

# Federal Trade Commission

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## FTC 2016 –Meeting the Challenges of the Digital Revolution

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Good morning This is the first time I have spoken at a WOMMA event and  
delighted to be here Today, I'm going to talk about the FTC's recent work to protect consumers  
– and in particular, how the FTC is meeting the challenges posed by the digital revolution.

Everyone in this room knows that technology has been a game-



## I. Mobile and New Technologies

Nowhere are the effects of the digital revolution more dramatic than in privacy. But I'm going to set privacy aside for a moment so I can talk about some areas that may be less obvious but nevertheless are transforming how consumers interact with the commercial marketplace.

### *Mobile Payments*

With the growth of mobile payments, it has become easier for consumers to pay for goods and services instantly, with no messy paperwork. But these conveniences also make it easier for scam artists to commit fraud through mobile devices, and consumers to incur unauthorized charges without noticing them.

Consumers shouldn't be charged for purchases they didn't authorize—period. We've emphasized this principle in dozens, even hundreds of FTC cases over the years — most recently in a series of cases involving mobile payments. For example, we took action against Apple, Amazon, and Google for allegedly failing to obtain parents' permission before letting kids run up charges in mobile gaming apps. So far, we've obtained over \$50 million in consumer refunds from these cases and we hope to obtain even more once we've completed our ongoing work.

unauthorized third-party charges on consumers' mobile phone bills. Collectively, we've obtained over \$160 million in consumer refunds from these cases. ~~That's~~ make clear that companies offering new products and services on the mobile platform must also offer basic safeguards to prevent fraud and misuse.

*Deceptive Health Apps*

We're also tackling unsubstantiated health claims on the mobile platform – and there are many. These claims can actually be dangerous if unproven products are touted as a substitute for medical care. For example, the FTC recently charged two app developers with deceptively claiming that their apps – Mole Detective and MelApp – could detect symptoms of melanoma, even in the early stages. In fact, we alleged, the companies lacked evidence to show their apps could detect melanoma, early or at all. And most recently, we took action against an app called

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<sup>4</sup> See also *FTC v. Jesta Digital LLC*, No. 1:13ev-01272 (D.D.C. filed Aug. 20, 2013), available at <https://www.ftc.gov/enforcement/cases-proceedings/112187/jestadigital-llc-also-dba-jamster>; *FTC v. Wise Media LLC*, No. 113CV-1234 (N.D. Ga. filed Apr. 17, 2013), available at <https://www.ftc.gov/enforcement/cases-proceedings/122182/wisemediallc-et-al>; *FTC v. Tatto, Inc.*, No. 2:13ev-08912DSF-FF4.6(s)-7 (-)Tj 0.32at002 Twcas -



More recently, we brought our first case involving the Kickstarter crowdfunding platform, against the creator of a project called Forking Path.<sup>10</sup> We alleged that the defendant used Kickstarter to raise money to produce a board game, telling backers they would get copies of the game and other rewards. After raising over three times this stated goal, he cancelled the project and promised to refund backers' money. In fact, we allege, backers never got refunds because he spent the money on personal items such as rent, home equipment, and moving to Oregon.

We also recently took action against *Prized*, a mobile gaming app that supposedly earned consumers rewards.<sup>11</sup> The app promised it would be free from malware, but instead loaded consumers' mobile phones with malicious software to mine virtual currencies for the developer.

#### *Deception in New Media*

Technological developments also have led to dramatic changes in how consumers receive advertising. Today, everyone's a salesman – the doctor on TV, the blogger, your friends on Facebook and, increasingly, the author that s 5bb (al)-6(es) reday, 6.02 0 -4( i)-720(, t)-2(<</M

We've made this point in numerous enforcement actions over the past two years. For example, in one of our cases challenging the slimming effects of "pure green coffee bean extract" (GCBE), we charged defendant Lindsey Duncan with passing himself off as an independent expert when he touted the supplement on the *The Dr. Oz Show*.<sup>12</sup> In fact, we charged, he was actually selling the supplement, deceptively, through websites he set up beforehand. In another, we alleged that marketplaces Advertising set up fake websites that made false claims about the effectiveness of GCBE and channeled people to another site where they could buy it.<sup>13</sup>

One particularly troubling case this year involved NourishLife, the marketer of a supplement for kids. We alleged that the company posted a fake research site, and trumpeted paid endorsements from parents, making unsubstantiated claims that the supplement was scientifically proven to treat childhood speech and behavioral disorders, including those associated with autism.<sup>14</sup> According to our complaint, it wasn't.

