



Federal Trade Commission

**Remarks of Deborah Platt Majoras¹
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Consumer Assembly**

¹The speech was prepared with the assistance of Elizabeth Anne Hone, an attorney in the Commission's Division of Marketing Practices. The views expressed herein are my own and do not necessarily represent the views of the Federal Trade Commission or of any other individual Commissioner.

the FTC's work as I am.

I. Why Consumer Protection Is Important

As many of you may be aware, my background is in antitrust law enforcement. Enforcement of our nation's antitrust laws is essential to keeping our markets strong and responsive to consumer demand. But you do not have to be at the FTC for very long to become enamored of the agency's consumer protection work and to grasp the important role sound consumer protection plays in our economy. In fact, shortly after I joined the agency, one of the managers in the Bureau of Consumer Protection remarked that if you scratch the surface of an antitrust enforcer, you will find a consumer protection lawyer underneath. It is no wonder. The collective consumer voice is as powerful a force as any we encounter in our society. When armed with accurate information, consumers' actions move markets and can determine the difference between the success or failure of entire businesses or industries. Antitrust law prohibits anticompetitive conduct that undermines consumer choice. By the same token, our consumer protection program attacks the fraud, deception, and privacy breaches that shake consumer confidence and undermine the same consumer choice.

Early in my tenure at the Commission, I read an article about advance-fee credit card scams that brought home for me the critical importance of our consumer protection mission. The article reported that Esthel Luciano paid \$299 for what she thought was a major credit card. When she learned that she had been scammed, she reportedly began to cry. "I feel very sad, embarrassed," she said. "It's not like I wasn't born here." "I see in the news, 'Don't let people steal your money.'" Now, reportedly, Ms. Luciano intends to be less trusting. She reminded me that when consumers are scammed, they lose much more than money; they lose faith. While a healthy skepticism for advertising claims may serve Ms. Luciano well in the future, the nation

cannot afford to have our consumers lose confidence in the marketplace (and, of course, consumers cannot afford to lose precious resources or their pride).

Consumers who have been scammed -- and by our last count that is 11% of American adults each year² -- need to know that the FTC is on the beat.

II. Law Enforcement

Aggressive law enforcement is the mainstay of the FTC's consumer protection mission. Since the last CFA assembly, the FTC has filed 83 actions in federal district court, and obtained 75 judgments ordering the return of more than \$474 million in consumer redress to consumers. Today, I want to tell you about a few of the types of cases we are currently litigating.

A. Business Opportunity Fraud

One area of focus is business opportunity scams. These schemes appeal to the optimist in all of us, with their exhortations to "Be Your Own Boss!" and "Make Every Day a Vacation!" Unfortunately, the con artists who promote these shady business schemes take consumers' money without providing them the tools necessary to generate the promised earnings. Late last month we announced Project Biz Opp Flop -- an unprecedented collaboration among civil and criminal law enforcers to crack down on business opportunity fraud. Biz Opp Flop included 16 FTC cases aimed at schemes that defrauded consumers of approximately \$100 million and more than 100 additional civil and criminal actions brought by the Department of Justice, the U.S. Postal Inspection Service, and 14 states.³

²See Consumer Fraud in the United States: An FTC Survey, at ES-2 (Aug. 2004), *available at* <http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf>.

³See FTC Press Release, *Criminal and Civil Enforcement Agencies Launch Major Assault Against Promoters of Business Opportunity and Work-at-Home Schemes* (Feb. 22, 2005), *available at* <http://www.ftc.gov/opa/2005/02/bizzoppflop.htm>.

Our law enforcement efforts seek to restore both money and confidence to the victims of the schemes we have shut down. Recently, we received a letter from the victim of an earlier business opportunity scam who had just received a partial redress check from us. In her letter, she thanks the FTC for “looking out for ‘sucker consumers’ like me.” She goes on to say, “At the time I was unemployed and grasping for anything that might provide an honest income . . . I

B. Deceptive Credit Counseling, Debt Management Schemes and Debt Negotiation Schemes

Scam artists in the credit counseling, debt management, and debt negotiation industries also target disadvantaged consumers. Taking money from consumers who are already struggling to make ends meet, without providing the counseling and debt reduction services these schemes promise, is a particularly heinous practice. As consumer debt skyrockets, deceptive practices in these related industries are another enforcement priority for the FTC.

