



Federal Trade Commission

“A VIEW FROM THE FTC:

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don't merely look at products that show up during prime-time advertising on broadcast television. The advent of advertising on the Internet has changed the terrain. Cases that are "national" in scope now include sellers using websites that anyone in the country can access. For example, just last month the Commission settled a case with Sunny Health Nutrition Technology and Products – the marketer of dietary supplement products that purported to enhance height and treat osteoporosis.³ The defendants promoted their products in both English and Spanish on their website and through other Internet advertising, as well as through radio and magazine advertising. In addition to paying consumer redress for the particular products at issue, the defendants also are prohibited from making false, deceptive or unsubstantiated claims about "any covered product."

Another consistent "core" area of enforcement includes rulemaking and rule enforcement. The Commission was involved in extensive rulemaking during the 1970s – issuing and enforcing rules regulating the funeral industry, sales of used automobiles, octane ratings postings, mail orders, and unsolicited credit cards, to name a few.

As many of you are aware, the Commission currently has a very robust rule enforcement program, including rules such as Do Not Call,⁴ CAN SPAM,⁵ and the Children's Online Privacy

³ *Federal Trade Commission v. Sunny Health Nutrition Technology & Products, Inc.*, CIV No.: 8:06-CV-2193-T-24EAJ, (issued Nov. 28, 2006), available at www.ftc.gov/os/caselist/0623007/finalorderpermanentinjunction.pdf.

⁴ 16 C.F.R. Part 310 (2006).

⁵ 16 C.F.R. Part 316 (2006).

years, the Commission explored attempting to restrict the marketing of sugary foods to children, but ultimately terminated the rulemaking in 1981, in part because although the record showed some cause for concern, there did not appear to be a way to develop workable rules to address these concerns.

As many of you know, our interest in exploring methods to better protect children has not waned. By way of recent example, in July 2005, the FTC and the Department of Health and Human Services sponsored a workshop to examine various perspectives on marketing, self-regulation, and childhood obesity, bringing together representatives from the food industry, medical experts, consumer advocates, advertising specialists and other key experts for an open discussion on industry self-regulation concerning the marketing of food and beverages to children, as well as initiatives to educate children and parents about nutrition.⁸ This workshop culminated in a report released in May 2006, which recommended concrete steps that industry could take to change its marketing and other practices to make progress against childhood obesity.⁹ The FTC is committed to closely monitoring industry progress in implementing the recommendations set forth in the report. In addition, the agency also is conducting a study on the

⁸ See Press Release, “*FTC, HHS Announce Workshop on Childhood Obesity*,” (May 11, 2005), available at www.ftc.gov/opa/2005/05/childobese.htm.

⁹ See “*Perspectives on Marketing, Self-Regulation and Childhood Obesity*,” A Report on a Joint Workshop of the Federal Trade Commission & the Department of Health & Human Services, (Apr. 2006) available at www.ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-

nature and extent of food marketing techniques directed at children and adolescents.¹⁰

So, how are things different than they were thirty-five years ago, when I first started at the FTC? I think the answer has to be the development of technology and the impact that it has had on consumers. Broadband and high speed internet access are a major mechanism for communication and the distribution of content. One development that has really changed the face of the way some of us experience life today, is the extent to which the average person can now create and share content by using technologies such as the computer, telephone and internet. Things like chat rooms, message boards, blogs and social networking sites have impacted the way that people communicate with each other. Broadband and high speed internet access now allow people to share digital photographs, music and video “f(comseu61.0810 Td(ndextent tnd intway)sthat per

the truly amazing and beneficial ways that this technology can be deployed – from the convenience of inventorying the contents of one’s refrigerator to the possibility of facilitating the independence of the elderly populatio

to keep this financial information secure.¹³

This new technology also has spawned vehicles for offering content supported by Internet advertising. There is nothing new about the concept of free content paid for by advertising. That was – and still is – the norm for content delivered by over-the-air broadcasters, including the three major networks. However, implementation of this business model in the Internet environment involves some new problems. For example, a television viewer can simply terminate an over-the-air broadcast commercial simply by switching channels. Advertising appearing during a computer user's Internet surfing, by contrast, may be much more difficult to avoid or terminate, especially if it is the result of adware or malware embedded in the computer's operating system by