And just today, we filed a case in federal court alleging that Roca Labs not only

consumers who posted negative reviews online, thus preventing the truth about the product from getting out.<sup>15</sup>

Unfortunately, these strategies have gained traction among more mainstream companies too. For example, last November, in connection with our action against Sony for deceptive claims about its gaming consoles,<sup>16</sup> we alleged that a manager at its ad agency, Deutsch, had directed employees to post positive tweets about the console as part of the Sony ad campaign.<sup>17</sup> And earlier this month, we charged Machinima, an entertainment network that worked for Microsoft's ad agency, with paying a large group of "influencers" to develop and post videos online touting Xbox One.<sup>18</sup> The videos appeared to be the objective views of influencers, and did not disclose that the influencers were actually paid to tout the product.

The FTC's Endorsement Guides and FAQs provide detailed guidance about how to avoid this type of deception, including in new forms of promotion like Twitter affiliate marketing, "like" buttons, employee endorsements, and videos. In general, when there are material connections (like payment) between a marketer and an endorser, they must be disclosed clearly

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<sup>15</sup> *FTC v. Roca Labs, Inc.*, No. 8:15ev-02231-MSS-TBM (M.D. Fla. Sept. 28, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/142255/rocalabs-inc>.

<sup>16</sup> *Sony Computer Entertainment America LLC*, No. G4514 (Mar. 24, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/122252/sony-computer-entertainment-america-llc-matter>

<sup>17</sup> *Deutsch LA, Inc.*, No. G4515 (Mar. 24, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/122252/deutsch-la-inc-matter>. See also *AmeriFreight, Inc.*, No. G4518 (Apr. 13, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/142249/amerifreight-inc-matter> (shipment broker failed to disclose that it provided discounts ~~words~~ to customers who posted online reviews of its service); *ADT LLC*, No. G4460 (June 18, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/122121/adtlc-matter> (home security company paid endorsers to tout products on *NBC's Today Show* and in other national media).

<sup>18</sup> *Machinima, Inc.*, No. 142 3090 (Sept. 2, 2015) (proposed consent order), available at <https://www.ftc.gov/enforcement/cases-proceedings/1423090/machinima-inc-matter>

<sup>19</sup> *The FTC's Endorsement Guides: What People Are Asking* (May 2015), available at <https://www.ftc.gov/tipsadvice/businesscenter/guidance/ftc-endorsement-guides-what-people-are-asking>. See also *Dot Com Disclosures: How to Make Effective Disclosures in Digital Advertising* (Mar. 2013), available at <https://www.ftc.gov/tipsadvice/businesscenter/guidance/com-disclosures-how-make-effective-disclosures-digital>.



and prominently. Promotional messages also must be identifiable as advertising if not through their look and feel then through a disclosure. This issue remains a priority and we plan to issue guidance on the issue of “native advertising” by the end of the<sup>20</sup> year.

*Deceptive Broadband and Cable Claims*

With everyone moving to mobile and cable, competition among service providers is fierce. But that doesn't excuse deceptive claims. Last year, we took action against wireless providers AT&T (yes, again) and TracFone for advertising “unlimited” data in their broadband plans when in fact, they slowed down (“throttled”) service when consumers reached a certain limit.<sup>21</sup> Unlimited means unlimited – it's a pretty straightforward word. TracFone paid \$40 million in refunds to consumers; we still in litigation with AT&T.

changes have led to an explosion of these calls, which violate consumers' privacy and also provide a cheap vehicle to peddle ~~fra~~

To date, the FTC has brought more than a hundred lawsuits against ~~100~~ <sup>100+</sup> companies and individuals responsible for billions of illegal robocalls and other Do Not Call violations.

millions of calls that violated the FTC Telemarketing Sales Rule, including Do Not Call. The case goes to trial in January.

*Office of Technology Research and Investigations*

Lastly, part of our focus in tech is internal to the FTC – to make sure we have the personnel and resources to meet the consumer protection challenges of the expanding tech world. A few years ago, created the Mobile Technology Unit (MTU) to help bring consumer protection into the mobile era. The MTU assisted BCP staff with law enforcement investigations. It also developed surveys on kids' apps, mobile shopping apps, and health apps. This year, BCP announced that it would broaden the MTU's mission so it focuses not just on mobile, but on tech more broadly. We renamed it the Office of Technology Research and Investigation (OTech), and are in the process of hiring more researchers and technologists. We expect the office to play an important role in the agency's work on privacy, data security, connected cars, smart homes, emerging payment methods, Big Data, and the Internet of Things.

