

**PREPARED STATEMENT OF**

**THE FEDERAL TRADE COMMISSION**

**on**

**Reauthorizing the U.S. SAFE WEB Act of 2006**

**Before the**

**COMMITTEE ON ENERGY AND COMMERCE**

**SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**Washington, D.C.**

**July 12, 2012**

## I. INTRODUCTION

Chairman Bono Mack, Ranking Member Butterfield, and members of the Subcommittee, I am Hugh Stevenson, Deputy Director for International Consumer Protection at the Federal Trade Commission (“FTC” or “Commission”). I appreciate the opportunity to present the FTC’s testimony in support of renewing the authority that Congress granted to the FTC in the U.S. SAFE WEB Act of 2006. Without Congressional action, the Act will sunset in December 2013.

Congress passed the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006 (“U.S. SAFE WEB Act,” “SAFE WEB Act,” or “Act”)<sup>2</sup> to enhance FTC enforcement against cross-border threatening American consumers in the global marketplace. The Act arms the FTC with key enforcement tools to combat Internet scams, fraudulent telemarketing, spam, spyware and other cross-border misconduct that harms our consumers. In this Act, Congress gave the FTC enforcement tools similar to those long available to the Securities and Exchange Commission and the Commodity Futures Trading Commission.<sup>3</sup>

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<sup>1</sup> The views expressed in this statement represent the views of the Commission. My oral presentation and responses to questions are my own and do not necessarily represent the views of the Commission or any Commissioner.

<sup>2</sup> Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006 (“U.S. SAFE WEB Act”), Pub. L. No. 109-455, 120 Stat. 3372 (2006) (codified in scattered sections of U.S.C. and 12 U.S.C. § 3412(e)). A copy of the public law is available at <http://www.gpo.gov/fdsys/pkg>

To continue to protect American consumers in a global economy, the FTC believes it is critical that Congress reauthorize the law enforcement tools provided by the U.S. SAFE WEB Act. Every FTC Commissioner who has addressed the issue—three Democrats, three Republicans, and an independent—supported reauthorization of the Act.

This testimony first describes the problem of cross-border fraud and provides a brief history of the Act. It then de

addresses, and computer system scans. The challenges for the FTC and other law enforcers have included the global reach and speed of the Internet; the ability of scammers to cloak themselves in anonymity; the ease of moving ill-gotten gains offshore asset havens; and the roadblocks to information sharing and cooperation created by national laws and borders.

Cross-border fraud is an ongoing problem. The FTC's Consumer Sentinel database, which combines consumer fraud complaints received by an array of enforcement agencies and other organizations,<sup>7</sup> suggests the scope of the problem:

- x Between 2006 and 2011, almost half a million U.S. consumers (471,014) complained about transactions involving more than \$1,400 paid to businesses in other countries.
- x The number of U.S. consumer complaints against foreign businesses exceeded 100,000 in 2011 alone:

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<sup>6</sup> Id.

<sup>7</sup> The Consumer Sentinel Network is a secure online database of millions of consumer complaints, available only to civil and criminal enforcement agencies, that provides immediate and secure access to fraud, identity theft, Internet, telemarketing (including Do Not Call), and other consumer-related complaints. <http://www.sentinel.gov> Note

- x Cross-border complaints have accounted for more than 10% of all *Consumer Sentinel* fraud complaints every year since 2000, with a high of 22% in 2006 and 13% for each of the last three years. These numbers likely underestimate the scope of the problem, as this complaint count includes only those instances where consumers report a foreign address.
- x U.S. consumers complain about foreign businesses from an increasingly broad range of countries. In 2002 more than 55% of such complaints were about Canadian businesses; in 2011 more than 85% were about businesses in other foreign countries.<sup>10</sup>

Congress strike the sunset provision.<sup>17</sup> Following this report, in October 2011 the FTC's five Commissioners submitted letters to congressional leaders, including to the leaders of this Subcommittee, urging repeal of the sunset provision and permanent authorization of the SAFE WEB Act.<sup>18</sup>

### III. FTC USE OF SAFE WEB ACT TOOLS

The FTC has used the SAFE WEB Act's tools to protect American consumers from cross-border threats robustly and responsibly. Some numbers tell the story:

- x The FTC has conducted more than 100 investigations with international components, such as foreign targets, evidence, or assets. The FTC has filed more than 50 cases involving cross-border components, since January 2007. The FTC has used the Act's authority in many of these matters, and in related ac

FTC, armed with SAFE WEB Act authority, worked together with U.S. and Canadian law enforcers to orchestrate a telemarketing enforcement sweep with 180 actions overall, including criminal actions against more than 90 defendants and several Canadian actions. Moreover, the 13 FTC actions brought as part of the sweep relieved more than half a million consumers defrauded by unscrupulous telemarketers, resulting in losses of more than \$100 million, and the agency estimated that as a result of the enforcement actions consumers would have saved \$19.7 billion.

egregious frauds and putting the defendants out of business and under court order, while at the same time helping foreign agencies to bring actions against foreign-based fraudsters that victimize American consumers.

The Act in particular enhances the FTC's consumer protection enforcement authority in four key areas: (1) information sharing; (2) investigative assistance; (3) cross-border jurisdictional authority; and (4) enforcement relationships.<sup>23</sup>

### **A. Information Sharing**

The Act authorizes the FTC to share confidential information in its files with foreign law enforcement agencies, subject to certain statutory safeguards.<sup>24</sup> This enforcement tool has proven particularly useful.

In one of the first uses of this enforcement tool, the FTC shared evidence with enforcers in Australia and New Zealand about an international spam network that peddled bogus prescription drugs, weight-loss pills and male-enhancement products to U.S. and foreign consumers. The network, which the anti-spam organization Spamhaus called the largest "spam gang" in the world, sent billions of spam emails.<sup>25</sup> Using this evidence, the New Zealand agency executed multiple search warrants, filed an enforcement action in New Zealand, and obtained several monetary settlements. The Australian agency also filed suit, obtaining injunctions and a \$210,000 penalty from an Australian court. In turn, these actions helped the FTC obtain further evidence and nearly \$19

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<sup>22</sup> The Act's enforcement tools are not available for competition cases. See Act, §§The



million in default restitutionary judgments in its own civil case, and led to the criminal conviction of one of the defendants.<sup>26</sup>

testimony to a U.S. entity (often a third party such as a domain registrar) and share the information with the foreign agency. Before the Act was passed, the FTC could not provide such assistance — even if the foreign agency was investigating a fraud, helping the FTC to investigate a fraud, that victimized U.S. consumers.

An example of how this enforcement tool helped U.S. consumers comes from an Edmonton (Canada) Police Service investigation of Hazim Gaber, a Canadian who peddled cancer cure scams mainly to U.S., Canadian, and U.K. citizens. Gaber claimed to sell an experimental cancer drug, but only sent victims a useless white powder. Using the Act's investigative assistance provisions, the FTC obtained evidence from a U.S. domain registrar that helped tie Gaber to websites associated with the scam. Ultimately, the FBI arrested Gaber in Germany and extradited him to the U.S. In March 2010, Gaber pled guilty to five counts of wire fraud for selling counterfeit cancer drugs. He was sentenced to 33 months in prison and three years of supervised release.<sup>31</sup>

### C. Cross-Border Jurisdictional Authority

The SAFE WEB Act also provides enhanced litigation tools. Key among them is the Act's confirmation of the FTC's cross-border jurisdictional authority. The Act amended the core jurisdictional provisions in Section 5 of the FTC Act to confirm the agency's authority to

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by any provision of the laws administered by the Commission, 15 U.S.C. § 46(j)(1). The Act also requires that the Commission consider all relevant factors, including: (1) whether the agency has agreed to provide or will provide reciprocal assistance to the Commission; (2) whether the request would prejudice U.S. public interest; and (3) whether the foreign agency's investigation or proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons. See 15 U.S.C. § 46(j)(3). Finally, section 6(j)(1), (6)-(7) of the FTC Act, 15 U.S.C. § 46(j)(1), (6)-(7), also sets forth exceptions to the Commission's authority to render investigative assistance to foreign law enforcement agencies. The Act prohibits the Commission from providing investigative assistance if: (1) the foreign agency's investigation or proceeding involves the enforcement of antitrust laws; (2) the targets of the foreign agency's investigation or proceeding are banks, savings and loan institutions, federal credit unions, or common carriers; or (3) the agency is from a foreign state that the Secretary of State has determined repeatedly provides support for acts of international terrorism.

