce the reporting requirements of the Medicare Modernization Act (MMA).

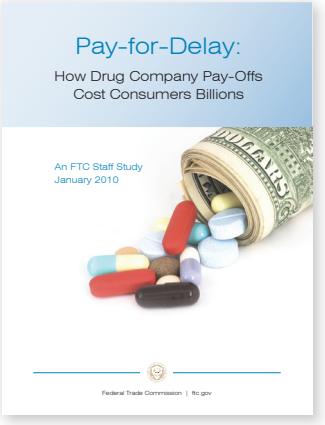
- **Provigil.** The Commission's case charging ***Cephalon, Inc.*** with an illegal pay-for-delay agreement for its branded drug, Provigil, is pending in the Eastern District of Pennsylvania. Provigil is an FDA-approved treatment for excessive sleepiness in patients with sleep apnea, narcolepsy, and shift-work sleep disorder, with annual U.S. sales of over $800 million. The court denied the defendants' motions to dismiss the complaint, finding the agreements may violate antitrust laws.

- **AndroGel.** In February 2009, the Commission and the California Attorney General challenged an agreement between ***Solvay Pharmaceuticals, Inc.***, maker of AndroGel, and two generic drug manufacturers to abandon their patent challenges and delay marketing a generic formulation until 2015. Androgel is Solvay's branded testosterone-replacement drug, a prescription pharmaceutical with sales of more than $400 million a year. This case, which was transferred to the Northern District of Georgia, was dismissed by the court in February 2010.

- **Plavix.** The Commission obtained $2.1 million – the largest fine allowed by law – from ***Bristol-Myers Squibb Company*** (BMS) for failing to inform the FTC of agreements reached with Apotex, Inc., regarding potential generic competition to its blockbuster drug Plavix. BMS's conduct allegedly violated a 2003 FTC Order and the MMA, which require that certain drug company agreements be accurately reported to both the Commission and the DOJ. In this first action under the MMA, the Commission charged that BMS failed to disclose

that, as part of a patent settlement with Apotex, BMS orally promised that it would not compete with Apotex during the first 180 days that Apotex marketed its new generic drug.

Reports & Testimony



This year, the Commission released a staff report, "*Pay-for-Delay: How Drug Company Pay-Offs Cost Consumers Billions*," that studied the impact on consumers and the economy of over six years of pay-for-delay pharmaceutical settlements. The report found that, on average, these agreements delayed generic entry nearly 17 months longer than agreements without such payments. The study observes that most of these agreements are still in effect and currently protect at least $20 billion in sales of brand-name pharmaceuticals from generic competition. The study projects that over the next 10 years pay-for-delay agreements will cost American consumers an estimated $35 billion – $3.5 billion per year.

The Commission twice presented testimony to committees of the U.S. House of Representatives supporting legislation to ban anticompetitive pay-for-delay agreements between generic and brand-name drug companies. The testimony explained that pay-for-delay agreements were successfully challenged by FTC enforcement actions between 2000 and 2004, but recent appellate decisions have significantly undermined these efforts, leading to a dramatic increase in the number of these agreements.

B. Preserving Competition in Pharmaceuticals and Medical Devices

The Commission reviewed a number of proposed acquisitions in the pharmaceutical industry, mergers that threatened to reduce the number of firms working on innovative treatment options and cost-saving drugs. In total, the Commission reviewed acquisitions valued in excess of $117 billion, and the merger enforcement actions described below preserved competition in pharmaceutical and medical devices markets totaling more than $5.5 billion in sales.

Enforcement

- **Blood Plasma Therapies.** The Commission blocked ***CSL Limited's proposed $3.1 billion acquisition of Talecris Biotherapeutics***, two leading makers of plasma protein therapies used to treat blood borne illnesses such as primary immunodeficiency. The Commission's complaint alleged that a history of consolidation in the plasma industry has shown that the industry uses consolidation as a tool to limit supply and drive prices higher. According to

the complaint, the proposed acquisition of Talecris was particularly concerning because it was undergoing substantial expansion that – absent the acquisition – would have increased availability, and lowered prices, of these life-saving therapies. Soon after the FTC filed its complaint, the companies announced their decision to abandon the merger.

- **Heart Pumps.** The Commission successfully challenged ***Thoratec's proposed $282 million acquisition of rival medical device maker HeartWare***, charging that the proposed acquisition would have enhanced Thoratec's existing monopoly in the market for left ventricular assist devices (LVADs) used to treat patients with advanced heart failure. Prior to the proposed acquisition, HeartWare was positioned to obtain FDA approval for its LVAD device in 2012, making it the only LVAD device to challenge Thoratec's LVAD monopoly. The parties abandoned the transaction after the Commission announced its intention to challenge it.

> *"We can't have health care reform that truly benefits American consumers unless we have competition, and competition is particularly important when it comes to life-saving devices such as the LVAD."*
>
> *– Richard Feinstein, Director, BC (press release, July 30, 2009)*

- **Drug Treatment for Heart Defects in Premature Babies.** The Commission is seeking a permanent injunction to remedy harmful effects from ***Ovation Pharmaceutical's 2006 acquisition of the rights to sell NeoProfin***, a drug used to treat congenital heart disease in approximately 30,000 premature babies each year in the United States. At the time of the acquisition, Ovation sold Indocin, the only other drug used to treat the condition. In the week-long trial in December before the U.S. district court in Minneapolis, the Commission argued that Ovation used its monopoly position to raise prices for the drug from $36 to $500 per vial. The Commission is seeking divestiture and disgorgement of all unlawfully obtained profits since the merger; closing arguments were heard on March 11.

- **Anti-Nausea Drugs and Animal Health Products.** The Commission's review of ***Schering-Plough's $41.1 billion acquisition of Merck*** resulted in significant divestitures to resolve concerns that the merger would have reduced competition in several animal health care markets and in the market for drugs used to treat nausea and vomiting in surgical and chemotherapy patients. Before the merger, the companies were two of the leading animal health pharmaceutical suppliers in the United States, and competed head-to-head in several markets. In addition, Merck's Emend product is the first and only drug approved for human use to treat side effects of chemotherapy. Schering-Plough was in the process of licensing an equivalent drug to a third party when the Merck transaction was announced. Accord-

ing to the FTC, the merger would likely have reduced the combined firm's incentives to launch Schering-Plough's competing drug. To resolve FTC concerns in the market for anti-nausea treatments, Schering-Plough agreed to divest its related assets to Opko Health, Inc. To remedy concerns about animal health product competition, Merck agreed to sell its interest in Merial to Sanofi-Aventis, its joint venture partner in animal health products. The FTC worked closely with competition authorities in Australia, Canada, Israel, Mexico, New Zealand, and the European Commission (EC) throughout its investigation.

Sarah Mathias, Office of the General Counsel



As Associate General Counsel for Project Management, Sarah leads several intra-agency groups working on matters such as the latest insurance study, the Social Media Task Force, and the renewed Remedies Task Force. Previously, Sarah worked in the OGC's Policy Studies group on seminal projects such as the FTC/DOJ hearings on health care and on intellectual property, as well as the 2005 report "*Gasoline Price Changes: The Dynamic of Supply, Demand, and Competition*." Before returning to the OGC a year ago, Sarah served as an advisor to Commissioner Kovacic and as his Chief of Staff while he was Chairman.

- **Animal Vaccines.** As originally structured, the ***$68 billion merger of Wyeth and Pfizer, Inc.*** would have reduced competition in several markets for the manufacture and sale of animal vaccines and pharmaceutical products, leaving veterinarians and other animal health product customers with limited options, according to Commission charges. To settle the FTC's claims, the companies agreed to sell animal health business assets to an FTC-approved buyer. FTC staff thoroughly investigated other business lines where the companies may compete against each other in the human pharmaceutical area, and the transaction's broader impact on incentives to innovate and marketing practices. The Commission concluded that the transaction likely would not harm consumers in any prescription drug market where the companies currently overlap, reduce incentives to innovate, create intellectual property barriers, or allow Pfizer to engage in anticompetitive marketing practices. The FTC worked closely with competition authorities in Canada, Australia, Mexico, New Zealand, and South Africa during this investigation.

- **Generic Drugs.** The Commission challenged ***Watson Pharmaceutical's $1.7 billion acquisition of rival generic drug company Arrow Pharmaceuticals***. Prior to the merger, both Watson and Arrow developed important generic drugs used to treat Parkinson's disease and the side effects of chemotherapy. The Commission alleged that the merger, as originally proposed, would have substantially reduced competition in the U.S. markets for these generic drugs. In order to remedy the Commission's concerns, Watson and Arrow agreed to sell

Commissioner J. Thomas Rosch



With the economic downturn, Commissioner J. Thomas Rosch believes vigorous enforcement is more important than ever. Notwithstanding the decrease in M&A activity, the number of FTC merger enforcement actions dropped by only ten percent in our fiscal year ending September 30, 2009, compared to the prior year. Moreover, the drop in merger work has provided the agency with resources to go after anticompetitive conduct under Section 5, which remains a top priority. In the fall out from the financial crisis, the FTC has likewise stepped up its consumer protection efforts. In 2009 alone, the FTC and the states, working in close coordination, brought more than 200 cases against firms that peddled phony mortgage modification and foreclosure rescue scams. The Commission's litigation efforts demonstrate that it continues to take its missions of protecting competition and consumers seriously.

assets related to the two drugs to FTC-approved buyers and to ensure that those buyers have the means to compete effectively in the future.

- **Laser Microdissection Devices.** To settle Commission charges, ***Danaher Corporation*** and ***MDS Analytical Technologies*** agreed to divest MDS's assets related to its laser microdissection business as a condition to allowing the companies to proceed with their merger. Microdissection devices are used in scientific research to separate small groups of cells – or even one cell – from larger tissue samples for specialized testing, such as DNA analysis, RNA analysis, or protein profiling. As such, they are a key tool used in scientific research. Danaher and MDS are two of only four North American suppliers of these devices. The FTC contended that the combination of Danaher and MDS would have led to increased prices and decreased innovation for the devices. Under the consent order, Danaher and MDS must sell to Life Technologies, an FTC-approved buyer, all of the products and equipment needed to operate the MDS laser microdissection business.

Reports & Advocacy

The Commission released three policy reports addressing issues in pharmaceutical innovation and competition and filed two comments on pending health care plan proposals.

- **Follow-On Biologics.** As Congress considered legislation to provide the FDA with authority to approve follow-on biologics (FOBs), the Commission report, "*Emerging Health Care Issues: Follow-On Biologic Drug Competition*," examined whether special incentives are warranted to encourage FOBs to enter and compete with branded biologics. Based on its study, the FTC concluded that special procedures are unnecessary to encourage FOBs to enter and compete with branded biologics and are likely to harm consumers. Rather, the patent system and the ability to charge a monopoly price during the patent term likely will continue to incentivize further innovation by brand firms and entry by FOB firms.

- **Authorized Generics.** The Commission issued an interim report, which provided the first set of results from the FTC's study of the effects of authorized generics on competition in the prescription drug marketplace. Authorized generics exist when a pharmaceutical manufacturer sells a drug under both a brand-name and generic label. The interim report addressed effects of authorized generic competition on wholesale and retail generic prices during the Hatch-Waxman Act's 180 days of marketing exclusivity, as well as effects on the revenues and sales quantities of independent generics during that period. The report also presented analysis of patent settlement agreements in which a brand agreed not to compete against an independent generic with an authorized generic for a certain amount of time and the independent generic agreed to defer its entry for a certain period. Staff is preparing a final report that will extend the analysis to include consideration of authorized generics' long-term competitive effects.

- **The Success of Divestitures in Merger Enforcement: Evidence from the J&J – Pfizer Transaction.** This Bureau of Economics working paper examines the divestitures relating to Johnson & Johnson's $16.6 billion acquisition of Pfizer's consumer health division in 2006. Six brands were divested in this matter to alleviate antitrust concern. The results show that for three of the brands, their pre- and post-divestiture performance is similar, while the remainder underwent changes that do not appear to be divestiture related. Overall, the results are consistent with the view that the divestitures maintained the pre-transaction level of competition.

- **Comments on Health Care Plan Proposals**

  - **New York PBMs.** FTC staff commented on proposed New York legislation to regulate the contractual relationships between pharmacy benefit managers (PBMs) and health plans. The comments concluded that the bill's mandatory disclosures of PBM information could excessively restrict PBMs' ability to negotiate efficient, mutually advantageous contracts with health plans, which might unintentionally increase prescription drug prices for New York consumers and health plans, and also could facilitate collusion among third parties like pharmaceutical manufacturers.

Bureau of Economics

Economists in the Bureau of Economics conduct policy-relevant research to inform the FTC's decisions. With more than 70 Ph.D. economists and more than a dozen research and financial analysts, BE is the center of the Commission's "R&D." BE co-sponsors an annual microeconomics workshop with Northwestern University to bring together scholars working in industrial organization, information economics, game theory, quantitative marketing, consumer behavior, law and economics, behavioral and experimental economics, and other areas related to the FTC's antitrust, consumer protection and public policy missions.

- **Information About Medicare Advantage and Prescription Drug Plans.** The Commission submitted a comment to the Department of Health and Human Services (HHS) supporting a proposed rule change to improve the information that health insurers give to enrollees in Medicare Advantage and Medicare prescription drug benefit plans, in order to facilitate consumer ability to compare and select among various plans. The comment further suggested that standardized disclosures should be based on objective tests of how well consumers understand them and that they should be updated regularly. In addition, the FTC urged that HHS explore ways to permit third parties to use health insurers' claim and performance data to develop quality measures that further competition and consumer choice.

"I am truly thankful for the FTC ... at least one government agency who is willing to go to bat for the consumers."

– Consumer in Arlington, TX

C. Promoting Competition Among Health Care Facilities

Competition between health care facilities, such as hospitals and clinics, helps control health care costs and provides vital incentives to improve services to patients at their most vulnerable times.

Enforcement

- **Outpatient Clinics.** This year, the Commission took action to prevent higher health care costs due to ***Carilion Clinic's*** 2008 acquisition of two outpatient clinics in the Roanoke, Virginia area. According to the Commission's administrative complaint, the two clinics had strong reputations for offering high-quality care and convenient services at prices much lower than Carilion's. The acquisitions therefore eliminated important competition that benefitted patients, employers, and health plans in the Roanoke area, the complaint alleged. In light of the Commission's challenge, Carilion agreed to sell the two outpatient clinics and related assets to FTC-approved buyers.

- **Hospital Merger.** In order to improve transparency in the merger review process, BC Director Richard Feinstein issued a statement on the agency's decision to close its investigation of a consummated hospital merger between ***Scott & White Healthcare and King's Daughters Hospital*** in Temple, Texas. According to the letter, King's Daughters Hospital's precarious financial condition made it likely that it could not continue as an independent competitor. Therefore, the determinative issue in the investigation was whether there was a viable alternative purchaser that would not pose a danger to competition. Scott & White had offered to sell to another company identified as the most likely alternative purchaser, but that company declined. Under the circumstances, Commission staff concluded that Scott & White was the

only viable acquirer of the King's Daughters Hospital assets, and accordingly, closed the investigation.

Michael Wroblewski, Office of Policy Planning



As Deputy Director of the Office of Policy Planning, Michael Wroblewski continues his distinguished service to the FTC, where he has directed many of the Commission's studies on competition issues in the pharmaceutical and electric power industries. Recently, his work has focused on emerging health care competition and consumer issues. Michael led the agency's effort to examine the regulatory pathway by which "follow on biologics" might enter and compete once the pioneer drug's patent expires. Michael also drafted comments to the U.S. Department of Health and Human Services promoting the use of consumer-tested, standardized information about plan choices for Medicare enrollees.

Advocacy

- **Portable and Mobile Dental Services for Kids.** FTC staff filed comments in May asserting that proposed Louisiana legislation to restrict the practice of in-school dentistry raised competition concerns and could harm children seeking dental care. After a bill was passed allowing dentistry to continue in schools but mandating that the Board of Dentistry adopt rules to ensure safe delivery of care, the Commission filed additional comments in December, advocating that the Board strike proposed provisions that would make it more difficult to conduct dentistry in a mobile setting. The comment explained that, if enacted, the bill is likely to make the most vulnerable of Louisiana's children – particularly Medicaid-eligible children – worse off by denying many the opportunity to receive dental care.

- **Limited Service Clinics.** Commission staff commented on a Kentucky Cabinet for Health and Family Services proposed rule to set licensing requirements for limited service clinics (LSCs), noting that several provisions would impose costs and restrictions on LSCs but would not apply to the same professionals when practicing in other limited care settings such as urgent care centers. The comment expressed concern that such disparate regulation may reduce both price and quality competition among different types of facilities, without any evidence of countervailing consumer protection benefits.

D. Defining Standards for Collaborations Among Physicians and Physicians Associations

Enforcement

The Commission monitors joint price setting by physicians groups and acts to stop collective action that keeps reimbursement rates high without providing pro-competitive benefits for patients.

- ***Alta Bates Medical Group, Inc.*** A 600-physician independent practice association serving the Berkeley and Oakland, California area agreed to settle FTC claims that it fixed prices charged to health care insurers. The FTC order prohibits Alta Bates from collectively negotiating fee-for-service reimbursements or engaging in a related group boycott.

- ***Roaring Fork Valley Physicians I.P.A. Inc.*** The Commission charged a Colorado physicians' group with violating the FTC Act by orchestrating agreements among its members to set higher prices for medical services and to refuse to deal with insurers that did not meet its demands for higher rates. According to the Commission's complaint, Roaring Fork doctors demanded that contracts with insurers include automatic annual cost of living adjustments and banned a cost-lowering provision commonly used by insurers that links reimbursement rates to Medicare rates. The group agreed to terminate the anticompetitive agreements and notify the FTC before participating in any collaborative arrangement with doctors.

- ***In the Matter of M. Catherine Higgins.*** The Commission also took action against the executive director of Boulder Valley IPA for her alleged attempts to evade a previous FTC order against the association. The Commission alleged that shortly after Boulder Valley IPA agreed to stop negotiating prices on behalf of competing doctors, M. Catherine Higgins represented doctors in her individual capacity. The Commission's consent order with Ms. Higgins provides effective relief to protect competition and health care consumers in Boulder County, Colorado.

Advisory Opinions

Under its Rules, the Commission or its staff may offer industry guidance in the form of an advisory opinion regarding proposed conduct in matters of significant public interest. In recent years, the staff of the Bureau of Competition has issued several advisory opinions in the area of health care provider collaboration. These competition advisory opinions, which can be found on the Commission website, inform the public about the Commission's analysis in novel or important areas of antitrust law.

