

FTC MOBILE CRAMMING ROUNDTABLE
TRANSCRIPT
SEGMENT 2
05/08/13

RUSSELL DEITCH: Welcome, everybody. My name is Russell Deitch, with the Federal Trade Commission. I'm a veteran of the original cramming form here at the FTC, two years ago. It's almost our anniversary. And we dealt with landline cramming, and we raised the issues relating to wireless line cramming.

Today, we're going to get into current strategies reducing mobile marketing cramming. We have a lot to talk about, so I'm going to jump right into the panelists and issues. So take it away, Duane.

DUANE POZZA: So I'm Duane Pozza. I'm now a panelist. I'm a moderator. I'm at the Federal Trade Commission. We have a lot of great panelists. And they're going to go down the line and introduce themselves. And we've also asked them to give just a brief overview of--

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to combat mobile cramming.

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And mostly that was because the common rules of the carriers were consolidated into that document. And then each individual carrier's guidelines were attached to that document. In 2012, the CTIA and MMA got together and worked to consolidate that 150 page document into 30 rules. And those 30 rules are what the CTIA is auditing against. And it makes sense for and for the CTIA to kind of take over those rules, those guidelines, because the MMA has never been an enforcement agency.

That's not what we are doing. We'll continue to work with our members to articulate best practices in mobile marketing in general, and including obviously messaging. And I do want to emphasize that I think we are in a unique position because we are the only trade association whose sole mission, or sole focus, is on the mobile industry. And because we represent all of the

content providers that want to do this is a valid business. And oftentimes what we will do with them is be helping them ensure that the program is compliant before it goes out onto the network.

Once it's released into the network, we've started with a baseline. The baseline says this content provider can get it right and is compliant with all of the requirements. But once it goes into the market, then we provide the media monitoring. We provide the functional testing in the market,

And part of it is, and this is sort of a nice segue from the last panel, because CTIA talked about requirements for price disclosure, recurring nature of the subscription, and obtaining an affirmative opt in from a consumer. All of those happened with JAWA. And I've asked for a few minutes to walk through some slides and show exactly how it was happening so you get a sense of what was happening in the real world.

OK. So this is a sample program brief. This would be what was submitted to the cellphone carriers as a representation of what JAWA intended to be putting out publicly and advertising. Now one thing I should note, JAWA had hundreds of corporations that they registered using various employees within the company designated as the principal stakeholder for those corporations. And they set up mailboxes, private mailboxes, throughout the country as the registered address of each of those entities.

So from an application standpoint, every time they were obtaining a short code and submitting a brief to a carrier, it was through different entity with a different individual and an address that was randomly placed throughout the country. And you'll see in this program brief, there are some clear designations of what the price is going to be for the service. The short code is identified repeatedly on the brief itself.

So this is what happens in the real world. Consumers would get to a JAWA website first by doing an internet search for something that typically was offered for free-- so things like a movie showtime, or weather, or in this case funny jokes. And typically one of the first paid links that would show up would be a JAWA run website.

So once a consumer clicks through, this is a sample landing page of what they would get to. Obviously there's a very prominent call to action, asking for a consumer to enter their cell phone number. And there's little or no significant disclosure that occurs surrounding it. And this is one of these little examples where MMA requires a disclosure of the price.

To get into some of the nitty gritty, it needs to be 125 pixels from the entry of the cell phone field. Well in this case, you'll see that there is a reference here to monthly \$9.99. It's buried in the background. It's blended in with this image. But on many of these sites, when you measure the distance between that and the cell phone field, it falls within that 125 pixels.

Once a consumer enters their cell phone number, as was described in the last panel, that serves as a first opt in for the double opt in process. A consumer was sent to a page that looks similar to this, asking them to enter the pin code that would be sent to them. Meanwhile, they would receive a text message.

One of the tricks that JAWA used was to insert large gaps of spacing in the text messages, themselves. So this a sample of an iPhone screen shot. And you'll see that when you open the message, this is what would show up, because it starts from the bottom of the text message. This

\$9.99 there. One other thing that I'd note, because this came up in the last panel too, you'll see

CHRIS WITTEMAN: Can you hear me now?

