

**ABA Breakfast with the Bureau Directors
56th Annual Antitrust Spring Meeting**

**Remarks of Lydia Parnes
March 28, 2008**

Good morning. Susan, thank you for your kind introduction. It's a pleasure to be here this morning to talk about the Bureau of Consumer Protection. But, any discussion this morning will be a lot different because, at the FTC we are in a bit of a mini-transition. Chairman Majoras announced her resignation¹ last month and is leaving the FTC this week after four highly successful years. Yesterday, the President announced that he is appointing Bill Kovacic the FTC's 57th Chairman. Bill is no stranger to the FTC or the Antitrust Bar, and we are very excited about his appointment.

Over the past several weeks, I have been reflecting upon the many transitions that I have experienced at the FTC. I know that at some agencies transitions can be a painful process, a period of uncertainty, a time to clean house and reverse course. I have to say, that's just not my experience at the FTC. For a long time, transitions at the FTC have been very smooth. I anticipate that will continue to be the case in the foreseeable future.

One of the reasons we have been so successful – particularly on the consumer protection side – is that there is w

¹Muris, Timothy J. and Robert Pitofsky, "More than Law Enforcement: The FTC's Many Tools - A Conversation with Tim Muris and Bob Pitofsky," Antitrust Law Journal, Vol. 72, No. 3, pp. 773-860, 2005.

traced back to the 1995 globalization hearings” and other Pitofsky initiatives. They both agreed passionately that combining cond

²*In the Matter of Eli Lilly and Company*, File No. 012 3214 (January 2002), available at <http://www.ftc.gov/opa/2002/01/elililly.shtm>.

³*In the Matter of BJ's Wholesale Club, Inc.*, File No. 042 3160 (June 2005), available at <http://www.ftc.gov/opa/2005/06/bj>

allege that the companies engaged in unfair practices by failing to employ reasonable and appropriate security measures to safeguard sensitive data. As in our other data security cases, the settlements require the companies to implement comprehensive data security programs and third-party assessments biennially for 20 years.⁴

We also obtained our **first** “eight figure” civil penalty in a data security case. Consumer data broker ChoicePoint, Inc paid \$10 million in civil penalties and \$5 million in consumer redress to settle charges that its security and record-handling procedures violated consumers’ privacy rights and federal laws.⁵ This was not just the **first** “eight figure” civil penalty, but the largest consumer protection civil penalty in FTC history.

Whether we allege violations of the FTC Act, FCRA, or GLB Safeguards Rule, our message is the same – companies must maintain reasonable and appropriate measures to protect sensitive consumer information.

We have also been active on the education front. In 2007, we released our **first** ever interactive online video tutorial on data security.⁶ In its first month online, it was accessed over 21,000 times. Business employees who watch the tutorial can create and download their own customized tip sheets on data security. If you haven’t seen this video yet, go home, get online, and check it out.

Finally, I cannot leave privacy without mentioning the Do Not Call Registry. The **first**

⁴*In the Matter of TJX*, File No. 072-3055, available at <http://www.ftc.gov/os/caselist/0723055/index.shtm>; *In the Matter of Reed Elsevier, Inc. and Seisint, Inc.*, File No. 052-3094, available at <http://www.ftc.gov/os/caselist/0523094/index.shtm>.

⁵*United States v. Choicepoint*, Civ. Action No. 1-06-CV-0198 (N.D. Ga. filed January 30, 2006), available at <http://www.ftc.gov/os/caselist/choicepoint/choicepoint.shtm>.

⁶See www.ftc.gov/infosecurity.

telephone number was entered on the Registry in 2003. Within the first 72 hours, over ten million telephone numbers had been entered. By its effective date in October 2003, the Registry contained over 53 million telephone numbers and now tops 155 million numbers. By any measure, the Registry has been a phenomenal success. And as I'm sure that you all now know, those telephone numbers will remain on the Registry permanently.

The National Do Not Call Registry would not have been a huge success without a commitment by us to enforce the law - and enforce we have! We filed the **first** Do Not Call case in May 2004 against National Consumer Council.⁷ Since then, we have brought 36 cases alleging Do-Not-Call and/or Abandoned Call violations, resulting in more than \$16 million in civil penalties and more than \$8 million in consumer redress or disgorgement ordered.

II. Technology

Next, I'd like to mention some firsts in the technology area. In October 2004, the Commission filed its **first** spyware case, Seismic Entertainment, alleging that the defendants unfairly downloaded adware and other software programs to consumers' computers without authorization and then advertised "anti-spyware" products to these same consumers.⁸ To date, we have filed 11 spyware cases, which established three key principles:

1. A consumer's computer belongs to him or her, not the software distributor.
2. Buried disclosures about software and its effects are not adequate, just as they have never been adequate in traditional areas of commerce.

⁷*FTC v. National Consumer Council*, Civ. No. SACV04-0474CJC(JWJX) (C.D. Cal., filed May 2004), available at <http://www.ftc.gov/os/caselist/0323185/0323185.shtm>.