- **Clinical Integration Advisory Opinion.** Commission staff reviewed a proposal from ***TriState Health Partners, Inc.***, a physician-hospital organization based in Hagerstown, Maryland, to clinically integrate its operations, including joint contracting by its members with health plans and self-insured employers. *Bona fide* clinical integration efforts have the potential to achieve significant cost savings while improving the quality of care, especially when the members coordinate their clinical practice in a substantial way. Even though the group has a large market presence, the program will be non-exclusive, allowing members to contract individually outside of the proposed program. Under these conditions, TriState's

Commissioner Edith Ramirez



Rapid advancements in the high-tech sector not only bring tremendous benefits to consumers, but also are a fundamental driver of economic growth. The proper application of antitrust law is essential to promote vigorous competition in technology markets, while also maintaining adequate incentives to innovate tomorrow's solutions. As demonstrated by the Commission's long history of research, advocacy, and enforcement, achieving the right balance between competition and intellectual property policy is an ongoing challenge. Based on her IP litigation experience, Commissioner Ramirez plans to further the Commission's unique and consumer-focused role in analyzing rapidly evolving markets.

joint contracting with payers would be subordinate and reasonably necessary to achieve clinical integration of its members. Based on these representations, the Commission staff did not recommend a challenge to the program.

Chapter 2: Technology Markets

Technological advances are critically important to growing our economy, creating jobs and introducing more efficient products and processes into the marketplace. As a result, the Commission is especially vigilant to promote competition in technology sectors of the economy. Again this year, the Commission reviewed a number of proposed acquisitions that raised concerns about the number of firms devoted to advancing current technology in a given market and challenged business conduct allegedly aimed at thwarting new products in the marketplace.

Enforcement

- **Computer Chips.** The Commission charged chip manufacturer ***Intel Corporation*** with illegally using its dominant position in the markets for central processing units (CPUs) and graphics processing units (GPUs) to stifle competition and to strengthen its monopoly in violation of Section 5 of the FTC Act. The administrative complaint alleges that Intel carried out an anticompetitive campaign using threats and rewards aimed at the world's largest original equipment manufacturers (OEMs) to coerce them not to buy rival CPUs and used exclusive or restrictive dealing to prevent OEMs from marketing machines with rival CPUs. In addition, the complaint alleges, Intel secretly



San Francisco Chronicle

December 17, 2009

FTC sues Intel
Regulators allege chipmaker quashed competition
By Ryan Kim, Chronicle Staff Writer

The Federal Trade Commission sued Intel Corp. on Wednesday over its business practices, saying the chipmaker has engaged in anti-competitive behavior by abusing its dominant market position.

The FTC said the Santa Clara company pursued a deliberate campaign to stifle competition, cutting off its rivals' access to the marketplace. In the process, consumers have been denied the opportunity to buy superior non-Intel products at a lower price, the complaint alleges.

redesigned key software, known as a compiler, in a way that deliberately stunted the performance of competing CPUs, and then claimed that the software performed better on Intel's CPUs, without disclosing that the difference was largely or entirely due to Intel's compiler redesign. The complaint also alleges that Intel's CPU dominance was threatened by the innovation of GPU manufacturers, prompting Intel to engage in similar unfair practices to obtain a monopoly in the relevant GPU markets. The administrative trial is set to begin September 15, 2010.

- **Engineering Process Software.** The Commission modified an FTC order requiring ***Aspen Technology, Inc.*** to restore competition in the U.S. markets for several engineering process simulation software products. Under the 2004 order, Aspen Tech was required to divest overlapping software assets in order to alleviate FTC concerns that its 2002 merger with Hyprotech would substantially lessen competition. The Commission charged that Aspen Tech failed to fully and timely divest the assets to Honeywell, the FTC-approved buyer, and it agreed to additional requirements and oversight to settle the FTC charges.

- **Interlocking Directorates.** The Commission also monitors business relationships between firms with competing technology products. Section 8 of the Clayton Act prohibits, with certain exceptions, the same person from serving as a director or officer of two competing corporations. After an FTC investigation raised concerns about two individuals serving on the boards of ***Apple*** and ***Google***, these individuals stepped down from the boards of one of the companies in order to resolve the FTC's concerns without the need for litigation.

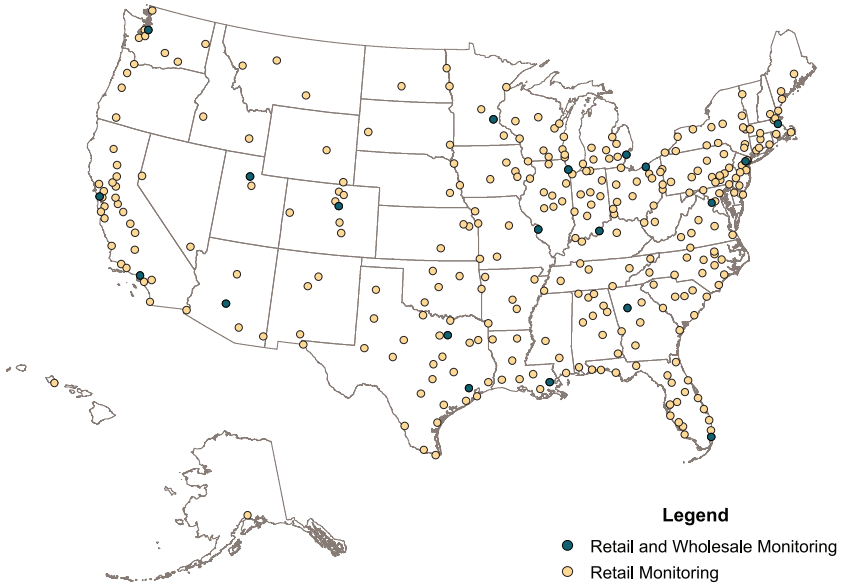
Public Hearings

- ***The Evolving IP Marketplace.*** During 2009, the FTC completed a series of eight hearings to explore the competitive dynamics of evolving markets for intellectual property. Hearings were held in Washington, D.C. and Berkeley, California to examine a number of important issues: the role of patents in promoting innovation and technology transfer; the operation of secondary patent markets; and the impact of substantive legal doctrines on the patent marketplace. In particular, participants at the hearings undertook an in-depth study of patent infringement remedies, such as injunctions and damages. The Commission heard from more than 100 experts and received 47 public comments. FTC staff is drafting a report analyzing the competitive implications of information learned from the hearings.

Chapter 3: Energy Industry

The petroleum industry plays a crucial role in our economy. Few issues are as important to consumers and businesses as the prices they pay for gasoline and for energy to heat and light their homes and businesses. The Commission devotes significant resources to monitoring energy markets. For example, the Commission monitors retail and wholesale prices of gasoline and diesel fuel in 20 wholesale regions and approximately 360 retail areas in the U.S. Each year, the Commission issues a number of reports on market statistics and trends, such as semi-annual reports on oil and gas activities, and an annual ethanol report.

Retail and Wholesale Gasoline and Diesel Price Monitoring



On the merger front, the Commission received premerger filings under the Hart-Scott-Rodino Act for 33 proposed acquisitions involving products in energy markets during 2009. The agency reviewed each of these transactions and also monitors the industry for non-reportable transactions that may raise competitive concerns. This year, the Commission investigated acquisitions involving refined petroleum products pipelines and terminals, liquefied petroleum gas (propane), lubricant oils, natural gas, and natural gas liquids storage and transportation.

Rulemaking & Comments

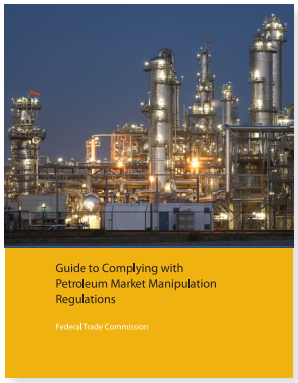
- **Petroleum Market Manipulation Rule.** This year, the Commission added another tool to combat higher prices for wholesale petroleum products. Pursuant to its authority under the Energy Independence and Security Act of 2007, the Commission issued its Petroleum Mar-

Patricia Galvan, Bureau of Competition



A Deputy Assistant Director of the Bureau of Competition, Patricia Galvan is one of the agency's oil and gas experts. In 1999, Patricia joined the Mergers III Division, where she has investigated numerous oil industry mergers such as BP Amoco/ARCO and Chevron/Texaco. Patricia also led a litigation team seeking a federal court injunction blocking Equitable Resources, Inc.'s acquisition of Dominion Resources, Inc., two natural gas distribution companies serving customers in Pittsburgh. This year, Patricia headed up an agency-wide task force to develop an FTC rule prohibiting manipulation in wholesale petroleum markets.

ket Manipulation Rule, which became effective in November. In a rulemaking proceeding that generated over 150 comments from consumers and businesses, the Commission crafted a Rule that prohibits fraud or deceit in wholesale petroleum markets, including omission of material information, that is likely to distort petroleum markets. The Commission staff prepared a compliance guide for businesses, which sets out examples of Rule violations, such as false public announcements of planned pricing or output decisions, false statistical or data reporting, and wash sales intended to disguise the actual liquidity of a market or the price of a particular product. Suspected violations of the Rule can be reported to mmr@ftc.gov.



- **Comments to the Federal Energy Regulatory Commission**

  - **Partial Acquisitions by Energy Companies.** The Commission submitted two comments concerning Federal Energy Regulatory Commission's (FERC) competitive assessments of partial acquisitions of electric power providers, including acquisitions by private equity firms holding investments in competing electric power providers. The FTC encouraged FERC to avoid adopting policies that assess competitive effects based solely on control, but rather to examine closely the competitive effects of partial acquisitions that fall short of control.

  - **Improving the Power Grid.** The Commission commented during a FERC proceeding concerning how to improve regional planning. The FTC advised that planning for new transmission lines will be most effective if it covers a geographic area that matches the scope of power flows, taking into account congestion, reliability, and environmental impact. When determining how to divide up the costs of new lines, FERC should recognize that the transmission system's functions are evolving to include new attributes, such as "smart grid" technology, that can improve the efficiency of grid operations and give consumers more control over their energy use and energy bills.

- **Effective Energy Use.** The FTC provided comments on FERC's draft action plan to support programs that could help consumers manage their electricity use, so the electrical grid can be run more efficiently, with increased reliability, and at lower cost. The Commission applauded the draft plan for including these "demand response" programs. The FTC recommended expanding the use of consumer research to better understand consumers' preferences, motives, decision-making, and ability to use technology effectively.
- **Assessing Regional Transmission Organizations.** In response to a FERC request for comments, the Commission recommended that FERC adjust the proposed metrics that it would use to measure the performance of electric regional transmission organizations (RTOs) and independent system operators (ISOs). The Commission proposed that FERC metrics evaluate RTOs' and ISOs' performance in relation to their prescribed minimum characteristics and functions, and that FERC consider augmenting these criteria to measure the organizations' efficiency.

Chapter 4: Consumer Goods and Services

The Commission also focuses its enforcement resources on mergers and anticompetitive business conduct that threaten competition for goods and services that consumers buy every day. In the past, this has resulted in Commission actions involving a variety of products, from groceries and health care products, to soft drinks and video stores. The Commission's merger investigations in these areas can be very time and resource-intensive because they often involve dozens, sometimes hundreds, of local markets or the analysis of extensive retail pricing data.

This year, the Commission ruled that certain policies of a Multiple Listing Service (MLS) operating in Southeastern Michigan violated Section 5 of the FTC Act by impeding competition from non-traditional and discount brokers. The Commission's unanimous opinion in ***Realcomp II Ltd.*** found that the group's policies restricted consumers' access to information about property listings from discount brokers on popular real estate websites and restricted brokers' access to such listings within its own MLS database. The Commission found that the restrictions reduced consumer choice, protected prevailing commission rates, and harmed the competitive process without any

> *"The Realcomp Policies are, in essence, an agreement among horizontal competitors to restrict the availability of information that consumers can use to evaluate the prices and other features of competing providers' offerings, the effect of which is to make such information more difficult and costly to obtain."*
>
> *– Commission Opinion in Realcomp II Ltd., November 2, 2009*

offsetting benefits for home buyers and sellers. The Commission's order requires Realcomp to cease and desist from enforcing its unlawful restrictions or otherwise discriminating against non-traditional listings. Respondents have filed an appeal.

Enforcement

The Commission also took action to preserve or promote competition in the following consumer goods markets.

- **Photochromic (Darkening) Treatments for Eyeglass Lenses.** The Commission charged ***Transitions Optical, Inc.*** with violating Section 5 of the FTC Act by using exclusionary contracts to maintain its monopoly in photochromic lenses. Transitions, the leading maker of treatments that darken lenses exposed to sunlight, allegedly imposed exclusive dealing policies on its lens makers, retailers and wholesaler labs, foreclosing rivals from key distribution channels and leading to higher prices, reduced innovation, and fewer choices for consumers. According to the complaint, as a result of these restrictive policies, Transitions lenses account for over 85 percent of the photochromic lenses sold in the United States, and new entrants offering competing photochromic lens treatments could not find outlets for their products. Under a settlement with the FTC, Transitions agreed to end existing exclusive dealing contracts and not enter into new ones.

- **Carbonated Soft Drinks.** The FTC required ***PepsiCo, Inc***. to restrict its access to the confidential business information of rival Dr Pepper Snapple Group as a condition for proceeding with a proposed $7.8 billion acquisition of its two largest bottlers and distributors, which also distribute Dr Pepper Snapple Group carbonated soft drinks. Under a separate 20-year exclusive license to bottle, distribute and sell Dr Pepper, Crush and Schweppes, Pepsi bottling employees will receive confidential Dr Pepper Snapple marketing and brand plans. The FTC consent agreement requires Pepsi bottling employees not to share sensitive business information with other Pepsi employees who manage concentrate sales, so as to eliminate opportunities for Pepsi to reduce competition between Pepsi products and the other carbonated soft drinks to the detriment of consumers.

- **Portable Batteries.** In November 2009, two major consumer electronics manufacturers, ***Panasonic Corporation*** and ***Sanyo Electric***, agreed to sell portable nickel metal hydride (NiMH) battery assets in order to alleviate Commission concerns regarding their proposed $9 billion merger. NiMH batteries are used to power the two-way radios used by first responders such as police and fire departments. Prior to the merger, Panasonic and Sanyo were the world's two largest manufacturers of NiMH batteries. Under the terms of the Commission's settlement, Sanyo's NiMH assets located in Japan were sold to a subsidiary of Fujitsu.

Global Competition Review: FTC One of Top Competition Agencies

Again this year, the Global Competition Review named the FTC one of the top three elite competition agencies in the world. "With a budget equivalent to more than €75 million and some of the most experienced staff of any antitrust agency in the world, it again deserves to take a place near the top of the Rating Enforcement table."

- **Cemetery Services.** The Commission entered into two consent agreements with ***Service Corporation International*** (SCI), the nation's largest cemetery operator, to resolve competitive concerns related to two separate acquisitions. Last fall, SCI proposed to acquire ***Palm Mortuary***, the third-largest provider of cemetery services in Las Vegas, Nevada, which would have given SCI control of 76 percent of the market for cemetery services in that area, according to the FTC. Under the consent order, SCI must divest its only cemetery in the Las Vegas area, as well as the funeral home on the same property. The FTC was assisted by the Office of the Nevada Attorney General throughout its investigation. In March, to settle FTC charges and proceed with a separate proposed acquisition of ***Keystone North America Inc.*** (KNA), SCI agreed to divest 22 funeral homes and four cemeteries in 19 areas throughout the country. Under the terms of the FTC's proposed consent, in order to preserve existing competition, SCI must divest SCI or KNA assets in 16 local funeral services markets affected by the acquisition: Yuma, Arizona; Monterey, California; Denver, Colorado; Auburndale/Winter Haven, Florida; Vidalia, Georgia; Bossier City, Louisiana; Lansing, Michigan; East Aurora, New York; Northern Rockland County, New York; Charlotte, North Carolina; Greensboro, North Carolina; Columbia, South Carolina; West Columbia/Lexington, South Carolina; New Tazewell, Tennessee; Lynchburg, Virginia; and Yakima, Washington. The consent also requires divestitures in the following three local cemetery services markets: Yuma, Arizona; Macon, Georgia; and Columbia, South Carolina.

Workshops



- **Resale Price Maintenance.** Resale Price Maintenance (RPM) involves an agreement between a manufacturer and retailer setting the prices at which the retailer will resell the manufacturer's goods to consumers. In 2009, the FTC held a series of workshops to explore, for the purposes of enforcing Section 1 of the Sherman Act and Section 5 of the FTC Act, how to best distinguish between uses of RPM that benefit consumers and those that do not.

Chapter 5: Industrial and Chemical Sectors

The Commission also reviewed several proposed acquisitions between chemical companies that raised competitive concerns, resulting in the following enforcement actions.

Enforcement

- **Battery Separators.** This year was an important one in analyzing competition in the industrial and chemical sectors as Commission staff presented evidence in a month-long administrative trial challenging ***Polypore International Inc.'s February 2008 acquisition of Microporous Products***. The Commission's complaint alleged that the acquisition decreased competition in four North American markets: deep cycle, motive, automotive, and uninterruptible power supply battery separators. The Commission's complaint also challenged a Polypore joint marketing agreement as an illegal market allocation agreement to prevent new competition for its polyethylene battery separators. The hearing before an Administrative Law Judge (ALJ) included testimony from 33 fact witnesses and two expert witnesses, as well as more than 2,100 exhibits. In February, the ALJ issued an initial decision finding that the merger violated Section 7 of the Clayton Act, and that a mutual non-compete clause in the joint marketing agreement violated Section 5 of the FTC Act as an unlawful market allocation. The ALJ's order requires complete divestiture of the acquired assets in order to restore competition in the four battery separators markets and prohibits continued performance under the non-compete clause.

- **Road Salt.** The Commission challenged ***K+S Aktiengesellschaft's $1.68 billion acquisition of Morton International***, two major suppliers of bulk de-icing salt to state and local governments. The Commission's complaint alleged that the transaction as originally proposed would have substantially reduced competition in both the Maine and Connecticut local markets, leading to higher prices for this essential commodity sold to local and state governments to treat roads. To remedy these concerns, the parties agreed to sell bulk de-icing assets in Maine and Connecticut to FTC-approved buyers. Commission staff worked closely with the Attorneys General for Maine and Connecticut in its investigation.

