You can't spell FinTech without FTC

10 May 2019

The Consumer Financial Protection Bureau (CFPB) is not the only consumer watchdog keeping a close eye on the financial sector and certainly not the only agency focused on FinTech. This is also a key area for the Federal Trade Commission (FTC).

FinTech provides an exciting array of financial products and services that benefit consumers. From online lending to payment apps, these technologies offer consumers fast and convenient access to financial services. But companies providing new and innovative digital products cannot take shortcuts when it comes to complying with traditional consumer protection principles without risking catching the attention of the FTC.

In this post, we describe several recent FTC actions highlighting key enforcement issues facing FinTech companies. Importantly, companies should keep in mind that basic consumer protection principles continue to apply in the new economy.

The FTC's authority

The FTC has a dual mission to protect consumers and promote competition. The primary consumer protection law enforced by the FTC is Section 5 of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices. The FTC also enforces a number of other consumer protection statutes governing financial-related activity, including (among others) the Gramm-Leach-Bliley Act, Truth in Lending Act, Fair Debt Collection Practices Act, and Fair Credit Reporting Act.

In the financial arena, the FTC and the CFPB share oversight over businesses that offer consumer financial products and services, except that the FTC's jurisdiction does not extend to banks, thrifts, federal credit unions, and others that are exempt under the FTC Act. In light of their concurrent jurisdiction, the two agencies cooperate and work to avoid duplication of effort, as documented in a memorandum of understanding.

The FTC has focused its efforts on, among other areas: debt collection, mortgage, credit card, student, and other debt relief services; short term lending; auto sales; financing and leasing; and FinTech.

Recent FTC enforcement actions in FinTech

In recent years, with the increasing role of technology, the FTC has paid particular attention to FinTech. These are some of the matters in which the FTC has taken action.

Avant LLC

On 15 April 2019, the FTC announced a US$3.85 million settlement with online lender Avant LLC, resolving charges that the company had engaged in deceptive and unfair loan servicing practices in violation of Section 5 of the FTC Act, the Electronic Fund Transfer Act, and the Telemarketing Sales Rule.

In its complaint, the FTC alleged that Avant required consumers to authorize recurring electronic fund transfers as part of their loan applications, stating that consumers could later change the method of payment. However, according to the FTC, Avant refused to accept debit or credit card payments from consumers who later attempted to switch payment methods. The FTC also charged, among other conduct, that the company withdrew money from consumers' accounts or charged their credit cards without authorization.

In addition to obtaining monetary relief for consumers, the FTC issued an order prohibiting Avant from taking unauthorized payments from consumers' accounts, collecting payments using remotely created checks, and misrepresenting material facts regarding, among other things, the accepted methods of payment, fees, and charges.

Lending Club

The FTC sued Lending Club in November 2018 alleging that it had misled borrowers by deceptively promising loans with no hidden fees. Lending Club's mail and online advertisements stated, "No hidden fees" and "No prepayment penalties." But the FTC alleged that the fine print, often behind obscure hyperlinks, stated otherwise and that the company charged, on average, a five percent fee and deducted the fee before disbursing its loans. The FTC asserted that this also resulted in consumers having to pay interest on the total requested loan amount even though the actual amount disbursed was less the fee charged by the company.

The lawsuit is pending in the Northern District of California.

Bitcoin Funding Team

In March 2018, the FTC brought an action in the Southern District of Florida to stop an allegedly fraudulent cryptocurrency scheme. In its complaint, the FTC charged four individuals operating under the name Bitcoin Funding Team with deceptively claiming that a small payment of bitcoin or litecoin, equivalent to about US$100, could be turned into US$80,000 in monthly income. On making the initial investments, participants were also eligible to recruit new members to make payments. The FTC alleged that in fact, the majority of participants would lose their initial investments.

The court granted the FTC's request for a temporary restraining order and asset freeze pending trial. Trial is set for 16 September 2019 in the Southern District of Florida.

Key takeaways

Companies must be mindful that traditional consumer protection principles continue to apply even if the products and services being offered are new and innovative. The following are some key lessons from the FTC's enforcement actions:

- **Representations to consumers must be truthful**. Statements regarding products and services should be truthful and accurate.
- **Promises to consumers should be kept**. Companies that make promises to consumers should follow through.

- **Avoid hidden fees**. Key terms of an offering should not be hidden in fine print or in hard-to-see hyperlinks. Consumers should be given clear and prominent information about all relevant terms.

The failure to abide by these key lessons could lead to a knock on the door by the FTC. If you have questions about any of these issues or receive an inquiry from the FTC, we are here to help.

About our team

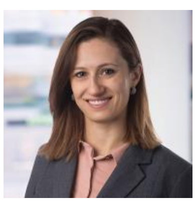
Edith Ramirez is the co-head of the the firm's global Antitrust practice and a member of the firm's Privacy and Cybersecurity group. She is the former chairwoman of the FTC and is based in Washington, D.C. and Los Angeles, California.

Meghan Rissmiller is a partner in the firm's Antitrust group. She represents and counsels clients on antitrust and consumer protection issues, including in connection with investigations before the FTC, and is based in Washington, D.C.

Contacts

Edith Ramirez
Partner, Washington, D.C., Los Angeles
T +1 202 637 5509
T +1 310 785 4600
edith.ramirez@hoganlovells.com

Meghan Rissmiller
Partner, Washington, D.C.
T +1 202 637 4658
meghan.rissmiller@hoganlovells.com



Olga Fleysh
Associate, Washington, D.C.
T +1 202 637 3204
olga.fleysh@hoganlovells.com