“Strictly Business” Forum

STAFF PERSPECTIVE | FEBRUARY 2020

Introduction

Small businesses act as an important engine in the U.S. economy by providing economic opportunity for entrepreneurs and employment for millions of job seekers. They are also woven into the commercial and social fabric of local communities, offering the goods and services on which consumers rely day-to-day. Like other enterprises, small businesses need financing to operate and grow. While many can obtain loans from traditional lenders, like local banks, in recent years small businesses have increasingly turned to relatively new sources of financing, including online loans,[1] lines of credit, and other alternative products. While these forms of financing offer some potential benefits for small businesses consumers (for example, broadening the availability of credit), they have also raised some consumer protection concerns.

The Federal Trade Commission (“FTC” or “Commission”) has broad jurisdiction under the FTC Act and other laws[2] to stop deceptive, unfair, and other unlawful practices by small business financing providers and their marketers, servicers, and collectors. In recent years, the Commission has used its authority to bring dozens of actions to protect small businesses from frauds, like fake invoice and unordered merchandise scams.[3] Additionally, the Commission has worked to stop unlawful conduct in the online lending marketplace by bringing actions against lenders for allegedly deceiving consumers about key aspects of their loans, like up-front fees, consumer savings, and servicing-related features.[4] The agency remains committed to protecting small businesses, including in the lending marketplace.

In order to further examine recent trends in small business financing, on May 8, 2019, the FTC hosted a public forum, “Strictly Business” (or “Forum”).[5] This event brought together a variety of stakeholders and experts to discuss consumer protection issues associated with this marketplace. This Staff Perspective highlights some of the key issues discussed during the Forum, as well as other information gathered through law enforcement and from existing research. In particular, we provide background on recent trends in the small business financing marketplace, discuss some potential benefits of newer online financing products, and examine some of their risks for small businesses.

Strictly Business:
An FTC Forum on
Small Business Financing

Background on the Small Business Financing Marketplace

It would be hard to overstate the importance of small businesses in the U.S. economy. They employ roughly half of private sector workers in the country[6] and have generated an estimated two-thirds of new private jobs in recent years.[7] Despite their outsized impact on the market, the overwhelming majority of these enterprises are *very* small: According to the Small Business Administration, 80% of small businesses have no employees.[8] Additionally, research by Federal Reserve Banks indicates that, among small businesses that do have employees, roughly half employ four or fewer people.[9] Our Forum panelists and other experts have also highlighted the fact that women- and minority-owned small businesses represent a significant and growing part of this marketplace.[10]

Panelists at our Forum emphasized that small businesses require financing to survive and grow, and that they face significant challenges obtaining such financing. Panelists noted that small businesses often have relatively little cash on hand to fund their ongoing operating expenses, leaving them vulnerable to shortfalls. In fact, as panelists stated, business owners frequently rely on their *personal* funds and credit (like credit cards and home equity loans) in order to finance their businesses, as well as contributions from family and friends.[11]

Beyond tapping their personal finances, small business owners frequently seek business financing — typically for relatively small amounts (*i.e*., $250,000 or less).[12] While many small enterprises can obtain loans from traditional lenders, like local banks, other businesses may not qualify for such loans. Additionally, Forum panelists and research suggest that, in recent years, banks frequently have been unable to meet the demand for small business loans,[13] in part due to wider trends in the banking sector and economy.[14]

Perhaps as a result, small businesses have increasingly sought financing from relatively new online providers offering loans, lines of credit, and other products. In fact, a survey by several Federal Reserve Banks found that, in 2018, 32% of employer small businesses reported applying for online financing — up from 24% in 2017 and 19% in 2016.[15]

Online financing products can have a broad range of features that vary from product to product. Some online lenders offer loan or credit agreements that resemble traditional bank loans or lines of credit — accruing interest and requiring monthly payments over a set term length. Other finance providers offer products with very different features. For example, in lieu of interest, many products charge consumers flat fees — and thus offer no savings for consumers who repay early. Some finance providers require weekly or daily repayments. Additionally, many online providers cater to higher-risk businesses or owners with low credit scores — typically offering them higher-cost products. One such product that has generated particular attention, and some concerns detailed below, is the “merchant cash advance” (“MCA”) — a product styled as a purchase of a business’ future receivables, that is often repaid daily based on a fixed percentage of daily sales.[16]

In addition to the new diversity of products, there appears to be an expanding variety of finance providers offering them. For instance, many online lenders have emerged that employ financial technologies and alternative data in new ways to underwrite term loans and lines of credit. Additionally, some large payment processing companies and technology platforms now leverage the information they already collect from small businesses (such as credit card receipts or sales information) to offer them loans. Further, nonprofit “microlenders” and other mission-driven companies that work to offer affordable loans to underserved borrowers are also increasingly relying on financial technologies to do so.