- **High Performance Pigments.** ***BASF*** settled FTC charges that its ***proposed $5.1 billion acquisition of Ciba*** would lead to reduced competition for two widely used high performance pigments (bismuth vanadate and indanthrone blue). High performance pigments provide color to a range of products, including inks, coatings, plastics, and fibers, used in a wide variety of every day products. High performance pigments offer superior durability and light-fastness compared to other types of chemical pigments, making them particularly suited

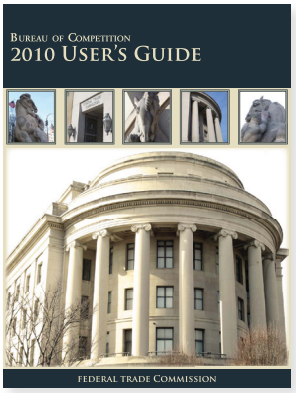
for products exposed to sunlight and weather, such as car coatings and building materials. Under the terms of the Commission's settlement, BASF agreed to sell all assets, including intellectual property, related to the two pigments to an FTC-approved buyer.

- **Farm Fertilizer.** Agricultural products supplier ***Agrium Inc.*** agreed to sell a range of assets as part of an agreement allowing it to move forward with its ***acquisition of CF Industries Holdings Inc.*** The consent order settled FTC charges that the acquisition would have eliminated competition in the market for anhydrous ammonia fertilizer, a product that farmers rely on to grow their crops, including corn and beans. Absent the FTC challenge, the merger would have reduced competition in three markets: the Pacific Northwest; East Dubuque, Illinois; and Marseilles, Illinois. The consent order requires Agrium to divest assets in each of these markets to an FTC-approved buyer.

Chapter 6: Other Competition Initiatives

- **Premerger Filing Violations.** The FTC administers the Hart-Scott-Rodino (HSR) premerger notification program for both the FTC and DOJ. This program is a critical tool in the government merger enforcement program and is used to identify and investigate proposed acquisitions that may be anticompetitive. This year, the Commission staff, deputized by DOJ, obtained a judgment for $1.4 million in civil penalties against ***John C. Malone***, CEO and Chairman of Discovery Holding Company, for failing to file the necessary premerger notifications in connection with acquisitions of Discovery shares in 2005 and 2008. The FTC alleged that Malone failed to file the required notice in 2005 after buying Discovery shares, and then in 2008 purchased additional Discovery shares before the expiration of a waiting period required by the HSR Act.

- **Competition Education and Outreach.** The Commission uses education and outreach to help prevent consumer injury, increase business compliance with the antitrust laws, and augment its law enforcement efforts. The Bureau of Competition released an updated version of its ***User's Guide***, which describes the work of the Bureau and who to contact about competition issues in Washington, D.C. and the three regional offices doing competition work. In order to facilitate e-discovery in antitrust investigations, the Bureau issued the ***BC Production Guide,*** a resource for companies and individuals that receive document requests such as a Request for Additional Information or a Civil Investigative Demand. As responses to these requests can often lead to production



of large volumes of electronic documents and data, this resource provides suggested formats based on the Bureau's experience with many different submissions in order to minimize incompatibilities and expedite review.

- **Subpoena Compliance.** The FTC brought three subpoena enforcement actions challenging tactics that delayed agency investigations. First, the U.S. Circuit Court for the District of Columbia affirmed a district court decision enforcing three subpoenas for videotape testimony issued to three individuals as part of the FTC's Androgel investigation. In the same investigation, the FTC also petitioned the district court for an order requiring ***Boehringer Ingelheim Pharmaceuticals, Inc.*** to fully comply with a subpoena for data and documents after a delay of over nine months. Finally, ***Church & Dwight*** petitioned to quash a Commission subpoena, first on grounds that it requires production of Canadian documents and subsequently on grounds of relevance. The Commission denied both motions, and then filed a motion to compel in the District Court for the District of Columbia; the matter has been referred to a magistrate judge for settlement.

- ***Amicus* Briefs**

  - ***American Needle v. NFL.*** The Commission and DOJ filed a joint *amicus* brief in the U.S. Supreme Court. The brief urged the Court to reject a holding that the NFL and its separately owned teams were a single entity when licensing and marketing their individual logos and trademarks under an exclusive licensing agreement with Reebok, because the standard would unduly limit the application of the antitrust laws.

  - ***Princo v. ITC.*** The FTC filed an *amicus* brief with the Federal Circuit to address the applicability of antitrust analysis in a patent misuse case. The FTC's brief, which does not support either party, states that, to the extent the Court draws on antitrust law to resolve "patent misuse" claims, it should recognize that pro-competitive efficiencies may justify some competitive restraints, but only if they are reasonably necessary to facilitate a productive collaboration between companies, such as a joint venture to invent, develop, and commercialize new technologies.

From Town Criers to Bloggers: How Will Journalism Survive the Internet Age?

Consumers are increasingly turning to the Internet for free news and information. Some news organizations are struggling with large debts that were acquired during better times. Advertisers have scaled back ad buys as a result of the recession. Perhaps of most concern, advertisers are following readers online, where an almost infinite supply of advertising space has dramatically reduced the prices that can be charged to advertisers.

The reduced profitability of online advertising has had a devastating effect on newspapers, where print advertising basically subsidized news reporting for most of the twentieth century. News organizations that once derived 80 percent of their revenue from print advertising are now confronting substantial – and ongoing – revenue losses. In response, newspapers have cut their staffs significantly over the past few years, with corresponding cuts in news stories and coverage. As just one example, in six states, no journalists are currently covering the activities of the state legislature. Changes such as these have led many to question how journalism will evolve in the future and to wonder whether any changes in government policies might be appropriate to support journalism.

This year, the FTC hosted two public workshops to discuss the future of journalism in the Internet age. In December 2009, a diverse group of owners of news organizations, journalists, bloggers, technologists, economists, and other academics discussed the changing dynamics of the news business and what new business models for journalism might evolve in the future. Participants included Representative Henry Waxman, Rupert Murdoch, Chairman and CEO of News Corp., Arianna Huffington, Co-Founder and Editor-in-Chief of The Huffington Post, Josh Marshall, Founder of Talkingpointsmemo.com, and Aneesh Chopra, Chief Technology Advisor to the President, as well as representatives from E.W. Scripps Co., *The Wall Street Journal*, *The Washington Post*, *The Milwaukee Journal Sentinel*, Yahoo!, Google, the National Newspaper Association, NorthwestCitizen.com, and many others.

In March 2010, experts in a variety of fields joined panel discussions at the FTC on ways in which the costs of journalism could be reduced through greater availability of, and more easily managed, government data; possible changes to copyright law to require news aggregators to pay fees to news-gathering operations; the viability of various non-profit and for-profit models for "new" news organizations; and collaborations that news organizations may use to both increase coverage and lower their costs.

In June 2010, the Commission will hold a final public workshop to compare, contrast, and seek consensus about the policy options that have been proposed as ways to better support journalism. The Commission will produce a report on this project in the fall.





Section Two: Consumer Protection Mission

The FTC works to combat fraud, deception, and unfair practices in the marketplace. The economic turmoil of the past year has posed new challenges for the FTC's consumer protection mission. As more consumers face financial distress – such as loss of work or inability to meet mortgage or loan payments – fraud operators have seized upon new schemes to take advantage of those most affected by the economic downturn. They offer bogus job placement assistance, work-at-home schemes, mortgage foreclosure relief services, or interest rate reduction plans – always requiring payment of substantial fees before consumers realize the promises are empty. This year the Commission has worked aggressively to protect consumers in this troubled economy, partnering with other federal and state authorities to maximize its efforts to halt such fraudulent practices. The FTC also remains committed to enforcement against abusive payday lending practices, discrimination in lending, and other unfair or deceptive conduct by financial services providers.

At the same time, the FTC has continued to build upon its record in other priority areas of enforcement activity – including protection of consumer privacy, computer security, and the security of sensitive consumer data, as well as prosecuting false or deceptive health and environmental claims and telemarketing fraud.

From March 2009 through March 2010, the Commission filed 80 actions in federal district court and obtained 83 judgments and orders requiring defendants to pay more than $393 million in consumer redress or disgorgement of ill-gotten gains. In addition, cases referred to the DOJ resulted in 18 civil penalty orders and $25.8 million in assessed civil penalties. Furthermore, the Commission gave final approval to 22 administrative orders. In many cases, the FTC worked closely with other law enforcement authorities – local, state, federal, and foreign – to achieve the best results for consumers.

In addition to bringing law enforcement actions, the FTC promotes consumer welfare through several additional tools, such as conducting rulemaking proceedings and issuing industry guidance; publishing reports; holding hearings and workshops to explore options and develop policy through dialogue with outside experts and organizations; testifying before Congress; and making the Commission's views known through letters or comments to other agencies. These activities enable the FTC to work with industry members, other government agencies, the media, and the public to gather information and establish policies that protect consumers.

Consumer Outreach and Education

In the past year, the FTC has distributed over 14 million print publications in English and Spanish and logged nearly 27 million accesses to materials on Commission websites. In addition, the FTC expanded its online outreach by creating several new videos, starting a blog in support of National Consumer Protection Week, and encouraging social networkers to post FTC content on their sites.

The FTC is committed to using education and outreach as cost-effective methods to prevent consumer injury, increase business compliance, and leverage its law enforcement program. Virtually every consumer protection effort contains an education component. Through print publications, websites, electronic media, videos, interactive quizzes, tutorials, special events, and partnerships, the agency reaches out to millions of consumers and businesses every year on issues that directly affect their daily activities.

Chapter 7: Protecting Consumers in a Troubled Economy

A. Deceptive Mortgage Foreclosure Rescue and Loan Modification Scams

Enforcement

To stop fraud and help distressed homeowners, the FTC continues to crack down on mortgage relief scams. The Commission filed 22 federal lawsuits in the past year against operators who falsely claimed they would obtain a loan modification or halt a foreclosure on behalf of consumers. In a typical scheme, the perpetrators collect a high up-front fee from consumers, but do little or nothing to help homeowners renegotiate their mortgages or stop foreclosure. Some also misrepresent themselves as affiliated with a federal government agency or program. The FTC obtained relief in all cases – preliminary or temporary relief in 21 actions, a litigated permanent injunction in one case, and stipulated permanent injunctions against some or all defendants in eight cases. The Commission also led two federal-state coordinated law enforcement sweeps against bogus mortgage relief operations. ***Operation Loan Lies***, announced in July in southern California – where many of the schemes originated – involved 189 actions by 25 federal and state agencies. ***Operation Stolen Hope***, announced in Nevada in November, involved 118 actions by 26 federal and state agencies. In addition, the FTC participates in ten mortgage fraud task forces around the country in order to coordinate its efforts with those of state and local enforcement agencies. Some examples of enforcement actions:

- In two related cases, ***Hope Now Modifications LLC*** and ***New Hope Property LLC***, the FTC charged that defendants misled consumers about their ability to provide mortgage loan modification relief; misrepresented that they would refund consumers' money if they were unable

Commissioner Julie Simone Brill



In light of our national economic crisis, Commissioner Julie Brill has made financial fraud her top priority. Commissioner Brill is particularly interested in ensuring that the Commission addresses scams designed to take advantage of consumers' economic insecurity. Through aggressive, coordinated enforcement with the states, the Commission is working hard to ensure that unscrupulous businesses that engage in deceptive practices and falsely promise help are prosecuted and quickly shut down. In addition, through new or revised rules and guidelines setting standards for unfair or deceptive mortgage related marketing practices and debt relief services, the Commission aims to enhance its ability to prosecute wrongdoers.

to do so; and falsely claimed affiliation with the HOPE NOW Alliance, a non-profit, HUD-endorsed organization that offers free assistance to homeowners unable to pay their mortgages. According to the FTC's complaints, consumers who contacted the defendants were told they must pay a substantial fee before any work could be performed, but were promised a full refund if they were not satisfied. After consumers paid the up-front fee, the defendants often failed to obtain a mortgage modification, and, in many instances, never even contacted the mortgage lender, the complaints charged. Consumers who complained generally were not able to get the promised refund. In both cases, the court issued a preliminary injunction with an asset freeze against the defendants to stop any further harm to consumers. The Commission is pursuing permanent relief.

- The Commission reached a settlement with ***Foreclosure Solutions, LLC*** and its principal, barring the defendants from making misrepresentations about their services, including the likelihood that they can or will stop a foreclosure. The FTC alleged that many consumers who paid the defendants a fee – often exceeding $1,000 – ultimately lost their homes, and others avoided foreclosure only through their own efforts. The order imposed an $8.5 million judgment against the defendants, some of it suspended (based on their inability to pay) upon turnover of cash and other property, including proceeds from the sale of five homes.

- Another mortgage foreclosure "rescue" company, ***U.S. Foreclosure Relief Corp.***, and its principals reached a settlement with the FTC, as well as the states of California and Missouri, which prohibits the defendants from selling mortgage relief services. The order imposes a judgment of $8.6 million that will be suspended, due to inability to pay, after the defendants turn over jewelry, cars, and nearly $1 million in cash.

- In ***Dinamica Financiera***, the Commission charged a mortgage foreclosure "rescue" operation with falsely promising Spanish-speaking consumers who were behind on their mortgage

payments that it would stop foreclosure. According to the complaint, many people who paid the defendants ultimately lost their homes; others avoided foreclosure only through their own efforts. At the FTC's request, a federal court temporarily halted the defendants' practices and froze their assets, pending trial.

- Often cash-strapped homeowners desperate for mortgage relief search the Internet for help. Too often they find unscrupulous entities seeking to take what little they have left. The FTC settled charges that ***Thomas Ryan*** misled homeowners about his association with the U.S. government through websites – bailout.hud-gov.us and bailout.dohgov.us – that featured an official looking seal and the names of federal homeowner relief plans. The settlement order bans Ryan from offering mortgage relief services in the future and prohibits him from making misrepresentations about any goods or services.

Rulemaking & Comment

The Commission testified numerous times about its efforts to protect consumers subject to possible mortgage foreclosure from fraudulent foreclosure rescue and loan modification schemes. It also is conducting rulemaking and filed comments on various mortgage products and services.

- **Mortgage Assistance Relief Services and Mortgage Acts and Practices Rulemaking.** The Omnibus Appropriations Act of 2009, as amended by the Credit CARD Act of 2009, required the FTC to initiate rulemaking proceedings relating to unfair or deceptive mortgage practices. The FTC is conducting three mortgage rulemakings. The first addresses the practices of foreclosure rescue and loan modification services. The Commission published an Advance Notice of Proposed Rulemaking (ANPR) on June 1, 2009 and a Notice of Proposed Rulemaking on March 9, 2010 seeking public comment. The proposed rule would prohibit companies from charging up-front fees for such services and telling consumers to stop communicating with their lenders or mortgage servicers. In addition, it would bar misrepresentations about the likelihood of favorable results, affiliation with public or private entities, and refund and cancellation policies. The Commission anticipates publishing a second notice of proposed rulemaking in the near future addressing mortgage advertising practices, followed by a third proposed rulemaking addressing mortgage servicing. The ANPR for these two rulemakings was also published on June 1, 2009.

- **Comment on Proposed Guidance on Reverse Mortgages.** The FTC staff has submitted comments to the Federal Financial Institutions Examination Council (FFIEC) – whose members include both federal and state banking agencies – in support of a measure designed to protect consumers from deceptive claims and help them make informed decisions about "reverse mortgages." These "mortgages" are actually home-secured loans that allow older

consumers to draw on their equity even as they continue to live in their houses. However, they are complex transactions, not always fully understood by home-owners entering into them. The staff supports the FFIEC's efforts to provide lenders with concrete guidance as to the kinds of claims about "reverse mortgages" that may be deceptive and violate the FTC Act.

Consumer Education



- **Mortgage Foreclosure Rescue Scams.** In Spring 2009, the Commission created a website, print publication, flyer, bookmark, radio PSAs, dwell time spots, and video in cooperation with the Hope Now Alliance, the Homeownership Preservation Foundation, and the Making Home Affordable program. The materials provide tips on how to spot a mortgage relief scam and information on where to go for free housing help from legitimate sources. The FTC has distributed more than 131,000 copies of the English-language flyer (9,600 in Spanish) and nearly 125,000 English-language bookmarks (54,000 in Spanish). Mortgage servicers play the FTC's dwell time spots when callers are on hold.
- ***Real People, Real Stories.*** This video, produced in English and Spanish, features the stories of people who saved their homes from foreclosure. The Commission mailed copies of the video to nearly 5,000 community groups, legal aid offices, attorneys general, housing counseling agencies, and consumer protection organizations.

B. Deceptive Work-at-Home and Get-Rich-Quick Schemes

Enforcement

In July, the FTC announced a law enforcement crackdown on scam operators taking advantage of the economic downturn to bilk vulnerable consumers by: promising non-existent jobs; promoting get-rich-quick plans or bogus government grants; offering phony debt-reduction services; or simply placing unauthorized charges on consumers' credit or debit cards. Dubbed ***Operation Short Change***, this law enforcement sweep resulted in 15 FTC cases, 44 law enforcement actions by the DOJ, and actions by 13 states and the District of Columbia.

In February, the FTC announced ***Operation Bottom Dollar***, a stepped-up multi-agency effort to target con artists that prey on unemployed Americans through bogus job-placement, work-at-home, and other money-making schemes. This second sweep resulted in seven FTC cases, 43 criminal actions by DOJ, an action by the Postal Inspection Service, and 18 actions by state attorneys general.

The FTC's enforcement actions to protect financially stressed consumers include the following:



The New York Times

February 18, 2010

Federal Trade Commission, Citing Deception, Sues Seven Job Placement Operators

By Sewell Chan

The commission announced seven civil suits as part of a crackdown on such schemes, which officials said deceive job seekers by falsely promising work as federal employees, movie extras or assemblers of Christmas ornaments, among other positions.

- ***Google Money Tree.*** Defendants, doing business as Google Money Tree, allegedly misrepresented affiliation with Google and lured consumers into divulging their financial account information by advertising a "low-cost" kit that purportedly would enable consumers to earn $100,000 in six months by filling out forms and running searches on Google and Yahoo. As alleged, they then failed to disclose adequately that the fee for the kit would trigger monthly charges of $72.21. The FTC shut defendants down, first obtaining a TRO, then a stipulated preliminary injunction, with an asset freeze and appointment of a receiver.