<sup>31</sup> See Department of Justice Press Release, "Canadian Sentenced to 33 Months in Prison for Selling Counterfeit Cancer Drugs Using the Internet," available at

challenge both frauds from abroad that harm U.S. consumers and frauds involving material conduct in the United States, including those that victimize foreign consumers.<sup>32</sup> The amendment also confirms the availability of monetary restitution to consumers as a remedy for domestic and foreign victims of FTC Act violations.<sup>33</sup>

These provisions are crucial to the FTC's ability to sue foreign defendants who harm U.S. consumers, helping the FTC to overcome arguments about the scope of its cross-border consumer protection jurisdiction. *FTC v. Innovative Marketing, Inc.*,<sup>34</sup> for example, the FTC alleged that defendants used "scareware" to trick millions of consumers around the world into thinking malicious software had infected their computers, then sold them software to "fix" the non-existent problem. The foreign defendants argued that the FTC did not have jurisdiction over them, and thus could not seek return of the assets to the United States. The FTC invoked the SAFE WEB Act amendments in response: "Because the FTC is specifically empowered to redress foreign victims, the defendants' argument that funds derived from defrauded foreign consumers are immune from repatriation must fail."<sup>35</sup> The Court agreed, and the FTC eventually recovered \$8.2 million from one of the key defendants who was based in Canada. The FTC has used this money to send out refund checks to more than 300,000 consumers for consumer redress.<sup>36</sup>

The Act's jurisdictional provisions are even more critical in light of the Supreme Court's 2010 decision in *Morrison v. National Australia Bank Ltd.*<sup>37</sup> The Court there held that the SEC

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<sup>32</sup> 15 U.S.C. § 45(a)(4)(A)(i), (ii).

<sup>33</sup> 15 U.S.C. § 45(a)(4)(B).

<sup>34</sup> *FTC v. Innovative Mktg., Inc.*, No. RDB 08CV3233 (D. Md., filed Dec 2, 2008) SC(6.,)JT2.(B2)

Act did not have extraterritorial effect, and therefore could not apply to the sale of foreign securities outside the United States. Though the case involved only private parties, the *Morrison* decision also presented hurdles to the SEC's ability to sue foreigners selling securities to U.S. citizens. Congress therefore promptly amended the law to provide that the SEC could bring cases involving transnational securities fraud.<sup>38</sup>

The FTC Act, before the SAFE WEB amendments, contained jurisdictional language similar to that in the SEC Act. Though the ultimate effect of *Morrison* on the FTC's jurisdiction is not clear, there is a risk that the federal courts would not permit the FTC to pursue foreigners victimizing U.S. consumers if the SAFE WEB Act were to sunset. Without the power to sue foreign wrongdoers, the FTC's cross-border consumer protection enforcement would be crippled.

#### **D. Enforcement Relationships**

Finally, the Act strengthens the FTC's enforcement relationships with foreign agencies. In particular, the Act authorizes the FTC "to retain or employ officers or employees of foreign government agencies on a temporary basis as employees of the Commission."<sup>39</sup> With this tool, the FTC created an International Fellows Program that foreign agency officials can work side-by-side with FTC staff on investigations and cases, subject to appropriate confidentiality

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<sup>38</sup> 15 U.S.C. § 77v(c). The SEC Act, as amended, now confers on federal district courts jurisdiction over actions involving: (1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or (2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States. These jurisdictional provisions do not contain a sunset provision or any other time limitation. See *Also Study on the Cross-Border Scope of the Private Right of Action Under Section 10(b) of the Securities Exchange Act of 1934* by the Staff of the U.S. Securities and Exchange Commission, available at <http://www.sec.gov/news/studies/2012/929y-study-cross-border-private-rights.pdf> (by this amendment "Congress restored the ability of the Securities and Exchange Commission ("Commission") and the Department of Justice ("DOJ") to bring enforcement actions under Section 10(b) in cases involving transnational securities fraud").

<sup>39</sup> 15 U.S.C. § 57c-1.

restrictions and security measures.<sup>40</sup> This kind of arrangement is key to establishing trust and the understanding between agencies on basic functions crucial to developing meaningful case cooperation.