DUANE POZZA: Yes. I'll let you know if there's any feedback. You might have to mute your webcast.

CHRIS WITTEMAN: OK. So my name is Chris Witteman. I'm an attorney with the California Public Utilities Commission. And I should follow immediately with the same disclaimer that Mr. Singer made. I am here speaking for myself and not for the California Public Utilities Commission. I have participated in a number of proceedings there that involve cramming. So I have some idea about this subject.

And I do want to thank the FTC for having this panel and for having me on the panel. We, out in California, very much appreciate the FTC's efforts in the cramming area. Particularly the Inc21 case in the Northern District of California was a seminal case for us on the west coast.

The second substantive point I'd make is how little we know. As referenced in the first panel, the mobile and wire line third party billing ecology is a three legged stool. You have the billing telephone companies. You have the aggregators and you have the service or content providers. And this version of rules leads to, from my perception, some lack of accountability on the part of each of the carriers.

And as the Vermont Attorney General said, a gap between rules and reality. What we have done in California to address that issue is a decision and rules issued in 2010 around cramming and the light motif of that decision is this sentence-- the billing telephone corporation bears ultimate responsibility for all items presented in a subscriber's bill.

With that principle, we have required billing telephone companies to conduct a reasonable inquiry before they sign on a service or content provider. Before they give billing privileges, if you will, to a service or content provider, we require the billing telephone corporation to disclose Teo.yoJ 23.35

agency, are in relation

But upfront, we do that complete check. And if we find anything that number one associates that content provider with any bad behavior in the past related to cramming, any open lawsuits, any kind of articles talking about that company. But in addition, any relationships of any of the people within that company that play key roles, or any of the other features of that company that they submit. And I'll say very vaguely bank accounts, addresses, at the highest level, we can connect those to people that we've vetted in the past and more importantly companies that we have removed with their carriers from the network.

So I have a slide that I show sometimes that I pictorially shows groupings of bad players, how they come back as different companies and turn bad. But you'll see, when we plot them on a point diagram, that you have clusters of good players that have relationships to each other. And then you have clusters of bad players.

And sometimes what we find is we'll find clusters of bad players and we'll find a few not yet bad players related to them. And so in terms of going beyond the vetting, that's one of the indicators that we use to two more closely monitor those companies that seem to have relationships with other companies that we've found in the past.

When Paul talked about the Arizona based company earlier, they had hundreds of companies associated. And they were playing the shell game. You play bad this week, and then we'll send it over to another company to play bad next week. For that reason, when we do our vetting, we're looking at of the doing business as names and all of the relationships of all companies that are associated with the company applying. And again, that's all stored in a relational database. And we use it, and we leverage that data as another source of identifying bad behavior.

DUANE POZZA: And how much of the monitoring is ongoing in terms of compliance to the MMA guidelines? And is that the touchstone for monitoring content providers once they go live? And is that enough to ensure that these content providers are not engaged in deceptive or cramming behavior?

JOHN BRUNER: We actually believe that the full life cycle approaches is critical. And the ability to join the data across the full life cycle is important. One of the things that I probably failed to mention in the first answer is that companies change. So just because you've vetted them once to let them onto the network, doesn't mean that they acquire a new CEO or they acquire another company.

And so re-vetting is also a very important thing. A couple things that we will do is we'll put crawlers out looking for changes that are occurring to companies. One of the things that rkio O fovid3.1 Td e wforoiw(-7(r)3(i)-2(n)-10(g)10(t)-nfne (rki)-2rhemo btga bt fovi1id3-10-2(ha)4(t)-2(f)(m)-8nbtr Or515 T

JOHN BRUNER: That's kind of outside of my purview, though, because I rea

for 11 months by them. And it took him that long to even realize it after we had been looking at them. He had multiple calls with this carrier attempting to get a refund.