- ***John Beck/Mentoring of America.*** Defendants used infomercials and telemarketing to market three get-rich-quick schemes – "John Beck's Free & Clear Real Estate System," "John Alexander's Real Estate Riches in 14 Days," and "Jeff Paul's Shortcuts to Internet Millions" – to hundreds of thousands of consumers, who paid them a total of at least $300 million. The FTC charged the defendants with making false and unsubstantiated claims about potential earnings for users of these systems. According to the complaint, they used frequently aired infomercials to sell the systems for $39.95, and then contacted the purchasers via telemarketing to offer "personal coaching services," which cost several thousand dollars and purportedly would enhance consumers' ability to use the systems to earn money quickly. In addition, the Commission complaint charged that all purchasers were signed up for continuity programs, costing an additional $39.95 per month, which was not adequately disclosed. The Court entered a preliminary injunction halting the deceptive infomercials, preventing unauthorized billing, and appointing a monitor to ensure defendants' compliance with the order.

- ***Job Safety USA.*** Through a host of front companies, Wagner Ramos Borges marketed maintenance and cleaning jobs online and in newspaper classified advertisements throughout the country. The Commission charged that Borges tricked consumers into paying $98 for a worthless and needless credential called a "certificate registration number" that supposedly would enable them to get the advertised maintenance and cleaning jobs. However, after consumers paid Borges to obtain the number, he allegedly failed to provide the promised jobs. The FTC obtained a TRO, asset freeze, and a litigated preliminary injunction against the de-

fendants. Subsequently, the court entered a default judgment ordering Borges to disgorge his alleged ill-gotten gains of nearly $415,000.

> *"Federal and state law enforcement officials will not tolerate those who take advantage of consumers in times of economic misfortune. If you falsely advertise that you will connect people with jobs or with opportunities for them to make money working from home, we will shut you down. We will give your assets to the people you scammed, and, when it's appropriate, we'll refer you to criminal authorities for prosecution."*
>
> *– David Vladeck, Director, BCP (press release, February 17, 2010)*

- ***Real Wealth, Inc.*** This company and its principal allegedly conned more than 100,000 people by selling them booklets that supposedly explained how they could earn money by applying for government grants and working from home mailing postcards and envelopes. Using direct mail campaigns that sometimes targeted the elderly and disabled, Real Wealth lured consumers, according to the FTC complaint, with deceptive solicitations such as "Collect up to $9,250 with my simple 3 minute form" or "All I do is mail 30 postcards everyday and I make an extra $350 a week!" Real Wealth also claimed that consumers could "rake in up to $1,500+ per week or more in solid cash" by learning "secrets" about the "$700 billion banking industry bailout." The court issued a temporary restraining order, and the case remains in litigation.

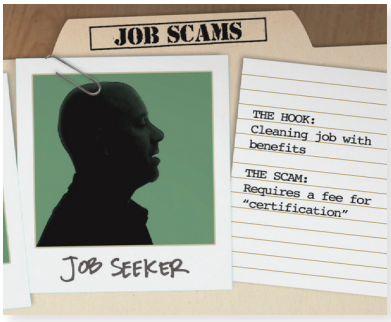
- ***Zoilo Cruz, d/b/a International Marketing and Universal Wealth.*** A federal court jailed the marketer of a work-at-home scheme after the FTC filed a motion alleging that the marketer ignored a court order requiring him to stop his deceptive envelope-stuffing operation. The defendant targeted Spanish-speaking consumers throughout the United States and in Puerto Rico.

Consumer Education

Educating consumers how to protect themselves in this environment is a critical adjunct to effective law enforcement.

- **Fraud in the Economic Downturn.** In addition to alerting consumers to scam operators who promise non-existent jobs and promote get-rich-quick plans, bogus government grants, and phony debt-reduction services, the Commission created *Fraud: An Inside Look*, a video featuring a once-fraudulent telemarketer convicted for his role in a business opportunity scheme. The former con artist tells the secrets of his success, how he got people to part with their money, and spells out the tricks consumers should listen for.

- **Job Scams.** To educate consumers on how to spot and avoid job scams, the Commission produced a video (in English and Spanish), two audio public service announcements (PSAs), and an article. The FTC partnered with Microsoft's Digital Crime Unit to create a set of PSAs for its Bing search engine, so that when web searchers use certain key words, FTC resources turn up as a sponsored result.



C. Other Unfair or Deceptive Consumer Credit and Financial Services Practices

In the wake of the recent economic crisis, the FTC remains committed to protecting consumers at every stage of the credit life cycle. To that end, the Commission continues to be active in the areas of fair lending, debt collection, payday lending, credit repair, and debt relief. It also works to ensure that consumers get free access to their credit reports and meaningful information about their credit and creditworthiness.

Enforcement

"...this debt collection agency continues to harass me and insult me. I am unemployed and doing the best I can. I do not need a collection agency degrading me in these economic times."

– Consumer in Portland, OR

- **Fair Lending.** Continuing its efforts to eliminate unlawful discrimination in mortgage pricing, the Commission filed a federal court action against ***Golden Empire Mortgage, Inc***. The complaint alleges that the company and its owner violated the Equal Credit Opportunity Act by charging Hispanic consumers higher prices for mortgage loans than non-Hispanic whites – price disparities that cannot be explained by the applicants' credit characteristics or underwriting risk. The Commission also entered a modified order against ***Gateway Funding Diversified Mortgage Services, L.P.*** and ***Gateway Funding, Inc.***, a lender that previously settled FTC allegations that it had violated the Equal Credit Opportunity Act by charging African-American and Hispanic consumers discriminatory higher prices for mortgage loans. Gateway allegedly failed to create the fair lending monitoring program required by the earlier settlement. It agreed to a modified order that requires it to hire an outside consultant to develop and implement its fair lending monitoring program and limits its discretion over pricing until the consultant certifies that an adequate monitoring program is in place.

Maureen Wilkin, Office of the Executive Director



As the Benefits Officer with the Human Resources Management Office, Maureen works with employees on a range of items, from complicated retirement cases to telework concerns. Each year, she prepares a health benefits fair for FTC employees. In some circumstances, her service reaches beyond the FTC, counseling family members of deceased employees. Maureen's work is significant to the well-being of FTC employees and to the successful operation of the agency.

- **Debt Collection.** The FTC settled charges that ***Oxford Collection Agency, Inc.*** and its principals used false threats and other unlawful tactics to collect consumers' debts. The complaint alleged that the defendants violated the Fair Debt Collection Practices Act and the FTC Act by misleading, threatening, and harassing consumers, including calling many times a day, calling back immediately after a consumer hung up, and using profane language. The settlement included a civil penalty of $1,060,000, with all but $225,000 suspended based on inability to pay, and prohibits the defendants from further violations. In another action, ***Credit Bureau Collection Services*** (CBCS) and two of its officers agreed to settle Commission charges of unlawful debt collection practices. According to the FTC's complaint, even after receiving information that a debt was paid off or did not belong to the consumer, the company continued to assert that the consumer owed the debt, without a reasonable basis and without trying to confirm or dispute the consumer's information. CBCS is also charged with violating the Fair Credit Reporting Act by reporting to credit agencies information that consumers had proved was inaccurate, failing to inform credit agencies that consumers had disputed debts, and failing to investigate after receiving a notice of dispute from a credit reporting agency. The consent decree prohibits future violations, and CBCS will pay a civil penalty of $1,095,000.

- **Payday Lending.** The Commission seeks to ensure that consumers receive the information they need to understand the substantial costs of payday loans. An international Internet payday lending operation, comprising of ***Cash Today, Ltd.*** and other entities, settled FTC and state of Nevada charges that it failed to provide U.S. consumers with key loan terms in writing before consummating their loans. The stipulated order also settles FTC charges that the defendants violated the FTC Act by using unfair and deceptive collection tactics, including falsely threatening consumers with arrest or imprisonment. The settlement order requires the defendants to pay $970,125 to the FTC and $29,875 to Nevada, and it bars future violations. In another matter, a debit card company and a payday lender, ***VirtualWorks, LLC***, and ***Swish Marketing Inc.***, were charged with working together to deceive consumers

who applied online for a loan. Because of a pre-clicked "yes" box buried on many application websites, consumers applying for a loan also unknowingly paid $54.95 for an unrelated product – a prepaid debit card with a zero balance. A stipulated order bars the debit card company from such conduct and imposes a $5.5 million judgment, much of it suspended based on the company's financial condition. The ***Swish*** case remains in litigation.

- **Credit Repair.** The Commission announced settlements in five actions against bogus credit repair organizations. In ***Ace Group, Inc.***, defendants were charged with falsely representing that they could remove negative but accurate information from consumers' credit reports by sending dispute letters to credit reporting agencies. The order bars defendants from violating the Credit Repair Organizations Act by making such misrepresentations and charging clients fees in advance. In stipulated orders with ***Successful Credit Service Corp.***, ***Lee Harrison Credit Restoration***, ***Advantage Credit Repair LLC***, and ***Credit Restoration Brokers, LLC***, the defendants were similarly prohibited from making false claims when marketing credit repair services and charging fees before services are performed. The five settlements contain monetary judgments totaling more than $32 million, most of which has been suspended because of the defendants' inability to pay.

- **Interest-Rate Reduction Robocalls.** A number of fraudulent marketers used robocalls – automated prerecorded messages sent randomly to hundreds of thousands or even millions of telephone numbers – to sell consumers so-called interest-rate reduction services. The FTC took enforcement action to stop unlawful behavior in the following cases.

  - ***Economic Relief Technologies, LLC, Dynamic Financial Group (U.S.A.) Inc.***, and ***JPM Accelerated Services Inc.*** Three telemarketers were charged with violating the Do Not Call Rule and other laws by using robocalls to sell allegedly worthless credit-card interest-rate reduction programs for hefty up-front fees of as much as $1,495. According to the FTC complaints, the defendants used names like "card services," "credit card services" or "account services" in their automated telephone messages. Consumers who then pressed 1 to receive more information were transferred to live telemarketers who allegedly misrepresented that they could dramatically lower the interest

> *"The FTC has heard the public outcry against robocalls and has taken swift action to stop them. During these difficult economic times, the last thing anyone needs is to be bombarded by robocalls pitching worthless interest-rate reduction programs or making deceptive claims about so-called warranty extensions. The Commission will protect consumers from intrusive, illegal, and deceptive telemarketing robocalls."*
>
> *– Chairman Jon Leibowitz (December 2009)*

rates on consumers' credit card debts. The court issued an order temporarily halting the robocalls by all three defendants pending trial.

- ***Mutual Consolidated Savings.*** The FTC charged this company, its affiliates, and principals with using deceptive robocalls and Internet marketing to sell a so-called "Rapid Debt Reduction" program to consumers in the United States and Canada. According to the Commission's complaint, the defendants convinced consumers to pay them $690 to $899 by allegedly misrepresenting that their program would reduce credit card interest rates, save consumers thousands of dollars, and enable them to pay off their debts three to five times faster than they could under their current payment schedules. The defendants allegedly also failed to make the promised refunds of their fees if consumers' credit card interest rates were not reduced. The Commission obtained a TRO and a stipulated preliminary injunction, with an asset freeze and appointment of a receiver, to stop further harm to consumers.

Workshops & Rulemaking

- **Debt Collection Roundtables.** More than 100 state court judges, debt collector representatives, consumer advocates, and government regulators participated in a series of three FTC roundtable discussions on protecting consumers in debt collection litigation and arbitration. Held in Chicago, San Francisco, and Washington, D.C., the Roundtables examined consumer protection issues in consumer debt collection proceedings. Drawing on information from the roundtable discussions and provided in response to a call for public comments, the FTC is preparing a report containing findings, conclusions, and recommendations for how to best protect consumers in debt collection litigation and arbitration proceedings without unduly burdening debt collection.



- **Free Credit Report Rule.** The FTC amended the Free Credit Report Rule to prevent deceptive marketing of "free credit reports," pursuant to the Credit CARD Act of 2009. The amended rule requires prominent disclosures for "free credit report" advertising in order to prevent consumers from confusing these so-called "free" offers with the federally mandated free annual credit reports. In addition, the amended rule delays advertising of other products and services on the federally mandated "centralized source" website for free annual credit reports. The original rule allowed such advertising at any time; the amended rule delays such advertising until after consumers have obtained their free annual credit reports.

FTC Named In Top Ten Places to Work

FTC was named one of the top ten small federal agencies at which to work. The highly coveted Best Places to Work rankings – the most comprehensive and authoritative rating of employee satisfaction and commitment in the federal government – are determined by the Partnership for Public Service and American University's Institute for the Study of Public Policy Implementation (ISPPI).

- **Telemarketing Sales Rule – Debt Relief Services.** The Commission published a Federal Register notice on August 19, 2009, seeking public comment on proposed changes to the Telemarketing Sales Rule. The proposed revisions seek to combat unfair, deceptive, and abusive telemarketing of services that purport to be able to reduce consumer credit card and other unsecured debt. One proposal would prohibit a telemarketer from receiving payment for debt relief services until such services have been fully performed and documented to the consumer. In addition, FTC staff convened a one-day public forum to discuss the scope of the proposed debt relief amendments, including a ban on the collection of advance fees.
- **Risk-Based Pricing Rule.** The FTC and the Federal Reserve Board published final regulations requiring a creditor to give a consumer a risk-based pricing notice when, based on the consumer's credit report, the creditor offers or provides credit to the consumer on terms less favorable than the terms it offers or provides to a substantial proportion of its other customers. As an alternative to providing risk-based pricing notices, the final rules permit creditors to provide consumers who apply for credit with a free credit score and information about their score.

Education

- **Debt Collection.** The Commission produced a video (in English and Spanish) to help people understand their rights under the Fair Debt Collection Practices Act (FDCPA) when dealing with debt collectors. The agency distributed the video to more than 1,000 partners, including local and national non-profit organizations, consumer credit counselors, HUD-certified housing counselors, and state employment and community services agencies. The FTC also has reached out to daily and community newspapers, radio stations, and online outlets focusing on mainstream, African American, and Hispanic audiences.



- **Annual Credit Report.com.** The FTC released two short videos spoofing ads for supposedly free credit reports that actually come with enrollment in a costly plan. The FTC's videos, online at ftc.gov/freereports, garnered considerable attention when they were released in the spring of 2009. The videos remind people that AnnualCreditReport.com is the only site for the truly free credit report to which they are entitled under federal law. The FTC's videos have been viewed more than 400,000 times on ftc.gov and more than 65,000 times on YouTube.

- **Financial Literacy Campaign.** The Commission is active in the Jump$tart Coalition for Personal Financial Literacy at the national and local levels and this year participated in Jump$tart's first-ever National Teachers Conference for Financial Educators, which drew more than 250 classroom teachers from 46 states. The Commission is a member of the Financial Literacy Education Commission (FLEC), an initiative of the Treasury Department, and contributes to MyMoney.gov, the FLEC's national strategy for financial literacy, and the FLEC's periodic e-newsletter that provides information on new financial literacy activities at member agencies.

D. Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA) places obligations on consumer reporting agencies (CRAs), furnishers (entities that provide information to CRAs), and users of credit reports to promote the accuracy, fairness, and privacy of information in consumers' credit reports.

Enforcement

The FTC announced five settlements involving FCRA violations. ***TALX Corporation***, a CRA that sells income and employment history about consumers, was charged with failing to provide required disclosures to furnishers of information and users of credit reports. Four settlements were obtained against users of credit reports. The FTC charged ***Quality Terminal Services, LLC*** and ***Rail Terminal Services, LLC*** with firing workers and rejecting job applicants based on background checks without informing them of their rights under the FCRA. ***Metropolitan Home Mortgage*** settled charges that it violated FCRA rules relating to prescreened credit solicitations. Finally, ***Direct Marketing Associates, Corp.*** agreed to settle charges of making misrepresentations in its marketing to consumers and obtaining consumer report information from a CRA without a permissible purpose. The Commission obtained civil penalties totaling $447,000 and another $157,000 suspended penalty for these five FCRA enforcement actions.

Rulemaking

- **Furnisher Rules.** The FTC, together with other federal regulatory agencies, issued two final rules applicable to financial institutions and other entities that provide information to consumer reporting agencies. The first rule promotes the accuracy and integrity of information given to consumer reporting agencies. The second rule allows consumers to dispute inaccurate information in their credit reports directly with the furnishers of the information (in addition to disputing errors with consumer reporting agencies).

Chapter 8: Privacy, Data Security, and Technology

Over the past decade, data security and consumer privacy have become a central focus of the Commission's consumer protection mission. In recent years, advances in computer and Internet technology have made it possible for detailed information about people to be compiled and shared more easily and cheaply than ever.

A. Privacy

A number of significant actions were either initiated or resolved during the past year.

Enforcement

The FTC works aggressively to address privacy issues through law enforcement. Using its authority under Section 5 of the FTC Act, the Commission has brought cases against businesses that use unfair or deceptive practices. As part of these efforts, the Commission has undertaken law enforcement to protect consumer privacy as information travels across borders.

- **Safe Harbor Cases.** Six companies agreed to settle FTC charges that they deceived consumers by falsely claiming they were abiding by the EU/U.S. Safe Harbor, an international privacy framework that provides a means for U.S. companies to transfer data from the European Union (EU) to the United States in keeping with EU and U.S. law. The complaint alleged that the six companies – ***World Innovators, Inc.***, ***ExpatEdge Partners LLC***, ***Onyx Graphics, Inc.***, ***Directors Desk LLC***, ***Collectify LLC***, and ***Progressive Gaitways LLC*** – deceptively claimed they held current certifications under the EU/U.S. Safe Harbor framework when in fact they had allowed those certifications to lapse.

- ***ControlScan, Inc.* and *Richard Stanton*.** The FTC settled cases with ControlScan, Inc., and its founder and former CEO Richard Stanton to resolve allegations that they made deceptive privacy and security claims to consumers through seals that they provided to online companies. The complaint alleged that ControlScan and Richard Stanton violated the FTC

Act by falsely representing to consumers that ControlScan had verified the privacy and data security practices of companies displaying its website seals, when in fact it had not. In addition to injunctive relief against the defendants, the settlement requires Richard Stanton to disgorge $102,000 and suspends disgorgement of $750,000 by ControlScan due to the company's financial condition.

- ***FTC v. Accusearch, Inc.*** The Tenth Circuit held that Accusearch's unfair practices – obtaining and selling confidential consumer telephone records without consumers' knowledge or authorization – were not shielded by an exemption provision in the Communications Decency Act. Accusearch procured these records from vendors who could have obtained them only by deception or other illegal means. The court held that the immunity provision of the Communications Decency Act did not apply because the information Accusearch obtained from its vendors was not "information provided by another information content provider."

FTC Privacy Program

The FTC continued in 2009 to implement and develop its award-winning privacy program. While the FTC continually assesses privacy risks and its own efforts to safeguard information within the agency, through its participation in the CIO Council's Privacy Committee and its various working groups, it has also taken a leadership role to help others address privacy issues throughout the federal government.

