

Federal Trade Commission

When Section 5 was enacted, I think it's fair to say that no one could have imagined the digital explosion of today. Today, data is collected from consumers at every turn, all day long –

These issues drive much of what we do. Protecting consumer privacy is one of the Commission's top priorities and has been for decades. Although the agency's activities have varied during that time, our central goal has remained constant: to protect consumers' privacy in a way that fosters trust in the marketplace, and preserves and complements innovation.

Section 5 has been a critical tool in this effort, and we have used it to address privacy by applying the same elements of proof we have always applied to a company

surreptitiously capture consumers' sensitive data, location, and even photos of them in their homes.

Both theories are essential to our ability to protect consumers, and they are complementary. Our deception authority enables us to target false and misleading information that disables consumer choice, and interferes with competition. But many companies don't make claims and promises, or may operate behind the scenes. And consumers often are not in a position to learn, for example, whether a company is selling their data to fraudsters or treating their sensitive data carelessly. Unfairness allows us to address these types of harms. However, as those who know the law and our cases are well aware, unfairness requires that we analyze and prove three essential elements, including the presence of real, non-speculative risk of harm. We use this authority only when we can prove these elements.

I'd like to take the rest of my time to describe a few examples of how we have used Section 5 to address harms that would not have been contemplated when Section 5 was enacted. First is data security. Since 2001, the Commission has settled 53 cases against companies we charged with failing to provide reasonable and appropriate protections for consumers' personal information. We are currently litigating two others.

These cases all involved basic security failures – failures that led to specific consumer harms or put the data, and consumers, at serious risk of harm, and failures that could have been avoided if the company had used available, cost-effective security measures. Some cases alleged deception, some alleged unfairness, and some alleged both theories.

allow consumers to monitor their homes remotely.⁴ The FTC's complaint alleges that TRENDnet marketed its SecurView cameras for purposes ranging from home security to baby monitoring. Although the company claimed that the cameras were "secure," they had faulty software that left them open to online viewing, and in some instances listening. This resulted in hackers posting 700 consumers' live video feeds on the Internet.

In the *Wyndham* matter, an ongoing litigation, the FTC filed a lawsuit in federal court alleging that the company failed to protect consumers' sensitive financial data. According to the FTC's complaint, Wyndham and its subsidiaries repeatedly failed to take basic security measures, such as using complex user IDs and passwords and deploying firewalls. They also stored sensitive payment card data in clear readable text. These systemic failures exposed consumers' data to multiple instances of unauthorized access. Indeed, the company allegedly suffered three data breaches in less than two years, resulting in fraudulent charges on consumers' accounts, millions of dollars in fraud loss, and the export of hundreds of thousands of accounts to an Internet domain address registered in Russia. We alleged both deception and unfairness in this case.

Two recent examples on the privacy side include our cases against website operator Craig Brittain and data broker LeapLab. Brittain operated an alleged "revenge porn" website, on which he posted intimate images and personal data of more than 1000

⁴ *TRENDnet, Inc.*, No. G4426 (F.T.C. Jan. 16, 2014) (consent order) available at <http://www.ftc.gov/enforcement/cases/proceedings/123090/trendnet>

individuals.⁶