such promotional targeting may benefit a customer and streamline the shopping process – consumers may receive offers based on previous viewing habits; the website may give them a “free shipping” deal if they have never visited the website before; or the website may be able to suggest particular shopping selections based upon information they site has collected about the shopper. The article also points out that websites can use this information to a consumers’ detriment as well – for example, by only offering free shipping or special offers to first-time visitors and not to repeat customers. Even further out on this spectrum, during the recent “Tech-Ade” hearings, one panelist noted that websites and others could collect information about consumer “vulnerabilities” and use such information to get the upper hand in a transaction with the consumer. Along with the other insights provided at the hearings, these are all issues that the Commission is seriously examining.

What does the advent of new technology mean for the FTC’s mission to protect consumers? On one hand, many of the consumer protection issues remain the same, no matter what the technology – basic fraud and deception; privacy and data security; the importance of informed consumer choice; and child safety. These are issues with which we are currently grappling and have grappled with in the past.

In many instances, our “traditional” methods of addressing consumer protection issues such as these will continue to serve consumers well. For example, law enforcement and regulation are important tools that we will continue to use in our fight against deceptive and unfair practices that have emerged from consumers’ use of new and emerging technology.

Examples of this include our recent cases against purveyors of spyware and spam. As new consumer protection issues evolve, these tools will remain crucial to our consumer protection mission.

Correspondingly, education will remain an important component in the future of consumer protection. The FTC has had much success with its consumer and business education initiatives – for example, recently publishing safety tips for parents and children on hot topics such as social networking sites, online gambling, and peer-to-peer file sharing.

passes on the commercial message to other consumers.

Another ongoing challenge will be the increasing participation of children and “tweens” in the marketplace. Children today have an array of electronic devices and access to technology with which their parents may be quite unfamiliar. This gap will only continue to widen. The FTC needs to continue to study and develop the best ways to protect consumers such as these.

Of course, children aren’t the only vulnerable audience. Consumers and businesses that are unfamiliar with new technologies may need special attention. For example, there is a growing problem with unsophisticated sellers and business entities who fail to properly safeguard consumer information. In recent cases brought by the Commission, we saw failures on the part of businesses to use the most appropriate security settings to protect their wireless networks, or to take appropriate measures to protect themselves against common hacking techniques. The FTC may need to explore whether specially targeted rulemaking would encourage these businesses to get up to speed on these security issues.

The globalization of the marketplace also continues to pose an ongoing challenge in the consumer protection arena. Using Internet and long-distance technology, unscrupulous businesses can strike quickly on a global scale, victimize thousands of consumers, and disappear without a trace – along with their ill-gotten gains. Deceptive spammers can easily hide their identities, forge the electronic path of their email messages, and send messages from anywhere in the world to anyone in the world. The average consumer is often completely unaware of these

techniques and their repercussions. I am happy to report that last week, both the House and Senate passed the US Safe Web Act – legislation that will allow the agency to address the challenges posed by the globalization of fraudulent, deceptive and unfair practices.

Finally, the importance of the role of the private sector in this environment must be emphasized. The use of new technologies in advertising and marketing can offer much to both the consumer and the seller. However, if not implemented correctly or responsibly, these innovations can cause great harm to consumers. The importance of self-regulation and corporate responsibility can not be overstated. Often, the companies, retailers and advertising agencies deploying new technologies are in the best position to implement best practices at the outset – before any harm has been caused to consumers. In addition, private sector companies sometimes are uniquely situated to best protect and educate consumers about potential harms and risks related to emerging technologies that they use. There are many upsides to taking the high road – increased consumer trust and confidence, improved brand building, an efficient marketplace – not to mention the absence of an FTC enforcement action.

To wrap up, I would like to challenge you – through self-regulation and corporate responsibility – to be a vanguard in protecting consumers and maximizing the benefits to consumers.

Thank you very much for your attention.