For instance, in September 2009, the FTC hosted CPO Boot Camp, a first of its kind event co-chaired by the FTC's Acting Chief Privacy Officer, Kellie Cosgrove Riley. The one-day Boot Camp trained senior privacy officials from throughout the federal government through a comprehensive curriculum, with an extensive overview of the many legal and policy issues facing privacy officials and the tools to address them.

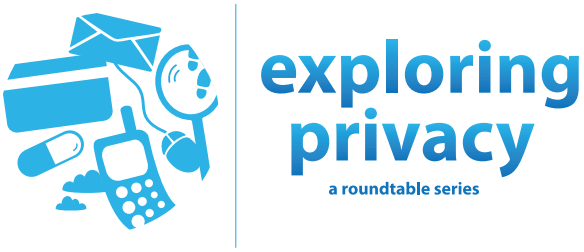
- **Do Not Call Rule Enforcement.** The Do Not Call Rule and related privacy provisions of the Telemarketing Sales Rule (TSR) prohibit most commercial telemarketing to consumers who place their telephone numbers on the National Do Not Call Registry. Since the FTC began enforcing compliance with the Registry in 2003, the Commission has filed 68 enforcement actions for rule violations, requiring payment of nearly $21.2 million in civil penalties and more than $14 million in consumer redress. This year's cases include:
  - ***DIRECTV.*** The company paid a $2.3 million civil penalty to settle charges that it placed prerecorded calls to consumers who previously had told the company not to call them again. The Commission alleged violation of both the TSR and a 2005 federal court order barring such conduct. ***Voicecast Systems, Inc.***, the telemarketer for DIRECTV, paid $115,000 to settle charges that it had also violated the TSR.

- ***Comcast Corp.*** Comcast entered into a consent order and paid a $900,000 civil penalty to settle charges that it violated the TSR by calling, or having its telemarketers call, consumers who specifically had told Comcast not to call them again.

- ***Dish Network/Echostar.*** On the FTC's behalf, the DOJ, together with the Attorneys General of California, Illinois, Ohio, and North Carolina, filed suit in federal district court charging that satellite television provider Dish Network, directly and through its authorized dealers, called numerous consumers whose numbers are on the National Do Not Call Registry. Dish Network, previously known as EchoStar, was also charged with violating the TSR by assisting and supporting its authorized dealers in telemarketing Dish Network services via robocalls that deliver prerecorded telemarketing messages when consumers answer their phones. The case is in litigation.

This year, the FTC also brought five cases targeting telemarketers who violated the Do Not Call Rule and other laws by making millions of illegal prerecorded robocalls – many of them containing misleading claims about interest-rate reduction or auto warranty extensions.

Workshops, Rules & Policy Initiatives



- **Exploring Privacy Roundtables.** FTC staff convened three public roundtables in Washington, D.C. and Berkeley, California to explore challenges in protecting consumers' privacy. Participants discussed social networking, cloud computing, online behavioral advertising, mobile marketing, and the collection and use of information by data brokers and other businesses. The goal of the roundtables was to explore how best to protect consumer privacy without curtailing technological innovation and beneficial uses of information.

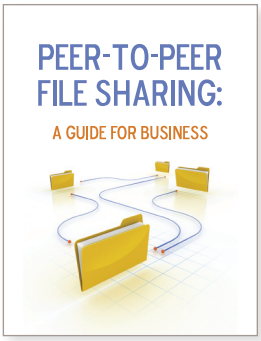
- **Health Breach Notification Rule.** The FTC issued a final rule requiring vendors of personal health records and related entities to notify consumers when the security of certain electronic health information is breached, as required by the American Recovery and Reinvestment Act of 2009.

- **Model Financial Privacy Notices.** The FTC, joined by seven other federal regulatory agencies, released a model privacy notice form that financial institutions can opt to use for their privacy notices to consumers required by the Gramm-Leach-Bliley (GLB) Act. Use of the model form will constitute a legal safe harbor for compliance with the GLB Privacy Rule.

The agencies conducted extensive consumer research and testing in developing the model form to ensure that consumers can easily understand what financial institutions do with their personal information and compare different institutions' information sharing practices.

- **Google Books Letter.** BCP Director David Vladeck sent a letter to Google addressing privacy concerns related to Google's plans to digitize millions of books. The letter requests that Google disclose how it will use the personal information it collects when it offers books online and delivers targeted advertising to consumers. In addition, it urges Google to commit to complying with the FTC's self-regulatory principles for online behavioral advertising.

B. Data Security



To promote data security through law enforcement, the Commission brings actions against businesses that fail to implement reasonable security measures to protect sensitive consumer data. The FTC enforces several laws and rules that contain data security requirements. The Commission's Safeguards Rule under the GLB Act, for example, sets forth data security requirements for financial institutions. The Commission's Privacy Rule, also under the GLB Act, requires financial institutions to provide their customers written notices describing their privacy policies and practices, including their data security practices. The Commission also enforces the FTC Act's proscription against unfair or deceptive acts or practices in cases where a business makes false or misleading claims about its data security procedures or where its failure to employ reasonable security measures causes or is likely to cause substantial consumer injury. To date, the FTC has brought 29 enforcement actions against businesses for failing to protect consumers' personal information. The Commission also testified before Congress about the FTC's efforts to promote better security for sensitive consumer information, to prevent inadvertent sharing of consumers' personal or sensitive data over Peer-to-Peer Internet file-sharing networks, and to combat identify theft, including recommended legislative remedies to enhance the effectiveness of these efforts.

Enforcement



- ***LifeLock, Inc.*** Working with 35 state attorneys general, the FTC entered into a settlement with LifeLock, Inc. and two of its founders, resolving claims that LifeLock deceptively advertised its identity theft prevention service by claiming that customers would receive far more protection than they actually did. The complaint also alleged that LifeLock failed to protect customers'

data in the manner in which it claimed in its privacy policy. The settlement requires LifeLock to pay $11 million in consumer redress and $1 million to the state attorneys general. The settlement also requires LifeLock to cease misrepresentations about its products and to develop an appropriate data security program.

- ***James B. Nutter & Company.*** The Commission announced a settlement with James B. Nutter & Company, which makes and services residential mortgage loans around the country, to resolve allegations that the company failed to provide reasonable security for sensitive consumer information in violation of the FTC's Safeguards Rule. In addition, the company allegedly violated the FTC's Privacy Rule by failing to provide privacy notices for several years and, when it began providing privacy notices, those notices were inaccurate. The settlement requires the company to establish and maintain a comprehensive data security program to protect personal information and to obtain independent audits of its security procedures every two years for 10 years.

- ***Dave & Busters, Inc.*** Dave & Busters, a restaurant chain that features arcade-style games, agreed to settle Commission charges that it engaged in unfair practices in violation of the FTC Act. The case arose from a data breach that compromised the credit card numbers and expiration dates of approximately 130,000 customers. The complaint alleged that Dave & Busters failed to employ reasonable and appropriate security measures to protect customer information, including failing to employ sufficient measures to detect and prevent unauthorized access to computer networks. Under the settlement, Dave & Busters must implement a comprehensive data security program and obtain biennial security assessments for 10 years.

- ***ChoicePoint, Inc.*** The FTC obtained a stipulated modified order against Choicepoint after charging that the company failed to implement a comprehensive information security program to protect consumers' sensitive information, as required by a 2006 federal court order. According to the complaint, the company turned off a key electronic security tool used to monitor access to one of its databases for four months, leaving sensitive consumer information vulnerable. During that period, an unknown person conducted unauthorized searches that compromised the personal information of more than 13,000 consumers. The modified order requires ChoicePoint to pay $275,000 and to submit additional reports to the FTC detailing how it protects databases containing sensitive personal information.

C. Computer Security

The FTC continues its efforts to protect consumers from online threats, as well as from deceptive claims that can induce them to install unwanted or useless software on their computers.

Enforcement

- ***Sears Holdings Management Corporation.*** The Commission settled allegations that Sears failed to disclose adequately the scope of consumers' personal information collected via software that Sears represented would merely track their "online browsing." The FTC charged that the software also monitored consumers' online secure sessions – including those on third-party websites – and collected information such as the contents of shopping carts, online bank statements, and other sensitive data. Only in a lengthy end user license agreement, available to consumers at the end of a multi-step registration process, did Sears disclose the full extent of the information the software tracked. In addition to requiring that Sears destroy information previously collected, the settlement provides that if Sears advertises or disseminates tracking software in the future, it must clearly and prominently disclose the types of data the software monitors, records, or transmits and whether any of the data will be used by a third party. Such disclosure must be made prior to installation and separate from any end user license agreement.



COMPUTERWORLD
Government

Sears settles with FTC over online tracking
Retailer says project is over and all personal information was destroyed

June 4, 2009
By Grant Gross

Sears Holdings Management has agreed to settle a complaint from the U.S. Federal Trade Commission that it failed to tell customers about the wide range of their personal information, including bank statements and prescription records, it collected through a downloadable software application, the FTC said.

- ***3FN.*** The FTC obtained a TRO and preliminary injunction shutting down a rogue Internet Service Provider that recruited, knowingly hosted, and actively participated in the distribution of spam, child pornography, and other harmful electronic content. The FTC complaint alleged that the defendant, ***Pricewert LLC***, which does business under a variety of names including 3FN and APS Telecom, actively recruited and colluded with criminals seeking to distribute illegal, malicious, and harmful electronic content, including child and other pornography, spyware, viruses, trojan horses, phishing, and botnet command and control servers.

- ***WinFixer.*** The FTC obtained a TRO and preliminary injunction against the international syndicate responsible for the marketing and sale of thousands of "rogue" computer security products, including WinFixer, WinAntivirus, DriveCleaner, ErrorSafe, and XP Antivirus. The complaint alleged that, to sell their "scareware" security products, the defendants disseminated more than one billion deceptive online advertisements, which featured bogus computer scans that falsely claimed to detect viruses, spyware, and illegal pornography on consumers' computers. At the conclusion of these scans, the defendants allegedly marketed their security software aggressively as a cure for the non-existent threats "detected" on consumers' computers. The Commission alleged that the defendants generated more than $165 million

in ill-gotten gains over a period of five years. The court entered default judgments in the amount of $163,167,539 against three of the defendants in the case – Sam Jain, Innovative Marketing, Inc., and Daniel Sundin. Final orders against these defendants ban them from selling security software of any type and from disseminating any computer program that interferes with consumers' computer use. Litigation continues against the remaining defendants.

- **Data Breach Warning Letters.** The Commission notified nearly 100 public and private entities – including businesses, schools, and local governments – that personal information, including sensitive data about customers and/or employees, has been shared from the organizations' computer networks and is available on peer-to-peer (P2P) file-sharing networks. Network users could use the information, which may include financial records and Social Security numbers, to commit identity theft. The FTC has also released new education materials about the risks involved and how to manage them.

Digital Rights Management Town Hall

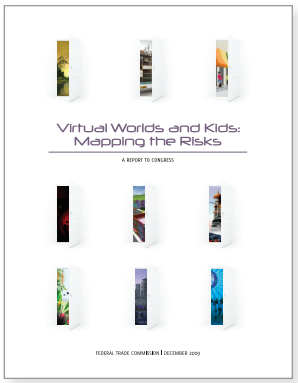
The FTC co-hosted a conference of entertainment and technology industry representatives, consumer advocates, academics, and Copyright Office representatives to examine the impact of digital rights management (DRM) technologies on consumers. The discussion helped both Commission staff and sellers of DRM-protected content and services to understand the legal and business implications of the use of these technologies, as well as ways of providing better notice to consumers.

D. Children's Privacy and Security Online

Enforcement

The FTC works to make the Internet more secure for children by enforcing the Children's Online Privacy Protection Act of 1998 (COPPA) and the FTC's COPPA Rule. To date, the FTC has brought 15 actions to enforce COPPA, obtaining a total of $3,220,000 in civil penalties. In March 2010, the Commission launched a full-scale review of its COPPA Rule, and will host a public roundtable on issues relating to the Rule review in Washington, D.C. on June 2, 2010. In its most recent action, the Commission charged ***Iconix Brand Group, Inc.***, owner and marketer of several apparel brands popular with children and teens, with collecting and storing personal information from approximately 1,000 children without first notifying their parents or obtaining parental consent. According to the complaint, on one brand website, Iconix enabled girls to share personal stories and photos publicly online. To settle the charges, Iconix agreed to pay a $250,000 civil penalty. An injunction prohibits future violations and requires the company to delete information collected in violation of COPPA.

Reports

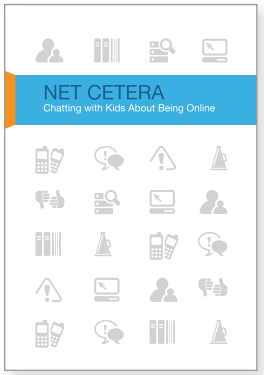


- ***Virtual Worlds and Kids: Mapping the Risks.*** In December, the FTC issued a report to Congress examining the types of content available in online virtual worlds, the ease with which minors can access both sexually and violently explicit content in virtual worlds, and the methods used by virtual world operators to restrict minors' access to such content. The report presents the results of an empirical survey of the explicit content offerings in 27 online virtual worlds, selected as a cross section of worlds specifically intended for children under 13, worlds that appeal to teens, and worlds intended only for adults. At least one instance of sexually or violently explicit content was observed in 19 of the 27 virtual worlds surveyed. Of the 14 virtual worlds included in the study that were, by design, open to children under age 13, seven contained no explicit content, six contained a low amount of such content, and one contained a moderate amount. Much of the explicit content was in the form of text posted in chat rooms, on message boards, and in discussion forums, with the remainder appearing as still or moving images, occasionally accompanied by audio. The report assesses the tools used by virtual world operators to attempt to prevent minors from gaining access to explicit content, such as age screens and age-segregation initiatives, as well as community policing measures like abuse reporting, flagging, and the use of filters and live moderators. The report concludes with a set of recommendations to reduce the risk of youth exposure to explicit content and encourages parents and children to become better educated about online virtual worlds.

- ***Marketing Violent Entertainment to Children.*** Over the past decade, the Commission has issued seven reports to Congress on the marketing of violent entertainment to children, including the results of undercover shopping excursions by underage shoppers. In the latest report, the Commission found that movie theaters denied 72 percent of underage shoppers admission to R-rated movies (the best results obtained to date) and electronic game retailers denied 80 percent of such shoppers access to M-rated games. On the other hand, the survey also found that music retailers permitted 7 in 10 underage shoppers to buy CDs with a Parental Advisory Label and more than half to buy violent R-rated and unrated DVDs. The report makes recommendations for increased enforcement of age restrictions; tighter restrictions for online and viral marketing of these products; limitations on the marketing of PG-13 movies to young children; and improved display of rating information in advertising and on packaging.

Consumer Education

- ***Net Cetera: Chatting with Kids About Being Online.*** This fall, the FTC released *Net Cetera*, a new guide to help parents talk to their children about Internet safety. The guide, part of the federal government's *OnGuardOnline* program, is designed to help parents address three areas related to their children's online activities: inappropriate conduct, inappropriate contact, and inappropriate content. *Net Cetera* encourages parents to reduce the risks by talking to kids about how they communicate – online and off – and covers what parents need to know, where to go for more information, and issues to raise with kids about social networking, sexting, cyberbullying, mobile phones, protecting the family computer, and parental controls. Since its publication in October, the Commission has distributed more than two million copies, including copies to school districts in Georgia, Texas, California, and Washington State and schools in Washington, D.C., Florida, and California. A variety of organizations are featuring *Net Cetera* on their websites or helping promote it, including Sprint, Facebook, MySpace, Ning, the national Better Business Bureaus, Boys and Girls Clubs of America, and the National Association of Independent Schools.



  Net Cetera is at OnGuardOnline.gov, a website maintained by the FTC. OnGuardOnline.gov provides practical tips from the federal government and the technology community to help people guard against Internet fraud, secure their computers, and protect their privacy. This year, OnGuardOnline launched a new module about searching for health care information or buying health care products online. OnGuardOnline.gov logs more than 150,000 visits per month.

Chapter 9: Other Deceptive and Unfair Advertising and Marketing Practices

A. False or Deceptive Health, Safety, and Weight Loss Claims

Health and safety cases continue to be a high priority for the Commission, as consumers are victimized by false or unsupported claims that dietary supplements and other products can prevent, treat, or cure various ailments, including serious diseases; cause substantial weight loss; enable smokers to quit smoking; improve mental focus; or make unsafe conduct safer. From March 2009 through March 2010, the Commission initiated or resolved 19 law enforcement actions challenging false or deceptive health or safety claims.

Enforcement

- **Remedies for Cancer and Other Serious Diseases.** The FTC targeted supplement sellers who claim their products can prevent, treat, or cure cancer and other serious diseases.

  - A federal district court ordered defendants in ***Direct Marketing Concepts*** – a case involving the sale of dietary supplements "Coral Calcium" and "Supreme Greens" – to pay a total of nearly $70 million for consumer refunds for products they claimed would treat, cure, or prevent cancer and other serious diseases, including Parkinson's disease, heart disease, diabetes, arthritis, and autoimmune disorders. A permanent injunction bars future deceptive claims, the failure to disclose that promotional programming is in fact paid advertising, and charging consumers on an ongoing basis without their consent.

    "I ordered a sample of (a health care supplement) for $1.99. I was charged $84.71 plus shipping and never received the initial sample. ... After reading your website, I now understand more about these types of internet deals."

    – Consumer in Los Angeles, CA

  - The Commission upheld an administrative law judge's ruling that ***Daniel Chapter One*** and its principal James Feijo made unsubstantiated claims that four dietary supplements could prevent, treat, or cure cancer. The respondents advertised their products – Bio*Shark, GDU, 7 Herb Formula, and BioMixx – on their website, in print publications, and on their radio program, "Daniel Chapter One HealthWatch." Among other defenses, the respondents asserted that Daniel Chapter One is a religious ministry and therefore not subject to FTC jurisdiction. The Commission determined that, notwithstanding the respondents' religious status and activities, the respondents' business of selling these supplements and other products does not meet the FTC Act standard for an exempt nonprofit entity. The Commission entered an order that prohibits Daniel Chapter One and Feijo from making false or unsubstantiated health claims and requires them to send a letter notifying purchasers of their products of the FTC's action. Respondents have filed an appeal.

  - ***Roex, Inc.*** The company, its principal, and one of its radio show hosts settled charges they made deceptive claims that an infrared sauna device could treat cancer and that various dietary supplements would treat, reduce the risk of, or prevent cancer, HIV/AIDS, diabetes, strokes, heart attacks, Alzheimer's disease, Parkinson's disease, and various other disorders. The products were sold by means of a nationally broadcast, live, call-in radio program titled "The Truth About Nutrition" and the company's website. Defendants

paid $3 million in consumer redress. More than 5,700 checks were sent to consumers in March 2010. The average consumer refund was $500.