The Commission has now brought six cases involving alleged bogus credit counseling, debt management services, or debt negotiation services, and there are others in the pipeline.⁴ In the largest of these cases, AmeriDebt, we pursued the company in the bankruptcy case it initiated. Not only were we able to have a trustee appointed in place of AmeriDebt's existing management, but I am also pleased to report that the federal bankruptcy judge handling that case approved the transfer of AmeriDebt's allegedly deceptively-obtained client accounts to a third-party credit counselor that has promised to educate and counsel these consumers. Consumers who would otherwise be orphaned by AmeriDebt's impending liquidation will have protection, and there will be additional money in the estate for possible redress. We will continue to

⁴*FTC v. AmeriDebt, Inc.*, Civil. No. PJM 03-3317 (D. Md.) (filed Nov. 19, 2003), available at <http://www.ftc.gov/opa/2003/11/ameridebt.htm>; *FTC v. Debt Management Foundation Services, Inc.*, No. 8:04-CV-1674-T-17MSS (M.D. Fla.) (filed July 20, 2004) available at <http://www.ftc.gov/opa/2004/07/dmfs.htm>; *FTC v. Jubilee Financial Services, Inc.*, No. 02-6468 (C.D. Cal.) (filed Aug. 19, 2002) available at <http://www.ftc.gov/opa/2002/09/opnocredit.htm>; *FTC v. Better Budget Financial Services, Inc.*, No. 04-12326 (D. Mass) (filed Nov. 2, 2004) available at <http://www.ftc.gov/opa/2004/11/bbfs.htm>; *FTC v. National Consumer Council*, No. SA CV 04-0474 CJC (JWJx) (C.D. Cal.) (filed April 23, 2004) available at <http://www.ftc.gov/opa/2004/05/ncc.htm>; *FTC v. Innovative Systems Technology, Inc.*, No. CV04-0728 GAF JTLx (C.D. Cal.) (filed Feb. 4, 2004) available at <http://www.ftc.gov/os/caselist/0323006/0323006.htm>.

⁵See, e.g., *Phillips Electronics North American Corp.*

(know as “the refrigerator” within the agency) by consumers. Thus far, we have filed 68 spam cases involving 198 individuals and companies. Going forward, you can expect the FTC to continue to pursue spammers who violate the FTC Act’s prohibition on deceptive and unfair practices as well as the various provisions of the CAN-SPAM Act. We will not allow spam to undermine consumer confidence in e-commerce.

Spyware poses another threat to consumers’ confidence in their use of the Internet. Like spam, spyware is widely distributed and is causing great frustration and sometimes substantial harm. Indeed, it is difficult to find many computer users these days who have not struggled to remove spyware that attached to their computers without their consent. Even Bill Gates has apparently acknowledged finding “malware” on his computer.⁶

We took our first “nip” out of spyware last October when we filed our first spyware case, *FTC v. Seismic Entertainment Productions, Inc.*⁷ We alleged that the Seismic defendants violated the FTC Act by loading spyware onto consumers’ computers that changed consumers’ web browsers and barraged them with pop-up advertisements, and installed other software programs without the consumers’ knowledge or consent. Look for more cases from us in the near future.

Unfortunately, as is too often the case, where there is a problem, there is a con artist ready to sell a bogus cure for it. Earlier this week, for example, we filed a case in which we alleged that the defendants sold anti-spyware software, called “Spyware Assassin” that was

⁶See “Gates: Microsoft to offer anti-spyware,” Cnet News.com (Oct. 1, 2004), available at http://news.com.com/Gates+Microsoft+to+offer+anti-spyware/2100-7355_3-5393208.html.

⁷See FTC Press Release, *FTC Cracks Down on Spyware Operation* (Oct. 12, 2004), available at <http://www.ftc.gov/opa/2004/10/spyware.htm>.

virtually useless. Today I am pleased to report that the Court granted us a temporary restraining order in that case.⁸

Also, just this week, we released a staff report discussing spyware.⁹ The report concludes that industry efforts to address spyware through technological innovation, self-regulation, and consumer education, combined with government efforts to address spyware through law enforcement, legislation, and consumer education measures can help stem the tide of spyware.

The problems of spam and spyware highlight the truly global dimension of consumer protection. Technology gives us access to the world, and gives the world access to us. As the Commission has repeatedly stated, "the path from a fraudulent spammer to a consumer's in-box

⁸*FTC v. MaxTheater, Inc.*, Civ. No. 05-CV-0069-LRS (E.D. Wa. filed March 7, 2005).