## II. Privacy and Big Data

That's a nice transition to privacy and Big Data. The effects of technology on privacy can't be overstated. Today, data is collected from consumers wherever they go – online, offline, through mobile and connected devices, everywhere. As I mentioned, for the companies that collect consumers' data are behind the scenes and never interact with consumers. And as we

The use of data, and Big Data, can drive valuable innovation across many fields – medicine, education, transportation, and manufacturing. But it also raises privacy concerns for consumers – massive collection and storage of personal information; the risk that detailed profiles will fall into the wrong hands, enabling identity theft and other harms; the release of sensitive information consumers regard as private; and the potential use of this data by employers, insurers, creditors, and others to make important decisions about consumers.

Our central message, again, is that even in the face of rapidly changing technology and business models, companies still need to follow the basic principles of privacy, these include don't collect or retain more data than you reasonably need. If you must collect data, identify it wherever possible. Protect data from unauthorized access. Give consumers accurate information and meaningful choices about their privacy. As new business models and technologies develop, these principles remain as important as ever, although they do need to be adjusted and adapted. We've emphasized these principles through enforcement, policy initiatives, and education.

Our enforcement actions include last year's case against mobile messaging app Snapchat. Among other things, Snapchat promised that the photos and videos sent through its app would disappear at a time set by the sender.<sup>29</sup> In fact, we alleged that recipients could use easy workarounds to keep the messages forever. We also took action against the popular flashlight app for misrepresenting that it would only collect data from users' devices for certain

internal housekeeping purposes.<sup>30</sup> In fact, we alleged it collected – and transmitted to third party ad networks – the device’s location and device ID.

More recently, we addressed the growing practice by retailers of using mobile technologies to track the movements of their customers in stores. We alleged that Nomi Technologies, the analytics firm that performed these services, told consumers they would be notified when stores were using its tracking services and would be able to opt out then and there.<sup>31</sup> In fact, consumers weren’t told at stores and couldn’t opt out.

Health data is another important FTC concern because it’s sensitive and often regarded as private. Also, HIPAA doesn’t protect health data unless it’s collected by a medical provider. But the FTC Act does. In December, we charged Payments MD, a health billing company, with using a deceptive registration process to trick thousands of consumers who signed up for its online billing portal into also consenting to collection of their detailed medical information from pharmacies, medical labs, and insurance companies.<sup>32</sup>

Then there are extortion websites that harvest sensitive data online, and seek payment to take it down. We took action against two of those this year. In one, defendant Craig Brittain solicited sexually explicit photos from women’s sex friends and others – in many cases through deception to post on his website, isanybodydown.com.<sup>33</sup> He then used another site to pose as an attorney and charge \$250 for removing the information. The Commission also

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<sup>30</sup> *Goldenshores Technologies, LLC*, No. C-4446 (Mar. 31, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/132087/goldenshores-technologies-llc-erik-m-geidl-matter>

<sup>31</sup> *Nomi Technologies, Inc.*, No. C-4538 (Sept 3, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/132251/nomitechnologies-inc-matter>



Transcription Services<sup>43</sup>, and debt brokers Bayview<sup>44</sup> and Cornerstone<sup>45</sup> And we have ongoing litigation against Wyndham Hotels<sup>46</sup> and LabMD

One theme I am stressing in our privacy program is the connection between the sale of sensitive data and fraud. In fact, we often discover in our fraud cases that the scammers used highly sensitive data bought from another company or a data broker – including Social Security and bank account numbers – to trick or steal from consumers.<sup>54</sup>





companies now track consumers across multiple devices, and not just within one device.<sup>63</sup> In January, we will host a conference called PrivacyCon to examine cutting-edge research and trends in protecting consumer privacy and security.<sup>64</sup>

## II. Conclusion

As you can see, keeping pace with the digital revolution occurring in the marketplace is keeping us very busy. While these rapid changes have provided benefits to consumers and businesses alike, the FTC will continue to take action whenever necessary to promote compliance and deter the growth of harmful trends. Thank you for having me today. I look forward to your questions.

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<sup>63</sup> FTC Workshop *Cross Device Tracking* (Nov. 16, 2015), available at <https://www.ftc.gov/news-events/events/2015/11/cross-device-tracking>

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