⁸*FTC v. Seismic Entertainment Inc., et al.*, Civ. No. 04-377-JD (D.N.H. filed Oct. 6, 2004), available at <http://www.ftc.gov/os/caselist/0423142/0423142.shtm>.

⁹See Press Release, “FTC Announces First CAN-SPAM Act Cases,” Apr. 29, 2004, <http://www.ftc.gov/opa/2004/04/040429canspam.shtm>.

¹⁰See <http://www.ftc.gov/bcp/workshops/foodm>

modification of the Better Business Bureau's guides with respect to advertising to children.¹¹

At a follow-up forum held in July 2007,¹² the FTC and HHS were able report significant progress in addressing these issues, particularly by the Council of BBB's Children's Food and Beverage Advertising Initiative. To date, 13 major food and beverage companies have joined the Initiative, pledging either to direct no advertising to children under 12 or generally to limit such advertising to the promotion of foods meeting certain nutritional criteria. If any members of the audience represent companies in the food industry, I urge you to encourage your clients to join this important initiative.

In another first in this area, the Commission, at the direction of Congress, is preparing the **first** comprehensive study of expenditures and activities in the marketing of foods to children and adolescents. Last August, we sent compulsory process orders to 44 food, beverage, and quick-serve restaurant companies to gather data for the study, which will look beyond measured media, like television and print, to all forms of marketing and promotion. We are looking at how the food industry uses such techniques as product packaging, in-store promotions, character licensing, event sponsorship, and word-of-mouth marketing. No researcher has ever had access to the data we are collecting on many of these marketing techniques. In many cases, even the food companies themselves have never before compiled the data.

The second "traditional advertising" area that I'd like to mention involves green

¹¹See "Perspectives on Marketing, Self-Regulation, and Childhood Obesity: A Report on a Joint Workshop of the Federal Trade Commission and Department of Health and Human Services," April 2006, *available at* <http://www.ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation&ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf>.

¹²See <http://www.ftc.gov/bcp/workshops/childobesity/index.shtml>.

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¹⁵See <http://www.ftc.gov/bcp/workshops/debtcollection/index.shtml>.

¹⁶*United States v. LTD Financial Services, Inc.*, Civil Action No.: H-07-3741 (S.D. Tex. filed Nov. 5, 2007), available at <http://www.ftc.gov/os/caselist/0523012/index.shtm>.

¹⁷See *FTC v. AmeriDebt, Inc.*, No. 03-3317 (D. Md. Jan. 9, 2006) (Stipulated Final Judgment and Permanent Injunc

First, I'd like to touch on the subject of behavioral advertising. As you know, last November we hosted a Town Hall meeting on behavioral advertising – the practice of tracking consumers' activities online to provide advertising targeted to individual consumers' interests.¹⁸ In December 2007, drawing from the themes we discussed at the Town Hall, the FTC staff issued for public comment proposed self-regulatory principles for behavioral advertising.¹⁹ At a high level, these principles address transparency, consumer control, reasonable security, and the use of sensitive data. The staff intentionally drafted the principles in general terms to encourage comment and discussion by a broad group of stakeholders. And so, I encourage those of you involved in this space to submit your written comments. Based on requests from stakeholders, we extended the deadline to file comments until April 11. We will carefully review the comments and determine next steps.

Second, to learn more about the many technological developments that are changing the marketplace – and to assess their effect on consumers and our consumer protection agenda – the FTC held hearings in 2006 on “Protecting Consumers in the Next Tech-ade.”²⁰ Later today, we are releasing a staff report that summarizes the major trends identified at the hearings. The report highlights the areas that are likely to influence the FTC's consumer protection agenda in the near term and discusses how BCP will respond to the challenges presented by the global,

¹⁸ See <http://www.ftc.gov/bcp/workshops/behavioral/index.shtml>.

¹⁹ See Press Release, “FTC Staff Proposes Online Behavioral Advertising Privacy Principles,” December 20, 2007, available at <http://www.ftc.gov/opa/2007/12/principles.shtml>.

²⁰ See <http://www.ftc.gov/bcp/workshops/techade/who.html>.

high-tech marketplace.²¹ Here are some thoughts:

Just as we have always done, we will apply existing policies and create new ones, as necessary, to address emerging challenges regarding new technologies and consumer products.

We'll work to ensure that consumers' private information, which will increasingly be collected, stored, and used, is maintained securely.

We'll monitor the ever-expanding number of marketing channels in the worldwide marketplace for fraud and unlawful activities.

We'll collaborate with law enforcers from around the world, and

We'll continue to encourage self-regulatory initiatives to benefit consumers.

Thank you. I would be happy to take any questions.

²¹See "Protecting Consumers in the Next Tech-Ade: A Report by Staff of the Federal Trade Commission," (Spring 2008), *available at* <http://www.ftc.gov/os/2008/03/P064101tech.pdf>.