PAUL SINGER: Well, I think you hit on it earlier. One of the questions has to be, what's the actual content that's being billed for? Is this content that consumers are likely to be knowingly choosing to purchase? Or is this something that's widely available for free, and it's very unlikely that they would be purchasing this?

I ran through some of the different categories of things that JAWA was marketing. All of them were widely available for free. And in fact, in their customer service calls that they wanted to use as evidence of their very generous refund policy, there were repeated references from consumers saying, well I would have never paid for this. Why would I pay for the service? It's available for free. So I think those are legitimate questions to be asking because it's certainly something that happened historically on the landline side.

DEREK HALLIDAY: And at the same time, that's somewhat complicated by the fact that there's so many new types of services that are embedded on mobile that don't exist on landline. The entire app ecosystem, for instance, doesn't have any kind of corollary in landline space.

And so there is, however far fetched, a very legitimate use case where someone is paying \$1.99, \$2.99 a month for a horoscope that's delivered by an app on their mobile device. As much as I think people in this room probably wouldn't be subscribing to that kind of service, it is a legitimate use case with things like premium apps.

So that, I

And as I explained, in 2012 version seven of the CBP guidelines was actually the last version published. And now, the CTIA-- like I said, the MMA and the CTIA consolidated version seven into 30 rules, which I think really is helpful. Because those are the most basic, necessary rules. And CTIA now and has been auditing against the guidelines and now those rules and will continue to do so.

Obviously, like I said, I think this is all part of an evolution. But I think the rules are very

CHRIS WITTEMAN: Out in California, we have looked into that a little bit. And contrary to what was said on the first panel, it's our understanding that those records reside only with the service provider. They're not even provided to the aggregator.

So one possible solution or measure that could be taken would be to make sure that the aggregator had access to those and that the billing telephone corporation had access to those so that they could look into those records and see a, if they're there, and b, if they're credible. And like I said earlier, in the Tell7 case, we had the functional equivalent of opt in evidence, but it was our conclusion at the end of the day that had been fraudulently obtained.

RUSSELL DEITCH: And let me ask another question getting onto remedies. Are the current remedies available to consumers sufficient? We've heard discussion on how people may not know that charges, or third party charges, are even going to be on their cell phone bills. We've heard discussion that the charges may be small, may be difficult to find. There are the whole issues of automatic bill pay, or even prepaid charges. Is there more that can be done to make the refund mechanisms adequate? Or is the status quo acceptable?

CARA FREY: Before we get to that, I did want to respond to what was said over the phone. And I've heard the suggestion that opt in management should be maybe brought in-house, or kind of moved up the chain. But one thing that I want to put out there is that these major brands, the content providers, see that as proprietary asset.

So I would wonder and ask the hardcore lawyers-- I don't like to think of myself as a hardcore lawyer-- what's your response to that? How do you protect that proprietary asset? And also, just to throw out there, I do think there needs to be this balance.

And I don't know where the balance is, but between innovation and a lot of regulation. I think we have to really keep that in mind as we discuss all of this. But I am interested on the proprietary asset question about the opt ins.

DUANE POZZA: Do you want to ask a question about-- going back to Russell's questions about remedies, are those sufficient now? That consumers can have a remedy if they discover they're being crammed-- do they need to be improved? And what is the experience the panel has with that?

PAUL SINGER: So I talked about that a little bit earlier. I think the Vermont survey is the most recent example that's out there. No, remedies are often hard to obtain in this field. Consumers report all sorts of varying experiences about their ability to get their money back at the end of the day.

And the JAWA experience we had is just a really good one, where carriers were very resistant to the idea of telling people, go to try to get a refund, despite the fact that really was the only source to get a full refund at the end of the day. It, I think, demonstrates that there is just a great deal of variance in what's going on today in the marketplace. And consumers are having varied experiences that often with the result that they find it difficult, if not impossible, to ultimately get their money back.

RUSSELL DEITCH: Well that leads to a follow-up question. What can consumers do to protect themselves in the current environment with wireless billing?