⁹*Spyware Workshop: Monitoring Software On Your Personal Computer: Spyware, Adware, and Other Software: Report of the Federal Trade Commission Staff* (March 2005), available at <http://www.ftc.gov/opa/2005/03/spywarerpt.htm>.

¹⁰*See, e.g.*, Prepared Statement of the Federal Trade Commission, *Spam (Unsolicited Commercial E-Mail)*, Before the Senate Committee on Commerce, Science and Transportation, 108th Cong. (May 21, 2003).

make it easier to take effective action against perpetrators of cross-border fraud"¹¹ In the meantime, we continue to use our current authority to work with our international partners on cross-border issues. So far in 2005, we have signed two bilateral Memoranda of Understanding: one with Mexico's consumer protection agency covering consumer protection cooperation¹² and the other with Spain's data protection agency covering cross-border cooperation on spam.¹³

E. Privacy and Security

Now, little is more central to consumer confidence than consumers' concerns about personal privacy and security. As consumers' concerns have increased, the FTC has mounted a series of law enforcement actions to challenge practices that involve the misuse of personal

¹¹*Resolution on Protecting Consumers from Fraud and Serious Deception Across Borders*, Issued by Transatlantic Consumer Dialogue (Nov. 2002), available at <http://www.tacd.org/cgi-bin/db.cgi?page=view&config=admin/docs.cfg&id=179>.

¹²*Memorandum of Understanding On Mutual Assistance In Consumer Protection Matters Between the Federal Trade Commission of the United States of America and the Procuraduria Federal Del Consumidor (Office of the Federal Attorney for Consumer Protection) of the United Mexican States* (Jan. 27, 2005), available at <http://www.ftc.gov/opa/2005/01/memunderstanding.htm>.

¹³*Memorandum of Understanding On Mutual Enforcement Assistance In Commercial Email Matters Between the Federal Trade Commission of the United States of America and the Agencia Espanola de Proteccion de Datos* (Feb. 24, 2005), available at <http://www.ftc.gov/opa/2005/02/spainspam.htm>.

¹⁴Documents related to these enforcement actions are available at http://www.ftc.gov/privacy/privacyinitiatives/promises_enf.html.

put in place solid information security practices before a breach can occur. But where significant breaches do occur, we will continue to determine whether they were caused by the failure to take reasonable steps to protect information security. As you know, recent revelations about security breaches at Choice Point and Bank of America have brought renewed Congressional interest in privacy issues. Yesterday, I testified in what promises to be a series of Congressional hearings on what more can be done to protect the confidentiality of consumer information collection and distribution by private data brokers.¹⁵

III. Consumer & Business Education

I strongly believe that an educated consumer is an empowered consumer. We are fortunate at the FTC to have an award-winning office of consumer and business education managed by Associate Director Carolyn Shanoff. The work done by Carolyn, and her staff, is essential to effective consumer protection. I would especially like to thank CFA and its fellow organizations for partnering with us on National Consumer Protection Week and other consumer and business education campaigns. You play a vital role in helping us get the word out to consumers and businesses.

One consumer education campaign that I am particularly excited about is part of our Hispanic Law Enforcement Initiative. According to our 2004 Fraud Survey, Hispanics are more than twice as likely as non-Hispanic Whites to be victims of fraud. (14.3% of Hispanics as compared to 6.4% of Whites reported that they had been victims of one or more of the types of

¹⁵See Prepared Statement of the Federal Trade Commission, *Identity Theft: Recent Developments Involving the Security of Sensitive Consumer Information, Before the Senate Committee on Banking, Housing, and Urban Affairs*, 109th Cong. (March 10, 2005).

fraud covered in the survey during the previous year.)¹⁶ In addition to aggressive law enforcement, our Hispanic Initiative includes a comprehensive Spanish-language consumer education campaign. We have sent public service announcements to 200 Spanish-language radio stations across the nation and sent Spanish-language consumer materials to more than 200 community-based organizations that serve the Hispanic community in eleven cities. Our Spanish-language consumer education materials can also be downloaded from the FTC website. We know the interest is there: our Spanish-language web pages receive thousands of hits every month, and members of our staff are interviewed at least once a week by the major Spanish-language networks and newspapers.