- **Cereal to Improve Kids' Attentiveness.** ***Kellogg Company*** agreed to settle FTC charges that its advertising – appearing on TV, cereal boxes, and the Internet, as well as in print – falsely claimed that a breakfast of Frosted Mini-Wheats was clinically shown to improve children's attentiveness by nearly 20 percent. The administrative consent order requires that claims about the benefits to cognitive health, processes, or function from eating cereal, or any other morning food or snack food, be true and supported by scientific evidence. The settlement also prohibits Kellogg from misrepresenting the results of tests, studies, or research regarding any morning or snack food product.

- **Weight Loss Supplements.** A federal district court judge ordered ***Bronson Partners, LLC*** (doing business as New England Diet Center and Bronson Day Spa) and its owner Martin Howard to pay more than $1.9 million as restitution for consumers who bought defendants' Chinese Diet Tea and Bio-Slim Patch based on deceptive claims that these products could cause significant weight loss without diet or exercise. The defendants represented, for example, that consumers could lose up to 25 pounds in four weeks simply by drinking a cup of tea after each meal. The court entered a permanent injunction barring the defendants from representing that any weight loss product can cause rapid or substantial weight loss without diet or exercise.

  From March 2009 through March 2010, the FTC's Redress Administration Office mailed redress checks to 2,598,799 consumers for a total of more than $63.6 million.

- **Cold and Flu Products.** In 2008, the Commission settled charges that ***Airborne Health, Inc.*** disseminated false and unsubstantiated claims that Airborne effervescent tablets prevent and treat colds and flu and protect against exposure to germs in crowded environments. Subsequently, the Commission turned its attention to Airborne "copycat" products – settling similar charges against three major retail chains, each of which marketed its own store-brand cold and flu product by promoting the product's similarity to Airborne at a lower cost. All three retailers agreed to permanent injunctions, as well as payment of consumer redress: ***CVS Pharmacy, Inc.*** $2,783,047; ***Rite Aid Corp.*** $500,000; and ***Walgreen Co.*** $5,970,000. Another action was filed against ***Improvita Health Products, Inc.***, distributor of Airborne "copycat" products sold by several retail stores, as well as Improvita's two principals, Thomas Klamet and Daniel Kohler. The principals agreed to a permanent injunction and payment of a total of $565,000; the court entered a default against Improvita.

- **H1N1 Flu Virus.** The FTC sent warning letters to 20 website operators who made questionable claims that their products – including dietary supplements, homeopathic remedies, air filtration devices, and cleaning agents – can prevent, treat, or cure the H1N1 virus, commonly known as swine flu. These warnings resulted from an Internet sweep conducted by members of the International Consumer Protection Enforcement Network (ICPEN) in September. The Commission referred another 13 website operators – believed to be located outside the United States – to foreign law enforcement authorities. Sixty percent of the domestic websites and half of the foreign ones have now removed the claims or the entire website. In addition, the FTC and the FDA sent their first joint warning letter to ***Weil Lifestyle LLC*** regarding a product the company claimed could prevent, treat, or cure human infection with the H1N1 virus.

Significant Redress Orders*

WinFixer	$163,167,539
Direct Marketing Concepts	$69,253,547
National Prize Information Group Corp.	$26,885,186
Herbal Kings/Lance Atkinson	$19,170,824
Network Services Depot, Inc.	$18,827,528
MoneyGram International, Inc.	$18,000,000
LifeLock, Inc.	$12,000,000
Select Management Solutions	$ 7,845,795
Timothy Jackson/Grant Info Systems LLC	$ 7,452,569
Walgreens	$ 5,970,000
Internet Listing Service Corp.	$ 4,251,876
Roex, Inc.	$ 3,000,000
CVS Pharmacy, Inc.	$ 2,783,047

* These do not include amounts suspended by the court based on inability to pay. Default judgments are included.

- **Smoking Cessation Devices.** The Commission settled charges that online marketer ***Next-Click Media LLC*** misrepresented the efficacy of its smoking cessation product and failed to disclose that consumers who accepted its so-called "free trial offer" were actually signing up for a continuity program and would be billed nearly $100 each month until they canceled. Consumers found that cancellation was often difficult or impossible. A stipulated final order entered by the court bars the defendants from making certain smoking cessation claims, as well as misrepresenting the health benefits of any supplement, food, drug or device, or the results of tests, studies, or research on such products. In addition, the order mandates disclosures in connection with the use of negative-option continuity plans, and requires the defendants to obtain the express consent of consumers to whom they sell any product or service through such a plan. The order imposes a $3.4 million judgment that will be suspended upon payment of $315,000 for consumer redress.

- **Alcohol Energy Drinks.** The Commission settled charges that ***Constellation Brands, Inc.***, a major alcohol marketer, deceptively advertised that its caffeinated alcohol drink, Wide Eye

Schnapps, would keep consumers alert. The administrative consent order bars Constellation from making untruthful claims that any alcohol beverage containing caffeine or any other stimulant will keep consumers awake, or that any ingredient in an alcohol product will counteract the effects of consuming alcohol.

- **Indoor Tanning Salons.** Based on studies showing that indoor tanning is associated with an increased risk of melanoma and non-melanoma skin cancers, the Commission charged the ***Indoor Tanning Association*** (ITA) with making false health and safety claims for indoor tanning. The Commission's complaint alleged that ITA deceptively represented that indoor tanning does not increase the risk of skin cancer, is government-approved, and is safer than tanning outdoors. The consent order entered into by ITA bars these claims and requires that future ads about the safety or health benefits of indoor tanning disclose, clearly and conspicuously, that exposure to ultraviolet radiation may increase the likelihood of skin cancer.


THE MEDICAL NEWS
from News-Medical.Net - Latest Medical News and Research from Around the World

Indoor tanning: FTC prohibits ITA from making false health and safety claims

January 28, 2010

The American Academy of Dermatology applauds the Federal Trade Commission (FTC) for issuing a consent order that prohibits the Indoor Tanning Association (ITA) from making false health and safety claims about indoor tanning.

Guides & Workshops

- **Revised Endorsement and Testimonial Guides.** The FTC also reviewed and revised its Guides Concerning the Use of Endorsements and Testimonials in Advertising. In one revision the Guides advise that when ads using consumer testimonials convey that the endorser's experience is representative of what consumers generally will achieve, and the advertiser does not possess adequate substantiation for this claim, the advertiser should clearly and conspicuously disclose the results consumers actually can expect to achieve, rather than simply inserting a disclaimer of typicality, such as "results not typical." Advertisers can still use such disclaimers, but the revised Guides no longer provide a "safe harbor" under Section 5 of the FTC Act to those who do so. The Guides also advise that celebrities are potentially liable for false and unsubstantiated statements they make in the course of an endorsement. In addition, because consumer endorsements will be interpreted as representing that the advertised product or service is effective for the purpose depicted in the ad, the revised Guides advise that the advertiser must have adequate substantiation to support such claims, just as it would be required to do if it had made the representation directly (*i.e.*, without us-

ftc.gov/video
About the Endorsement Guides


Mary Engle, BCP

What's new about the Endorsement Guides?
Why did the FTC update the Endorsement Guides?
What do the Endorsement Guides mean for bloggers?
How do bloggers follow the Endorsement Guides?
Is the FTC planning to sue bloggers?
Where to go for more information.

ing endorsements). Finally, a number of new examples apply the principles set forth in the Guides (*e.g.,* that material connections between advertisers and endorsers should be disclosed) to new social media, such as blogs, that did not exist when the Guides were issued in 1980.

- **Food Marketing and Childhood Obesity.** Since 2005, the FTC has hosted three public forums to address the issues surrounding food marketing to kids and childhood obesity. At the most recent event, in December 2009, Secretary of Health and Human Services Kathleen Sibelius served as the keynote speaker. Panels presented new research on the impact of food advertising on children's food choices; discussed the legal ramifications of possible restrictions on food advertising to children; and assessed food industry self-regulatory efforts to impose nutritional standards on their advertising to children. Finally, the Interagency Working Group on Food Marketed to Children, of which the FTC is a member, presented its tentative, proposed nutritional standards for foods marketed to children, followed by audience questions and discussion.

B. Environmental Marketing

Consumers are increasingly making purchasing decisions based on the environmental impact of products. As a result, marketers are making "green" claims about their products. The FTC continues bringing enforcement actions to weed out deceptive "green" claims.

Enforcement

- **Biodegradability Claims.** The Commission announced three actions charging ***Kmart Corp.***, ***Tender Corp.***, and ***Dyna-E Int'l*** with making false and unsubstantiated claims that their products are biodegradable. According to the FTC's complaints, the defendants' products typically are disposed of in landfills, incinerators, or recycling facilities, where it is impossible for waste to biodegrade within a reasonably short time period. The companies have agreed to orders that bar deceptive "degradable" product claims and require competent and reliable scientific evidence to support environmental product claims.
- **Textiles Labeled as Bamboo.** The Commission has settled charges that four sellers of clothing and other textiles, ***Sami Designs, LLC, d/b/a Jonäno***; ***CSE, Inc., d/b/a Mad Mod***; ***Pure Bamboo, LLC***; and ***The M Group, Inc., d/b/a Bamboosa***, violated both the FTC Act and the Textile Fiber Products Identification Act by deceptively labeling and advertising their products as made of bamboo fiber, when in fact they are rayon. The Commission further alleged that some of the companies made false and unsubstantiated claims that their products are manufactured using an environmentally friendly process; that they retain the natural

antimicrobial properties of the bamboo plant; and that they are biodegradable. Following these actions, the Commission sent warning letters to 78 retailers that appeared to market rayon products as being made of bamboo fiber.

C. Telemarketing Fraud

The Commission has continued its aggressive efforts to combat telemarketing fraud, including the use of robocalls – that is, automated calls placed to random phone numbers with prerecorded voice messages.

Enforcement

- ***Inc21.com Corporation.*** A U.S. district court issued a preliminary injunction to halt the illegal practices of an Internet services company charged with "cramming" unauthorized charges onto the telephone bills of thousands of consumers and small businesses for services they never agreed to buy. The FTC charged that Inc21 and its affiliated companies used offshore telemarketers to sell Internet services, including website design and hosting, Internet directory listings, search-engine advertising, and Internet-based faxing, for monthly charges up to $40. The complaint further alleged that Inc21 used third-party billing aggregators to place charges on the phone bills of consumers and businesses that either were never contacted, declined the services, or were offered a purportedly free trial without being informed that they would be charged monthly if they did not cancel.

- **Auto Warranty Robocalls.** The FTC filed two related complaints and a federal court shut down a telemarketing campaign that had been bombarding consumers with hundreds of millions of allegedly deceptive robocalls in an effort to sell them vehicle service contracts under the guise that they were extensions of original vehicle warranties. ***Transcontinental Warranty, Inc.*** and its owner, Christopher Cowart, settled with the FTC and are barred from using deceptive tactics to sell vehicle service contracts and selling their customer lists. In addition, they are required to cooperate in the FTC's ongoing investigation of a related case against the telemarketers who made the prerecorded calls. The settlement includes a $24 million judgment against the defendants, which is suspended because of their inability to pay. ***Voice Touch, Inc.*** and its principal, brokers for Transcontinental Warranty, also settled commission charges in this matter, agreeing to be permanently barred from telemarketing activities and from assisting

> *"I applaud the FTC for beginning to take action against the automobile extended warranty industry's robo-calls."*
>
> *– Consumer in Albuquerque, NM*

anyone else in telemarketing. They will pay more than $655,000 in consumer redress. Litigation continues against other participants in this scheme.

- ***Operation Mirage.*** The Commission filed suit to halt the illegal activities of three telemarketing boiler-room operations in Montreal, Canada. According to the complaints, these operations defrauded thousands of small- and medium-sized U.S. businesses and non-profit organizations, including churches, schools, and charities, out of millions of dollars by deceiving them into paying for unwanted listings in worthless business directories. The lawsuits, filed in federal court in Illinois, are part of ***Operation Mirage***, a joint initiative with Canadian law enforcement authorities aimed at cracking down on business directory scams. The court has issued preliminary injunctions in all three cases.

Billboard.com

Bruce Springsteen Fans To Get Ticketmaster Refund

February 18, 2010

Thousands of Bruce Springsteen fans will receive refunds for what the U.S. Federal Trade Commission called deceptive sales practices by TicketsNow, a ticket reselling unit of Ticketmaster, the FTC said on Thursday.

The Commission made news when it settled charges that ***Ticketmaster L.L.C.*** and its ticket reseller affiliate, ***TicketsNow.com, Inc.***, used deceptive tactics to sell tickets for various popular events. According to the FTC complaint, last year when Bruce Springsteen concert tickets were offered on ticketmaster.com, Ticketmaster displayed a "No Tickets Found" message when it could not fulfill a customer's initial ticket request. Ticketmaster then allegedly steered unsuspecting consumers to TicketsNow.com, a reseller offering tickets at much higher prices – double, triple, or even quadruple the face value.

The FTC charged that, in some cases, consumers were not informed the resale tickets were not actually "in hand" but merely offered on a speculative basis. Some consumers never received the tickets they had paid for, and although ultimately their money was returned, Ticketmaster allegedly kept the sales proceeds for several months without having a reasonable basis to believe it could fulfill the orders.

Under the FTC settlement, eligible consumers who have not previously received a refund will be reimbursed the extra money they paid for the higher-priced tickets. In addition, the Final Order requires detailed disclosures about any link between a primary ticket sale website and a resale website and about the status of any tickets listed for sale on the resale website that are not "in hand" – thus providing new transparency in the ticket resale market. Warning letters were sent to other ticket resellers that may engage in similar practices.

D. Payment Systems

- The FTC settled charges that ***MoneyGram International, Inc.***, the second-largest money transfer service in the United States, helped fraudulent telemarketers and other con artists trick U.S. consumers into wiring them more than $84 million, based on false statements that the consumers had won a lottery, were hired for a secret shopper program, or were guaranteed loans. MoneyGram agreed to pay $18 million in consumer redress to settle allegations that, between 2004 and 2008, it allowed its money transfer system to be used to facilitate fraud. The FTC charged that MoneyGram knew its system was being used to defraud people but did very little to prevent it, and that its Canadian agents, in some cases, participated directly in these schemes. Under the terms of the settlement, MoneyGram is required to implement a comprehensive anti-fraud and agent-monitoring program.

E. Prepaid Phone Cards

Deceptive claims about minutes and charges for prepaid phone cards continue to be a problem that especially targets Hispanics, as well as others with ties to foreign countries. The FTC testified before Congress on its efforts to crack down on deceptive marketing of prepaid phone cards and expressed support for pending legislation that would benefit consumers by giving the Commission stronger tools to combat this deceptive activity.

- ***Diamond Phone Card, Inc.*** The FTC charged Diamond, a seller of prepaid calling cards, and its principals with advertising that their cards provided more phone minutes than were actually delivered. The complaint also alleged that the defendants failed to adequately disclose fees that reduced the value of the calling cards. Diamond marketed the cards to recent immigrants, many of whom rely on calling cards to stay in touch with family and friends in other countries. According to the complaint, the defendants' ads made bold claims about the number of minutes the cards would provide for calls to international locations, including the Dominican Republic, El Salvador, Mexico, India, Pakistan, and Guatemala. The FTC charged, however, that consumers did not receive the number of represented minutes. For example, a

Hispanic Law Enforcement Initiative

The FTC continues to work aggressively to combat other kinds of consumer fraud perpetrated against the Hispanic community. Since the introduction of the Hispanic Law Enforcement Initiative in 2004, the FTC has filed 51 actions against 184 businesses and individuals alleged to have fraudulently sold a variety of products and services to Spanish-speaking consumers. Recent examples of such actions include *Dinamica Financiera* and *Zoilo Cruz, d/b/a/ International Marketing and Universal Wealth*.

card that was advertised to deliver 400 calling minutes to Mexico actually provided only 106 minutes, and a card that was claimed to deliver 50 minutes to Honduras actually delivered only 20 minutes. The case is in litigation.

- ***Clifton Telecard Alliance.*** A leading U.S. distributor of prepaid calling cards agreed to pay $1.3 million to settle charges that it misrepresented the number of calling minutes consumers would get with its calling cards, charged hidden fees, and failed to disclose that minutes would be deducted whether or not the calls were actually connected. In tests conducted by the FTC, the cards on average provided fewer than half of the advertised calling minutes.

Chapter 10: Order Enforcement, Bankruptcy Collections, and Supporting Criminal Prosecutions

The Commission places a high priority on aggressively enforcing its orders against repeat offenders and those who act with them. These enforcement efforts aim to identify violators quickly in order to limit consumer harm, obtain compensation for injured consumers, and modify orders to provide additional protection for consumers. The Commission also acts to secure its judgments when malefactors attempt to protect their assets through bankruptcy. In addition, the Commission refers particularly egregious violators to criminal law enforcement agencies for prosecution.

Significant Civil Penalty Cases	
Civic Development Group	$18,775,000
DIRECTV, Inc.	$2,310,000
Credit Bureau Collection Services, Inc.	$1,095,000
Comcast Corporation	$900,000
TALX Corporation	$350,000
Iconix Brand Group, Inc.	$250,000
Oxford Collection Agency, Inc.	$225,000

A. Order Enforcement

- ***BlueHippo.*** The FTC brought a contempt action against BlueHippo and its owner, Joseph Rensin, charging that they violated a 2008 federal court order by falsely informing credit-challenged consumers that BlueHippo is in the business of financing computers, and by failing to disclose material terms of the company's refund policy. The Commission alleged that Blue Hippo collected more than $14 million from consumers based on claims it would finance their purchases of new computers, but, in many instances, delivered neither the financing nor the computers. The Commission is seeking compensation for consumers, as well as a modified order banning BlueHippo from financing any product or service and from selling consumer electronics.

Michael Mora, Bureau of Consumer Protection



As a member of the Division of Enforcement, Mickey heads up the bankruptcy program for the Commission's Bureau of Consumer Protection. He represents the Commission in bankruptcy court, ensures that its law enforcement actions are not thwarted by defendants' bankruptcy filings, and enforces FTC money judgments. In 2009, under Mickey's leadership, the bankruptcy group preserved over $230 million of FTC judgments from discharge. Mickey also serves as the Bureau's primary expert on a wide variety of other commercial law issues, and he is the lead attorney in the Commission's ongoing contempt litigation against Kevin Trudeau.