DEREK HALLIDAY: Well, I would jump in, what Paul just mentioned, as well. We ask ourselves if the options for remediation or refunds are sufficient. And throughout this entire panel, we've been talking about the fact that one of the most difficult parts of this process-- the critical parts of this process-- is depending on a user to notice in their phone bill that there's an additional charge that they may not be aware of.

If you ask me, one of the most critical areas that's broken here is that exact process, is depending on the actual users, themselves, to notice in the 10 page phone bill they might get, that there's something they don't recognize. I think there's plenty of options for notifying users of these types of services beyond just an SMS based double opt in that operators have at their fingertips.

JIM CHILSEN: And just to add to that--

CHRIS WITTEMAN: One way that customer, consumer awareness might be raised is to go a little bit beyond the California rule, which requires disclosure of the blocking option, and to have an affirmative opt out. In other words, when the billing telephone corporation signs up a customer, that customer has to check a box or initial box that says, you may be billed by third party customers. Do you agree to that? I think that would be one step that might raise consciousness a little bit.

DUANE POZZA: Jim.

JIM CHILSEN: That's an excellent point. What I was just going to add to what John said is what we tell people is if they find a suspicious charge their bill is to immediately call the cell phone company. And we also find that it helps to call some type of government entity-- the Illinois Attorney General's office, or the FCC, or the FTC-- just to be able to tell the cell phone company, I have this strange charge. I filed a complaint with a government entity. That seems to add. It might light a fire under the company.

And also to tell them I'm not going to pay this charge. It's under dispute. And I won't pay this charge. I'll pay every other part of my bill. And we can agree on the phone what that part is and what I should be paying. But I will not be paying this charge.

DUANE POZZA: Just following up on that-- do consumers have an understanding and is it the case that they can dispute a third party charge on their bill without having their phone service cut off?

JIM CHILSEN: No. I think I think that is a big-- and we try to educate people about that. You're not forced to pay this fee. And I think that's what happens a lot. And it's not just in the cell phone industry, it's across the-- we deal with charges on gas bills and landline telephone bills, where people think a charge is a required charge. It's not optional.

And they think they have to pay it. And then they call us after paying it for many months. And then it's much more difficult to get a full refund.

PAUL SINGER: Can I throw out there-- I want to back up to a question you asked earlier because I'm not sure that there's been really a complete answer about the various ways that the double opt in can occur. I think it would be really good. John, I'm going to sort of turn to you.

Do you mind just sort of running through? Because the JAWA example is just one of the various mechanisms in which a double opt in can occur. That was a web-based, cell phone, pin entry process. I was hoping you could just sort of run through the different ways that people can be opted in.

JOHN BRUNER: OK. Thank you.

PAUL SINGER: You're welcome.

JOHN BRUNER: I'd really like to, if I may, refer to an expert on the floor. Jen Sizer is a lead analyst in our organization who was very instrumental in the research and discovery of the Cylon/JAWA investigation. Jen, would you mind giving the various examples?

JEN SIZER: Thank you, John. Is it working? So we have phone opt in, which is a lot of what the charities use, where the text is originating from your phone. So you send a keyword to the company. The company responds back and asks for you to confirm that usually responding with yes or y. So that's a phone opt in.

Then we have the web opt in, which is what we were discussing with Cylon, where you enter your phone number on a website, and that's your initial opt in. They then send you a text message, which would send you either a pin or you can respond affirmatively with a yes or OK.

Then we were discussing WAP opt in, which is a little more outdated at this point. But it is directly on your handset where you double click. You'll get a pop up message that asks if you want to incur these charges. And you click yes twice.

Direct carrier billing, which is very similar to WAP, but generally doesn't involve the PMS charges. That's more of the Android applications, iPhone applications, where you're confirming that the bill will go, or that charges will go, onto your credit card or iTunes account.

Then, I guess the last one would be IVR, which is interactive voice response, which is where you call generally a toll free number. And they give you the details of the program on the phone before you then hit a button. Generally

consumer who was receiving the text message that was entering it. It could just be anyone who was going to the website. So there are certainly ways to circumvent the process.