In addition to providing information to consumers and the media, the FTC and the United States Postal Inspection Service are holding a series of workshops to bring together law enforcers, educators, and community organizations to discuss problems and develop strategies for effective education and enforcement collaborations in the Hispanic community. We have already held workshops in Washington, D.C., Chicago, and Dallas, and our next stops will be Miami, Phoenix, and Los Angeles. The attendees at the workshops report that they have formed valuable partnerships in the fight against deceptive and fraudulent conduct targeting Hispanic consumers. These relationships have helped us identify potential targets, share information on enforcement and outreach strategies, and work together on law enforcement sweeps.

IV. Policy Research & Development

¹⁶See *Consumer Fraud in the United States: An FTC Survey*, at ES-4, 8 (Aug. 2004), available at <http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf>.

As you know, the FTC also plays an important role in providing and prompting policy research and development on issues of concern to consumers. Apparently, Congress agrees, because in addition to our self-initiated policy research and development, we find ourselves increasingly being directed by Congress to undertake research and prepare studies involving consumer protection issues. Today, I want to give you a sense of the policy work we are doing in three disparate areas that consumers care deeply about -- credit transactions, technology convergence, and childhood obesity.

A. The FACT Act

The Fair and Accurate Credit Transactions ("FACT") Act, enacted in December 2003, requires the FTC, alone or in conjunction with other agencies, to adopt 18 rules, publish eight

next year we will be conducting a pilot study in which we will interview consumers and examine their credit reports in an effort to come up with a workable plan for a national survey of credit report accuracy. In addition, we will be conducting an extensive review of insurers' underwriting and loss data in connection with our study of credit scores.

B. Convergence

Another emerging issue, from both a policy and law enforcement perspective, is technology convergence. We inhabit a world in which communication and information technologies and related devices are rapidly converging -- providing new and exciting opportunities for consumers, and at the same time opening new avenues for fraud and other abuses. In response, we have just begun a project to identify and study consumer protection issues that arise as a result of convergence.

One issue we are studying is Voice over Internet Protocol (or "VOIP") in place of plain old telephone services. VOIP can provide a low-cost, high-tech alternative to local and long distance phone service. But it also can raise consumer protection concerns. It is important that VOIP plans are marketed truthfully and with full disclosure about their limitations, as well as their benefits. We are also concerned that VOIP may provide scam artists with some wonderful tools. For example, using VOIP, telemarketers can blast huge numbers of voice mails to consumers at a very low cost. Imagine the annoyance of spam transferred to your phone system; in fact, there is already an acronym for it, "SPIT," short for "spam over Internet telephony."

The goal of the convergence project is to ensure that consumers, faced with a dizzying array of new and converging technologies, can be confident that these industries are held to the same level of truthful and accurate marketing as other industries, can turn to the FTC for helpful consumer education materials, and can rely on the FTC to ferret out bad actors and put a stop to

¹⁷*See*

exemption for telecommunications common carriers will become even more apparent.

C. Childhood Obesity

Today, I am pleased to announce an important research initiative that seeks to respond to the growing concerns over the alarming increase in childhood obesity. Last fall, the Institute of Medicine issued a report of findings by its Committee on Prevention of Obesity in Children and Youth.¹⁸ The report included many thoughtful recommendations for action by industry, government, schools, and parents. Among them was the recommendation that the Department of Health and Human Services convene a national conference to assist the development of industry self-regulatory guidelines for marketing and advertising to children to help minimize the risk of obesity. The report further recommended that the FTC monitor compliance with those guidelines. This summer, the Federal Trade Commission and the Department of Health and Human Services will hold a two-day workshop in Washington that will provide a forum for discussion of industry self-regulatory efforts to address concerns regarding the marketing of food and beverages to children.

1. The Terms of the Debate

We have all heard the statistics on the problem of childhood obesity -- a doubling of the number of children who are obese (and even higher numbers among children who are poor or disadvantaged). We have listened to health experts who warn that this will lead to a sharp increase in the incidence of type 2 diabetes, a disease that until now we worried about only in adults.

Children's health matters to all of us. It concerns every parent and grandparent; every

¹⁸*Preventing Childhood Obesity: Health in the Balance*, Committee on Prevention of Obesity in Children, Youth, Food and Nutrition Board, Institute of Medicine (2004).

and practices. Collectively, these individual actions are already bringing about changes in the way foods are marketed to children.