A standout example of this program was the work done by a Fellow from the FTC's Canadian counterpart agency in connection with Operation Tele-PHONEY, described earlier. As part of this enforcement sweep against direct telemarketers, the Fellow played a key role, working at FTC offices on investigations and facilitating close coordination and reciprocal assistance between her agency and the FTC on these cases. The resulting sweep counted 180 civil and criminal actions by the FTC, the Canadian agency, and various other enforcement partners.<sup>41</sup> Building these kinds of enforcement relationships is more important than ever, as the range of foreign countries involved in the agency's work continues to grow.

#### **IV. CROSS-BORDER CHALLENGES AND THE CONTINUING NEED FOR U.S. SAFE WEB ACT AUTHORITY**

Despite the FTC's successes using the SAFE WEB Act, cross-border fraud remains a significant problem for U.S. consumers. Though overall percentages of cross-border complaints have remained steady in the past few years, consumers and the FTC are facing new and emerging cross-border challenges. For example, whereas much of the cross-border fraud in the 1990s involved telemarketing from Canada, new threats to U.S. consumers are coming from all over the world. This general trend appears, for example, in the percentage of *Consumer Sentinel* cross-border complaints that involve companies in countries other than Canada:

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<sup>40</sup> To date, the agency has hosted 48 international officials, 13 of them working on some aspect of the consumer protection mission. The officials have come from Argentina, Austria, Australia, Brazil, Canada, China, Colombia, Egypt, the European Commission, France, Hungary, Israel, Kazakhstan, Mauritius, Mexico, Peru, Poland, Singapore, South Africa, South Korea, Switzerland, Tanzania, Turkey, United Kingdom, and Vietnam. Fellows have also made significant contributions to the FTC's competition work, as this provision of the Act, unlike other sections, also covers the agency's competition mission.

<sup>41</sup> See <http://www.ftc.gov/opa/2008/05/telephoney.shtml> and <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02677.html>

Several recent FTC cases illustrate this trend. In the past few months, the FTC filed cases involving “phantom” debt collection frauds, which appear to be based in India, targeting hundreds of thousands of financially vulnerable U.S. consumers to collect debts the consumers did not owe to the defendants or did not owe at all.<sup>42</sup> One of these cases was recently featured on ABC News’ *Nightline*.<sup>43</sup> This is consistent with the 2011 complaint data in *Consumer Sentinel*, which shows India as the sixth most frequent nation of companies complained about, after the United States, Canada, the United Kingdom, Nigeria, and Jamaica.<sup>44</sup> Another FTC case involved more than six million pre-recorded “robocalls” sent to U.S. consumers through facilities in the

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<sup>42</sup> See *FTC v. Broadway Global Master, Inc.*, No. 2:12-CV-00855 (E.D. Cal., filed Apr. 3, 2012), initial press release available at <http://www.ftc.gov/opa/2012/04/broadway.shtml>; *FTC v. American Credit Crunchers*, No. 12cv1028 (N.D. Ill., filed Feb. 13, 2012), initial press release available at <http://www.ftc.gov/opa/2012/02/acc.shtml>

<sup>43</sup> Phantom Debt Collectors From India Harass Americans, Demand Money (June 7, 2012), available at <http://abcnews.go.com/Blotter/phantom-debt-collectors-india-harass-americans-demand-money/story?id=16512428>

<sup>44</sup> Consumer Sentinel Network Data Book for January-December 2011, available at <http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2011.pdf>

Philippines, by defendants with principals and employees in the Philippines and in Thailand.<sup>45</sup>

Further complicating these challenges is the fact that not just wrongdoers, but also evidence and assets, can be located around the globe.

Reauthorization of the Act would enable the FTC to continue its current cross-border enforcement efforts and deal with new threats to U.S. consumers emanating from a growing number of jurisdictions. Like the SEC, CFPB, and CPSC, the FTC needs these enhanced enforcement tools to carry out its mission of protecting American consumers.

## V. CONCLUSION

We urge Congress to promptly reauthorize the SAFE WEB Act, and we look forward to working with this Subcommittee on its proposed legislation.

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<sup>45</sup> See *FTC v. Navestad*, No. 09-CV-6329 (W.D.N.Y., filed June 25, 2009), available at <http://www.ftc.gov/os/caselist/0923099/index.shtm>.