- ***Neovi, Inc., d/b/a Neovi Data Corporation and Qchex.com.*** The Commission brought a contempt action against Thomas Villwock, James M. Danforth, and G7 Productivity Systems, Inc. for violating a 2009 federal court order through their operation of a check creation and delivery service via the Internet. The defendants allegedly issued e*checks without taking steps required by the order to verify the identity of users and their authority to draw funds on designated financial accounts – thereby leaving unsuspecting bank account holders vulnerable to unauthorized withdrawals. The FTC seeks imposition of a daily fine or imprisonment if the unlawful conduct is not stopped, as well as an order requiring defendants to compensate affected consumers and to relinquish their ill-gotten gains.

- ***Civic Development Group.*** In 1998, Civic Development Group (CDG) and its principals agreed to an administrative order to settle charges that they misled consumers about how their donations would be used. Undeterred, in 2004, the defendants initiated a scheme whereby charities "hired" CDG's telemarketers (although CDG continued to hire, fire, pay, and supervise them), so that it could misrepresent that 100 percent of a prospective donor's donation would go to the charity. In fact, CDG retained all but 10 to 15 percent of the donations. Based on the Commission's referral, the DOJ filed an order violation case against the defendants, who settled on the eve of trial for a court order permanently banning them from soliciting for charities and entering a record $18.8 million civil penalty.

"This scheme packed a one-two punch: it deceived the people who donated, and it siphoned much-needed funds from police, firefighters, and veterans groups. The court's final settlement order packs a one-two punch of its own: a record-breaking financial penalty for violating an FTC order and a lifetime ban on soliciting charitable donations."

–David Vladeck, Director, BCP (press release, March 31, 2010)

B. Bankruptcy Claims

In 2009, Commission bankruptcy lawyers protected more than $230 million in FTC judgments from discharge in nine bankruptcy cases, including $48 million in suspended judgments that are subject to reinstatement. In ***John Stefanchik/Warwick Properties LLC***, the Commission filed a reverse veil piercing case against a shell corporation set up by Stefanchik to shield his multi-million home and other assets from creditors. The FTC holds a $17 million judgment against Stefanchik for operating a deceptive scheme in which he promised to teach consumers how to make large amounts of money selling mortgages and promissory notes.

C. Criminal Liaison Unit

Since its inception in 2002, the FTC's Criminal Liaison Unit (CLU) has promoted the criminal prosecution of consumer fraud by state and federal prosecutors. The CLU works to ensure that FTC defendants and their associates who have committed crimes are charged, prosecuted, and brought to justice. Through partnerships with the DOJ, U.S. Attorneys, and state prosecutors, the CLU program has assisted in the prosecution of hundreds of fraudulent telemarketers, sellers of bogus cancer cures, and those operating sweepstakes scams. In the last year, federal and state criminal authorities have charged 40 FTC defendants and their associates with crimes arising from activities investigated or prosecuted by the Commission. During this period, 32 such defendants and their associates were convicted or plead guilty. Prison sentences imposed totaled more than 220 years; the average sentence was six years.

- ***Transnet Wireless Corp.*** In 2005, the FTC sued promoters of a "sure fire" Internet kiosk business opportunity. Consumers paid $14,000 per kiosk, but often received nothing in return. Others found that the kiosks failed to produce anything close to the promised revenues. The FTC successfully completed its action, and now the DOJ has charged the ringleaders – Paul Pemberton and Bradley Cartwright – as well as the operation's salesmen and shills, with conspiracy to commit wire fraud. Following a guilty plea, Pemberton was sentenced to an 11 year prison term and ordered to pay restitution of $7.7 million. One of the shills was sentenced to three and one-half years. Altogether, five individuals have been convicted in this ongoing investigation.

Chapter 11: Consumer Protection Law Enforcement Tools

In order to improve its methods for identifying law violations, the FTC maintains various databases for collecting and analyzing information about consumer experiences in the marketplace.

Some of these databases are also made available to other law enforcement agencies to enhance their efforts to investigate and stop illegal practices.

- **Consumer Response Center.** The Consumer Response Center collects information from, and provides information to, consumers and law enforcement authorities. Last year, the CRC handled nearly 40,000 inquiries and complaints from consumers and businesses each week. These contacts come from the FTC's toll-free numbers (1-877-FTC-HELP and 1-877-ID-THEFT), the FTC's website, and by mail.

Top Consumer Complaints in 2009

Category	Number
Identity theft	278,078
Debt collection (third party and creditor)	119,549
Internet services	83,067
Shop-at-home and catalog sales	74,581
Foreign money offers and counterfeit checks	61,736
Internet auctions	57,821
Credit cards	45,203
Prizes, sweepstakes, and lotteries	41,763
Advance-fee loans and credit protection/repair	41,448
Banks and lenders	32,443
Credit bureaus, information furnishers, and credit report users	31,629
Television and electronic media	26,568
Health care	25,414
Business opportunities, employment agencies, and work-at-home plans	22,896
Computer equipment and software	22,621
Telecom equipment	22,377
Automobiles	22,372

- **Consumer Sentinel.** Complaint information collected by the FTC is entered into a secure, online database within the Commission's Consumer Sentinel Network. The agency shares the more than 13.4 million complaints collected during the past five years with more than 1,900 law enforcement organizations in the U.S., Canada, and Australia. The database enables the FTC and its law enforcement partners to spot trends quickly, target the most serious illegal practices reported by consumers, and coordinate law enforcement efforts with its counterparts.

- **Do Not Call Registry.** The Registry protects consumers from receiving unwanted commercial telemarketing calls. At the end of December 2009, the Registry contained more than 197 million telephone numbers.

- **Identity Theft Tools.** Since 2002, the FTC and its partners – which now include the U.S. Secret Service, the DOJ, the U.S. Postal Inspection Service, the Federal Motor Carrier Safety Administration, and the FBI – have provided state and local law enforcement officers with practical tools to assist victims of identity theft, investigate the crime, and work with local prosecutors. To date, the FTC and its partners have conducted 39 seminars, training more than 5,150 law enforcement officers from more than 1,680 agencies.

- **Spam Database.** The FTC maintains an electronic address to which consumers and businesses can forward unsolicited commercial email or "spam." The spam database is important to Commission enforcement of the CAN-SPAM Act – which prohibits deceptive sender and subject lines in commercial email and provides consumers the right to opt out of future commercial email campaigns – and to law enforcement actions by other federal and state agencies. From March 2009 through March 2010, this mailbox, spam@uce.gov, received approximately 111,000 pieces of spam daily. The total amount of spam received by the FTC to date exceeds 612 million.

How to File a Complaint

The FTC produced a short video in English and in Spanish, explaining how to file a complaint with the FTC. The video shows and tells what kinds of complaints the FTC collects, and how it uses them to build cases that eventually can help put con artists out of business. In addition, the Commission has created sets of tweets on a variety of consumer issues like cybersecurity, holiday shopping, general credit issues, and charitable giving that people can share with their online networks, friends, and followers. The tweets are posted at ftc.gov.

Certificate of Excellence in Accountability Reporting

The FTC was recognized for meeting the highest standards of federal fiscal accountability reporting for the third year in a row when the Association of Government Accountants' (AGA) awarded the agency its prestigious Certificate of Excellence in Accountability Reporting (CEAR). The CEAR is awarded to federal government entities whose Performance and Accountability Reports (PARs) achieve the highest standards of clarity in communicating financial information and demonstrating accountability. "FTC is to be commended for issuing a PAR that provides a good sense of what the FTC does, and how well it does it, even to those not familiar with the agency. It conveys the impression that FTC is clearly in compliance with the many different elements of transparency and accountability," said Relmond P. Van Daniker, AGA's Executive Director.

FTC Comments to the FCC

Using its substantial expertise in Internet and broadband issues, the FTC often provides input to the Federal Communications Commission (FCC) on key media and telecommunications issues. This year, the Commission filed three comments on how best to promote competition and protect consumers online in connection with particular FCC proposals.

National Broadband Plan. The FCC's National Broadband Plan (Plan) incorporates the FTC's comments on the proper role of competition and consumer protection in the development of nationwide broadband. The FCC's Plan recognizes, as the FTC advised, that competition and consumer protection policies must work together to benefit consumers in the broadband area, and that these policies form a critical part of the foundation on which to build a sound national broadband plan. The Plan adopts the FTC's recommendation that the FCC use economically sound analytical tools to evaluate competition in broadband and to tailor appropriate regulatory policies that benefit consumers. The FTC also emphasized the importance of meaningful consumer protection to foster broadband development, and the FCC's Plan specifies that consumers should receive meaningful and timely disclosures of service terms by broadband providers, and that providers must use strong data security policies. As the FTC explained, privacy protections are important because new technologies allow broadband providers to track consumers' online activities and use that data to target advertising online.

Advertising and Billing for Communications Services. The FTC urged the FCC to require that advertised prices of communications services – telephone, cable, and Internet access – reflect the price consumers actually pay, including taxes, fees, and other charges, and to consider whether requiring certain information disclosures would help consumers understand competing offers. Based on its own experience, the FTC also advised the FCC on ways to enforce against the cramming of unauthorized charges onto consumer telephone bills.

Empowering Parents and Protecting Children. The FTC expressed its support for the FCC's initiative to examine the media landscape to determine how best to empower parents and protect children from inappropriate contact, conduct, and content. To aid in the FCC's efforts, the FTC's comment described the agency's own enforcement and education efforts in these areas.



Section Three: International Activities

Globalization continues to reshape the world in which consumers and businesses operate. Thanks to the Internet and other new technologies, marketing practices that once remained within national borders now reach around the globe. This not only creates unprecedented opportunities for commerce, but also new challenges for antitrust and consumer protection agencies around the world, including the FTC. Fraud, deceptive practices, and anticompetitive conduct that once might have been contained within a single nation can now instantaneously affect consumers worldwide.

To meet these challenges, the FTC coordinates with foreign law enforcement agencies to halt unfair, deceptive, or anticompetitive conduct wherever it occurs and to obtain necessary information and assistance for investigations and enforcement actions. The FTC engages with competition and consumer protection agencies in other countries, bilaterally and through multilateral organizations, to provide policy leadership and promote sound approaches to common problems. The FTC also reaches out to both new and established competition and consumer protection authorities to help them develop their institutions and train their staff to deal with challenges in evolving to a market-based economy.

Notable developments this year include the FTC's continued use of its authority under the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers Beyond Borders Act of 2006 (**U.S. SAFE WEB Act**). The agency reported to Congress on the Act's effectiveness and recommended that it be made permanent. The FTC also engaged in cross-border enforcement assistance to better protect American consumers by cooperating with consumer protection, antitrust and other law enforcement authorities worldwide. The FTC maintained its strong record of working with foreign antitrust agencies to reach consistent outcomes in several high-visibility antitrust cases and developed new tools to promote common competition policy and enforcement approaches. The agency expanded its International Fellows and Interns Program to bring foreign agency officials to Washington to work side-by-side with expert FTC staff and also sent several FTC staff to work for several months at foreign agencies. The Commission hosted a high profile Organisation for Economic Co-operation and Development (OECD) conference on consumer protection in electronic commerce. With other U.S. agencies, the FTC negotiated a Memorandum of Understanding (MOU) with the 21 Asian Pacific Economic Cooperation (APEC) countries to establish a framework for cross-border transfer of enforcement data. The FTC also hosted an International Cooperation Network (ICN) workshop on unilateral conduct. In response to growing demand, it expanded its technical assistance program into new areas and increased the number of consumer protection programs offered.

Commissioner William E. Kovacic

"No public agency prospers without superior people. Create a great team, and you build the path to success. Today, the pool of exceptional talent in competition and consumer protection policy is truly global. Agencies that tap this pool effectively boost their performance. Citizens of foreign countries are playing a valuable and growing role at the FTC. They serve as fulltime employees and as U.S. SAFE WEB Act International Fellows seconded from the FTC's foreign counterparts. Their presence not only strengthens the FTC's substantive programs, but also creates the deeper understanding of comparative systems and forms the enduring friendships that draw nations together."



Chapter 12: Seeking International Cooperation and Consistent Outcomes in Cross-Border Investigations

A. Competition Enforcement

The FTC worked on almost 40 international antitrust investigations in the past year, many of which involved coordination or cooperation with foreign counterparts. The FTC has enhanced its coordination in cases of suspected unilateral anticompetitive conduct and has conducted effective reviews of multi-jurisdictional mergers. Significant examples from this year are:

- ***Panasonic/Sanyo.*** The Commission worked with its counterparts in the EU, Canada, and Japan to resolve competitive concerns raised by Panasonic's proposed $9 billion acquisition of Sanyo. The FTC and the EC's Directorate General for Competition coordinated on a divestiture package in the market for portable NiMH batteries that power two-way radios used by police and fire departments nationwide.

- ***Pfizer/Wyeth.*** The FTC cooperated with the competition agencies of Australia, Canada, the EU, Mexico, New Zealand, and South Africa to address competitive concerns raised by Pfizer's $68 billion acquisition of Wyeth with respect to a wide variety of animal health products, including vaccines. FTC staff worked with counterparts in Australian, Canadian, and the EU agencies to obtain coordinated, non-conflicting remedial decisions and orders.

B. Consumer Protection Enforcement

The FTC continued to expand its international enforcement cooperation efforts by making greater use of the tools provided by the U.S. SAFE WEB Act. The Act enhances the FTC's ability to cooperate with foreign law enforcement authorities on cross-border consumer protection enforce-

ment matters, including in investigations and enforcement proceedings involving Internet fraud and other technological abuses and deceptive schemes that take advantage of U.S. consumers.

Laureen France, Northwest Region



Serving as the liaison between the Northwest Regional Office and British Columbia law enforcement and with the U.S. Attorney's Office in Los Angeles, Laureen plays a critical role in criminal prosecution of cross-border targets. In 2009, Laureen's work contributed to convictions (including guilty pleas) or sentencing of four criminal defendants, and the extradition of a fifth from Canada to the United States. In addition, Laureen played a lead role investigating and supporting the litigation against U.S. Magazine Services and coordinating the investigation of loan modification and debt relief targets.

In the first three years of its authority under the U.S. SAFE WEB Act, the FTC has shared information in response to 38 requests from 14 foreign law enforcement agencies, resulting in over 17 enforcement actions by U.S. and foreign authorities, and it issued 26 civil investigative demands on behalf of 6 foreign agencies in 12 investigations. In many of these cases, the foreign agencies have been investigating conduct that directly harms U.S. consumers, while in others, the FTC's assistance has led to reciprocal assistance in other FTC investigations. Given the success of its enhanced authority, the FTC recommended that Congress repeal the Act's seven-year sunset provision in the next legislative session.

In addition, since the Act went into effect, the FTC has obtained formal negotiating authority from the U.S. Department of State to negotiate and enter into binding international agreements with foreign counterpart agencies, and the FTC has shared draft text for such agreements with key foreign partners. The agency also has asserted its cross-border jurisdictional and remedial authority under the Act in legal briefs defending against spurious challenges to its ability to protect U.S. consumers from cross-border harm.

During the past year, the FTC filed or obtained judgment in the federal courts in at least 21 cases with a major international aspect, including cases that involved cooperation with counterparts in Australia, Canada, China, Hungary, Nigeria, and the United Kingdom. For example:

- **Tackling U.S. – Canada Cross-Border Fraud in *Operation Mirage*.** To address the ever-constant telemarketing and other fraud taking place across the U.S.-Canadian border, the FTC works closely with its law enforcement partners in Canada, including the Competition Bureau Canada and the members of seven regional bi-national partnerships. In June, for example, the FTC joined with Canadian law enforcement authorities in ***Operation Mirage***, a cross-border enforcement sweep aimed at cracking down on business directory scams. As part of the sweep, the FTC brought three cases against telemarketing operations based in

Montreal alleging that they targeted U.S. businesses and other organizations with schemes to mislead them into paying hundreds of dollars each for unwanted business directory listings. The FTC used its U.S. SAFE WEB Act authority to share information with Canadian enforcers in two of the cases.

- **Stopping an International Payday Loan Scam.** In September, the FTC obtained a $1 million settlement from an Internet-based payday loan operation, based mainly in the United Kingdom, which used unfair and deceptive tactics in consumer credit transactions with U.S. consumers. In ***Cash Today, Ltd.*** the defendants allegedly provided consumers with payday loans without disclosing in writing key loan terms such as the annual percentage rate, the payment schedule, the amount financed, the total number of payments, and any late payment fees. The FTC alleged that the defendants also falsely claimed that consumers were legally obligated to repay the loans and threatened consumers with arrest and imprisonment. During its investigation, the FTC shared non-public information with authorities in the United Kingdom. The U.K.'s Office of Fair Trading assisted the FTC by obtaining corporate records for the foreign defendants and providing a declaration regarding those records, which the FTC filed in court.

- **International Electronics Fraud.** The FTC works hard to ensure that the United States does not become a haven for the types of Internet frauds that so often target American consumers from abroad. In a first under the U.S. SAFE WEB Act, the FTC filed suit against a U.S.-based Internet seller that allegedly deceived British consumers. In ***Jaivin Karnani***, the FTC charged, among other things, that the U.S. defendants duped British consumers into purchasing goods that carried no manufacturer warranties in the United Kingdom, denied consumers the option of cancelling orders, and shipped goods that were different from those depicted on their websites and in some cases were unusable. The case is in litigation in federal court in California.

Chapter 13: Promoting Sound Competition and Consumer Policy Through International Organizations

The FTC continues to provide leadership in several multilateral policy organizations including the ICN and the consumer, privacy, and competition committees of the OECD, the United Nations Conference on Trade and Development (UNCTAD), and APEC. The FTC's work with each of these organizations provides valuable opportunities to advance cooperation and sound policy in both the competition and international consumer protection and privacy arenas. Its leadership and activities in these international organizations are particularly noteworthy.

- **ICN.** Currently comprised of 112 competition agency members from 99 jurisdictions, the ICN is a key venue for antitrust authorities to exchange ideas and to work together to promote convergence through the development of best practices. Significant accomplishments this year include:

  - **First Unilateral Conduct Workshop and Webinar.** As co-chair for the Unilateral Conduct Working Group, the FTC hosted the Group's first workshop and its first webinar on excessive pricing in which over 100 delegates participated. The Group also issued two reports on tying and bundled discounting and loyalty discounts and rebates, and organized a second webinar to discuss remedies in single firm conduct cases.

  - **ICN Vice-Chair for Outreach.** Commissioner Kovacic serves as the ICN's Vice-Chair for Outreach and, with the FTC team, launched the ICN Blog and Bulletin Board.