The FTC/HHS workshop will take a snapshot of the current state of food and beverage marketing to children, review existing self-regulatory efforts, and discuss best practices by companies.

Let me make clear, this is NOT the first step toward new government regulations to ban or restrict children's food advertising and marketing. The FTC tried that approach in the 1970s and it failed. But it is a call to action for industry to examine what is working and what more can be done through responsible marketing, product innovations, and other approaches to promote healthy food choices and lifestyles in children. I believe that the companies that feed our nation and our children will want to be part of the solution.

Like my predecessors at the Commission, I greatly value the contributions of industry self-regulation. Each day I see the positive benefits that effective self-regulation can bring. Industry-generated approaches can address problems more quickly, creatively, and flexibly than government regulation can. Of course, self-regulation works only if it has real substance, if industry members participate, and if there are consequences for non-compliance.

Our advertising and marketing workshop is only one of the many components of the government's efforts to address obesity. Last March, then HHS Secretary Tommy Thompson announced broad and aggressive initiatives that are now being implemented throughout HHS. These included: (1) a new, cross-cutting obesity research strategy at NIH; (2) food labeling initiatives at the FDA that will give consumers better access to calorie information; and (3) a partnership with the Ad Council on a compelling public service announcement campaign. I am delighted that HHS, under the leadership of Secretary Michael Leavitt, will be our partner in this

workshop. HHS brings tremendous nutrition and health expertise to the table that will greatly complement the FTC's background in advertising and marketing policy.

Together, we will focus our workshop on self-regulation -- what works, and what doesn't. Our workshop will provide a forum for a much-needed discussion of what more industry can and should do on a voluntary basis in the area of food marketing to children.

The FTC has a long history of advocating approaches that foster greater access to nutrition information as a way to improve consumers' health. Studies by our Bureau of Economics have documented the very real benefits when companies market based on the health benefits of their foods.²⁰ Together HHS and the FTC have worked to encourage industry to improve the mix of foods and beverages it markets, and to give better nutritional information to consumers.²¹

Of course, all of this should be guided by parents. Parents want and know what is best for their children. They ask for truthful, non-misleading information that will help them select healthy foods for their families. As I noted earlier, some food marketers are already responding. Others can join with them and compete in developing and offering healthier products that taste great, are convenient, and are fun. With more choices, and more benefits, parents can be given

²⁰Pauline M. Ippolito and Alan D. Mathios, *Health Claims in Advertising and Labeling: A Study of the Cereal Market, Bureau of Economics Staff Report*, Federal Trade Commission, Washington, D.C. (Aug. 1989).

²¹As Secretary Tommy Thompson noted in launching HHS's campaign on obesity, "[t]he efforts of corporations, communities, governments, and parents can all help to stem the tide of our unprecedented obesity and diabetes epidemics" and "spur competition in the food industry to provide healthier options -- the more Americans know about food and its health benefits and consequences, the higher they will set the bar for the industry." Tommy Thompson, Secretary, U.S. Dep't of Health and Human Services, July 12, 2003.

more information about healthy foods, prompting more demand for these products. Industry best practices and vigorous self-regulation can help make this virtuous cycle work better.

3. Goal of the Workshop

So what are our goals for this workshop? We want to learn from the experiences of industry members who have stepped forward with their own programs to address concerns about food marketing to children and to examine best practices. We want to hear about the experience of the Better Business Bureau's Children's Advertising Review Unit and its efforts to encourage responsible industry advertising. We also want to hear criticisms of existing efforts and thoughtful suggestions concerning what more can be done. After the workshop, we will prepare a report summarizing what we have learned.

I doubt that workshop participants will fully resolve these issues in two days, but I agree with the IOM that this is a discussion we all need to start. I am optimistic that a constructive dialogue can occur. I hope you will join us at the workshop.

Finally, I will repeat the point I made earlier. Better food advertising and marketing to kids and their parents can be one small -- if highly visible -- part of the effort to address the nation's childhood obesity problem. I know it will take hard work on many fronts to actually reverse the growth of childhood obesity. But with the creative talents and resolve of many, this hard work will be well worth the effort. I believe that the industry can -- and will -- meet this challenge.

IV. Conclusion

I have covered a lot of ground today, and have touched on only a few of the myriad

this town and popular support throughout the country. In closing, I would like to thank all of you and your organizations for your consumer protection work and for working productively with the FTC.