  - **ICN Merger Notification and Procedures.** The FTC also chairs the ICN's Merger Notification and Procedures subgroup, which this year issued a report on notification information requirements, and promoted implementation of its Recommended Practices.

- **OECD.**

  - **Competition Committee.** The FTC actively participates in the OECD Competition Committee, where it plays a lead role in high-level dialogue on key competition issues. For instance, the FTC organized the Committee's roundtable discussion of competition issues in the pharmaceutical products market, including entry by generic drugs. The FTC also shared experiences on competition issues related to patents and innovation, the financial crisis, the failing firm defense, and procedural fairness.

  - **Global Forum on Competition.** The FTC participated with representatives from almost 90 agencies, the majority from non-member developing countries, and in regional OECD programs for non-members, including the Latin American Competition Forum.

  - **Consumer Policy Committee – Conference on the Internet Economy.** The FTC hosted an OECD conference marking the tenth anniversary of the 1999 Guidelines on Consumer Protection in the Context of Electronic Commerce. The three-day event, "Empowering E-consumers: Strengthening Consumer Protection in the Internet Economy," brought together over 250 government officials, business leaders, consumer advocates, and academics from around the world to explore the new opportunities, obstacles, and risks consumers face in today's online world. The conference laid the groundwork for global cooperation on a variety of consumer and Internet issues relating to the Com-

mittee's review of the 1999 Guidelines. The FTC has also played a leadership role in other aspects of the Committee's portfolio, including work on green marketing claims, the appropriate role of self-regulation, and policy insights from informational and behavioral economics.

- **Working Party on Information Security Privacy.** The FTC actively participates in the OECD's Working Party on Information Security and Privacy (WPISP), which is marking the 30th anniversary of the 1980 OECD Privacy Guidelines this year with a series of events to prepare for an assessment of the Guidelines in 2011. In March, the FTC spoke at the first event about the need for international enforcement cooperation in the privacy area, and worked with OECD WPISP members and others to launch a new informal network of privacy enforcement agencies.

- **ICPEN.** The FTC also participates actively in the International Consumer Protection and Enforcement Network (ICPEN), a global network of almost 40 governmental consumer protection authorities. ICPEN facilitates the exchange of information about cross border commercial activities affecting consumers, shares best practices in legislative and enforcement approaches to consumer protection, and encourages international enforcement cooperation among its members. In May, the FTC will host the bi-annual meeting of ICPEN in Washington, D.C. with participants from all over the globe.

- **APEC.**
  - **Developing an Enforcement Framework for Cross-Border Data Transfers.** With WPISP, APEC's Electronic Steering Group, and the International Conference on Data Protection and Privacy Commissioners, the FTC has strengthened international cooperation on privacy and data security issues, focusing the international community on the critical importance of aggressive law enforcement in this area. In November, APEC Ministers endorsed a MOU for multilateral cooperation on cross-border privacy enforcement by the 21 APEC member economies. The FTC played a key role in negotiating this arrangement, which it has now also endorsed. The MOU is an important step towards establishing a voluntary system of privacy rules for cross-border data flow consistent with the APEC Privacy Framework.

Chapter 14: Promoting Convergence and Cooperation Through Bilateral Relationships

The FTC has worked to develop flexible market-oriented standards and to address both long-standing and emerging consumer protection issues with its counterparts in developed economies like the EU and Canada, as well as in emerging economies in Latin American, the Caribbean, and Africa.

- **MOU with the Royal Canadian Mounted Police.** The FTC executed an MOU with the Royal Canadian Mounted Police (RCMP), Canada's national police force, allowing the RCMP online access to the upgraded Consumer Sentinel Network. The FTC participates with the RCMP and other Canadian law enforcers in six regional cross-border fraud enforcement partnerships, including Project COLT in Montreal, Project Emptor in British Columbia, and the Toronto Strategic Partnership.

With respect to competition issues, the FTC continued to strengthen its bilateral relationships with sister agencies, including a MOU on antitrust cooperation with Russia's Federal Antimonopoly Service. The FTC also worked on antitrust policy and enforcement issues with agencies from the EU, its member states, Australia, Canada, China, Israel, Japan, Korea, Mexico, Singapore, and other jurisdictions and provided requested input on their competition policies.



The MOU was signed in Washington, DC, by FAS Head Igor Artemyev and FTC Chairman Jon Leibowitz.

- **MOU with Russian Antitrust Agency.** In what was the first of its kind, the U.S. antitrust agencies entered into a MOU directly with the Russian Federal Antimonopoly Service (FAS). The MOU encourages the U.S. and Russian antitrust agencies to keep each other informed of significant competition policy and enforcement developments in their respective jurisdictions. It also establishes a framework for technical cooperation and communication among the agencies, providing for consultation and periodic meetings on competition enforcement, policy, and priorities.

- **China.** As part of U.S. efforts to encourage China to adopt sound antitrust policies and enforcement practices as it implements its new antitrust laws, senior FTC officials and staff held discussions with the Chinese antitrust agencies in the United States and China. Among the highlights of the past year was a week-long workshop on antitrust law with China's Supreme Peoples Court. The FTC also contributes to the cabinet-level strategic and economic dialogue between the United States and China.

Judicial Training in China

Successful enforcement of China's Antimonopoly Law depends on the capabilities of China's judiciary, as well as its three antitrust agencies. The Honorable Douglas Ginsburg of the United States Court of Appeals for the D.C. Circuit and the Honorable Sarah Vance of the United States District Court for the Eastern District of Louisiana, along with FTC and DOJ staff, helped train 70 judges from China's Supreme Peoples Court. Topics included antitrust economics, anticompetitive agreements, single-firm conduct, mergers, intellectual property, evidence, jurisdiction, and standing. A highlight of the program was the oral arguments based on the *Leegin* and *3M* antitrust cases.

Chapter 15: Outreach and International Technical Assistance

With more than 100 jurisdictions enforcing competition or consumer protection laws, the FTC has expanded its long standing technical assistance program to help both newer and more established agencies apply their laws to support free markets. The FTC continues to work with other U.S. government funders, including the United States Agency for International Development (USAID), the U.S. Trade and Development Agency (USTDA), and the Department of Commerce Commercial Law Development Program (CLDP), to provide this support. While USAID and other long standing players in the development field have taken the lead in providing support to developing countries, they are unable to serve all countries and all needs. Recognizing the importance and quality of the FTC's work, Congress provided the FTC additional funding to provide international technical assistance. Again this year, the FTC funded programs in countries not typically served by USAID and addressed topics historically outside the ambit of the program funded by USAID.

- **Technical Assistance.** This year, the FTC sent 66 staff experts to 30 countries on 63 technical assistance missions. These included continued USAID-funded work in the 10-nation ASEAN community (including Cambodia and Vietnam), and training programs in Egypt, Brazil, Kenya, Mexico, South Africa, Bulgaria, and Tanzania. The Commission also provided technical assistance to Brazil, Bulgaria, CARICOM (the Caribbean Community), Poland, and Turkey, among others. Commission staff also served as resident advisors to competition agencies in Latin America and Southeast Asia. Because consumer protection programs have

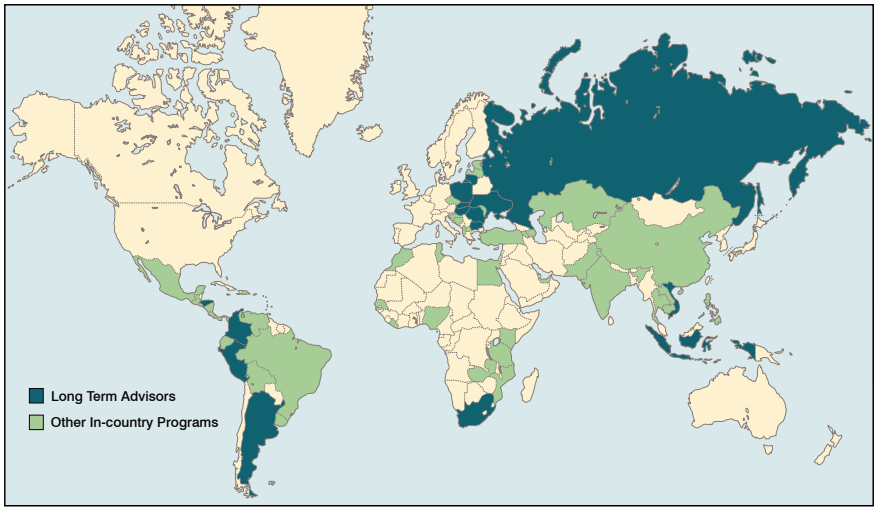
not attracted substantial external funding, the FTC expanded its technical assistance program to consumer protection agencies in Central America, Colombia, Hungary, India, Indonesia, Liberia, Malaysia, Mexico, Nigeria, and Ukraine.

Timothy Hughes, Office of International Affairs



After 18 years of working on competition and consumer protection cases in the FTC's Midwest Regional Office, Tim Hughes came to FTC Headquarters to pursue his interest in international economic development. Tim has been part of the FTC's International Technical Assistance program from its inception, serving as an advisor in countries throughout Southeast Asia, Southeast Europe, and the Middle East. Tim also develops training materials and conducts staff workshops to prepare other FTC staff for assistance missions. Last year, he advised the Vietnamese Competition Authority and the Vietnamese Competition Council, helping to draft new consumer protection and competition laws and regulations.

- **China.** The most significant technical assistance opportunities and challenges involve China. The FTC's engagement with China includes participation in an extensive public/private sector technical assistance program for the three Chinese antitrust enforcement agencies. Partially funded by USTDA, the program included training on anticompetitive agreements and theories of anticompetitive harm in merger investigations.
- **India.** The FTC is working with India's Competition Commission on antitrust enforcement and policy as it begins to implement its 2002 Competition Act.



- **The International Fellows Program.** The FTC's International Fellows and Interns program provides opportunities for counterparts from foreign agencies to spend several months working directly with FTC staff on investigations, subject to appropriate confidentiality protections. During the past year, the FTC hosted 12 International Fellows and Interns from Argentina, Australia, Austria, Brazil, Canada, the EC, Egypt, Hungary, Israel, Mexico, Poland, Singapore, Switzerland, and Turkey.

- **Building Cooperative Relationships Through Staff Exchanges.** The Commission sent staff members to work in foreign competition and consumer protection agencies on short-term assignments. This year an FTC economist worked for the U.K. Competition Commission, a merger attorney worked for the EC's Directorate General for Competition, and an Office of International Affairs attorney worked with the United Kingdom's Office of Fair Trading. These assignments provide invaluable opportunities for FTC staff to obtain a deep understanding of their international partners' laws and challenges. This knowledge provides critical support for coordinated enforcement and promotes convergence toward sound policy.

- **Expanding Outreach to Developing Agencies.** Building on the approach the FTC pioneered in Latin America and the Caribbean, the FTC launched an informal network of African consumer protection agencies and NGOs to discuss consumer protection policy and enforcement issues through monthly teleconferences. The FTC also organized the first regional conference for African consumer protection agencies in South Africa and will continue to develop its relationships with English- and French-speaking African countries in the year ahead.

International Fellows Program

"I am fortunate to spend my five month Fellowship in BCP's Division of Advertising Practices, where I've worked on several Internet-related investigations from their inception. I work alongside the FTC case attorneys to draft civil investigative demands, a consent order, and a complaint recommendation, and generally work on all substantive aspects of the matters. I've learned a lot about Internet marketers' techniques and the FTC's working practices, especially in the area of collecting and capturing Internet-based evidence. I look forward to bringing this knowledge back to the Office of Fair Trading."

Robert MacDougall
United Kingdom
Office of Fair Trading



Looking Ahead

This was a challenging year for many consumers. The FTC's mission to protect a free, fair market economy remains the same in good times and bad, but the FTC's work takes on greater urgency when consumers are struggling. As Americans, we are hopeful that things will turn around soon for more of our neighbors, and when they do, that we can all reap the benefits of a renewed economy. Until such time, the Commission will continue to use its resources to protect consumers, especially those made vulnerable by the economic downturn.

Here at the Commission, there is a sense of excitement as we meet our challenges with two new Commissioners. As a Commission, we can look forward to building on our strong relationships with the Department of Justice, state attorneys general, and other law enforcement partners here and abroad that share our mission to protect consumers and promote competition.

On the competition side, the Commission will continue to promote vigorous, competitive markets so that consumers have the broadest possible selection of goods and services and that businesses strive to improve their offerings. The FTC will continue to advocate for competition-based solutions to contain health care costs, and will bring enforcement actions to stop anticompetitive agreements or preserve existing competition in health care markets. We will press to eliminate anticompetitive pay-for-delay patent settlements that deprive consumers of low-cost drugs. The Commission will encourage competition among innovation firms, while sweeping away anticompetitive impediments to technological change. And we will endeavor to make our merger review process as transparent and predictable as we can through updated guidelines that reflect current approaches.

On the consumer protection side, we will work tirelessly to address the most pressing needs of consumers. Rising unemployment, shrinking credit, record-setting foreclosures, and disappearing retirement accounts are causing consumers tremendous anxiety about making ends meet. To con artists, today's challenging economy presents another opportunity to play on consumers' worries and bilk them out of money. Their new scams increasingly promise job placement, access to free government grant money, or the chance to work-at-home. They promise to help consumers modify their home mortgages to make them more affordable, but they deliver nothing. They raise people's hopes and then drive them deeper into a hole. The FTC will continue to act aggressively to stop these scams, through coordinated law enforcement actions with our state and federal partners and through extensive consumer education.

The expanding global marketplace, coupled with ever-changing technologies, presents both tremendous opportunities and considerable risk for consumers. The FTC will continue to work to ensure a competitive and safe global marketplace for the benefit of all Americans. It will continue to

be a world leader on international consumer protection, competition, and privacy issues. In order to do so, it will continue to devote its international resources to forging strong bilateral and multilateral relationships with enforcement partners and policymakers, promoting sound policies and best practices, and building the capacities of competition and consumer protection agencies across the globe.

In all our work, we are mindful that the FTC is the nation's only agency with both consumer protection and competition jurisdiction in broad sectors of the economy. From that unique perspective, we will continue to advance the interests of consumers by promoting a vigorous, competitive marketplace where consumers can make informed choices.

Senior Staff of the FTC

Chief of Staff	Joni Lupovitz
Executive Director	Charles Schneider
Acting Deputy Executive Director	Pat Bak
Director, Bureau of Competition	Richard Feinstein
Deputy Directors	Norman Armstrong, Jr.
	Marian Bruno
	Peter Levitas
Director, Bureau of Consumer Protection	David Vladeck
Deputy Directors	Chuck Harwood
	Jessica Rich
Director, Bureau of Economics	Joseph Farrell
Deputy Directors	Pauline Ippolito
	Paul Pautler
	Howard Shelanski
General Counsel	Willard K. Tom
Principal Deputy General Counsel	David C. Shonka
Director, Office of International Affairs	Randy Tritell
Deputy Directors	Alden Abbott
	James Hamill
	Elizabeth Kraus
	Hugh Stevenson
Director, Office of Congressional Relations	Jeanne Bumpus
Deputy Director	Judith Bailey
Director, Office of Policy Planning	Susan S. DeSanti
Deputy Directors	Suzanne Michel
	Michael Wroblewski
Director, Office of Public Affairs	Cecelia Prewett
Deputy Director	Peter Kaplan
Secretary of the Commission	Donald Clark
Inspector General	John Seeba

2009 Annual Awards

Chairman's Award
Christian White, OGC

Lifetime Achievement Award
Gloria Brown, BCP
Joseph Brownman, BC
John Crowley, BCP

Louis D. Brandeis Award
Douglas Wolfe, BCP

Janet D. Steiger Team Award
Part 3 Team
SAFE Team
CSL/Talecris Team
CompuCredit Team
Patent Settlement Team

Richard C. Foster Award
James Baker, OED
Renee Chapman, BC
Regina Duarte, OGC
Matthew Eaton, BE
Stella Schuller, NWR
Jonathan Soileau, BCP
Maureen Wilkin, OED

James M. Mead Award
James Mantiply, OED
James McLaughlin, BCP
Susan Taylor, OS

Paul Rand Dixon Award
Imad Abyad, OGC
Molly Crawford, BCP
Russell Deitch, BCP
Elizabeth Jex, OPP
Robert Jones, BC
Kenneth Libby, BC
Peter Vander Nat, BE

Mary Gardiner Jones Award
Jonathan Kessler, ECR

Excellence in Supervision Award
Cynthia Davis, OED
Stacy Feuer, OIA
James Lacko, BE
Jeffrey Perry, BC
Nathaniel Wood, BCP

Otis B. Johnson Award
Holly Frost, BC
Consuella Goosby, OGC
Andrew Hernacki, BCP
Michelle Thornton, OED

The Francis Walker Award
Chetan Sanghvi, BE

Outstanding Scholarship
Steven Tenn, BE

Stephen Nye Award
Elizabeth Nach, BCP
Evan Rose, WRSF
Jennifer Steifvater, BC
Christian Woolley, BC

A. Leon Higginbotham, Jr. Award
Carolyn Hann, Commissioner Rosch's Office
Jennifer Lee, BC
Leah Frazier, BCP

Eleanor F. Greasley Award
Nancy DeLuca, OGC
Alethea Fields, BE

Principal Contributors to Report

Kelly Signs and Pat Bak	Project Coordinators
Dawne E. Holz and Jessica Skretch	Graphics and Design
Carol J. Jennings	Bureau of Consumer Protection
Abigail A. Slater	Bureau of Competition
J. Elizabeth Callison	Bureau of Economics
Russell W. Damtoft	Office of International Affairs
Christopher M. Grengs	Office of Policy Planning
William P. Golden	Office of the General Counsel

Contributing staff members also include Heather Allen, Betsy Broder, Rachel Miller Dawson, Laura DeMartino, Janet Evans, Stacy Feuer, Kathy French, Frank Gorman, Nathan Hawthorne, Carol Kando-Pineda, Mitchell Katz, Janis Kestenbaum, Gail M. Kingsland, James Kohm, Tara Isa Koslov, Laura Koss, Nicholas Mastrocinque, Maria Mayo, Mickey Mora, Jon Morgan, Elizabeth Nach, Amanda Reeves, Kellie Cosgrove Riley, Stefano Sciolli, John H. Seesel, Pavneet Singh, Jonathan Soileau, Christopher Taylor, James Whitelaw, and Rebecca Wolozin.

In Memoriam

Pat Foster

Mary Gardiner Jones

Jesse William Markham

Steve Rurka

Cameron Williams

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

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