Potential Benefits of Online Financing

Panelists at our Forum discussed some potential benefits of online financing for small businesses and their owners:

Potential speed and convenience.

Panelists highlighted that online finance providers promote simpler, automated financing applications, and faster approvals and funding than traditional loans — in some instances, completing these processes within a day or two. In fact, research indicates that many small businesses choose online loans as a result of this perceived speed.[17] Industry panelists also stated that, for many consumers, online financing platforms may be easier and more convenient to use than older forms of financing — for example, allowing businesses to seek new funds virtually any day or time.

Potentially broadening access to credit.

Panelists also emphasized that online lenders may increase access to credit by offering financing to small business owners who might not qualify for more traditional loans because of low personal credit scores or other risk factors.[18] Many online providers appear to specialize in high-risk businesses or owners. Some financing providers, like MCA companies, often promote their ability to provide financing to almost *any* business that has generated a few months of revenue — regardless of the owner’s personal credit history.[19] Some online providers at our Forum stated that, instead of relying heavily on business owners’ personal credit scores, they analyze alternative data in their underwriting process to predict a business’s health — for example, data from linked online financial accounts, real-time payment processing information, and shipping records. Further, online lenders also increasingly use algorithms and other automated processes to underwrite loans based on this data.

Potentially flexible financing amounts, terms, and repayment options.

Panelists also stated that the wide array of new products may offer small business owners greater latitude in finding specific financing arrangements that closely meet their needs. For instance, online providers frequently allow businesses to obtain smaller amounts — as little as a few thousand dollars — than those traditionally offered by banks. Additionally, many newer products have very short terms that allow for repayment within several months. Further, many online products offer flexible repayment options that permit consumers to choose between making payments monthly, weekly, or daily — sometimes also allowing consumers to make variable payments based on their revenue. In the case of MCAs and some other products, businesses' daily payments are variable based on an agreed-upon percentage of daily revenues.

Consumer Protection Concerns

Panelists at our Forum shared a number of concerns regarding the products being offered in the evolving business financing marketplace:

Inconsistent information provided to business owners.

As discussed above, the current marketplace includes products with a wide variety of key features that can differ significantly from product to product. For example, some online lenders offer consumers term loans that accrue interest in a manner similar to traditional personal loans, and require consumers to make monthly repayments over a specific term. Other products, like MCAs, may charge consumers a fixed fee, or “factor,” which consumers repay along with the amount of the advance through daily, variable repayments that are supposed to rise or fall with the business's daily revenue.

Many of the Forum participants expressed concern that finance providers use widely-differing methods for calculating and describing the key features of their products — impeding small business owners' ability to make apples-to-apples comparisons. Notably, while the Truth-in-Lending Act requires the disclosure of annual percentage rate (“APR”) and other key pieces of information in personal credit transactions, it generally does not apply to small business financing.[20] Perhaps as a result, small business finance providers often describe the costs associated with their products very differently: While some lenders state the cost of their loans as an APR, others instead express it as the “total cost of capital” — *i.e.*, the total overall dollar amount consumers will pay in fees or costs beyond repaying the principal. Additionally, other finance providers use yet other metrics, like “interest rate,” “fees,” or “factor rate.”[21]

Small business owner confusion about features.

Both Forum panelists and outside research suggest that, as a result of this wide variation in disclosures, small business owners often struggle to understand the central features of financing products. In a recent study, Federal Reserve staff found that small business owners expressed confusion about the terminology used to describe the costs of financing products — frequently underestimating these costs as a result.[22] This is particularly concerning because online financing products often have relatively high costs, and those costs vary significantly from product to product.[23] Additionally, Federal Reserve staff found that some small businesses incorrectly assumed that they would save money overall by repaying products like MCAs early — when, in fact, these products require the payment of fixed fees or costs, regardless of how quickly they are repaid.

Several Forum panelists echoed these research findings. They also emphasized that, when faced with this wide variety of products with inconsistent disclosures, consumers often lack the heightened understanding of business financing necessary to effectively comparison shop and find the most appropriate products. Some panelists argued that business owners, drawing from their more common experiences with personal credit, may be likely to mistakenly assume that business financing products share the same characteristics — for example, accruing interest over time and offering prepayment savings.

While Forum panelists generally emphasized the problems posed by non-uniform disclosures, they voiced disagreement about which methods for calculating costs would be most relevant and understandable. Some panelists, including consumer advocates, argued that business owners would be most likely to understand costs and fees expressed as an APR or interest rate.[24] On the other hand, some industry panelists argued that, for shorter-term financing arrangements that consumers repay within several months (as opposed to the years associated with traditional loans), business owners may regard the total cost of capital as more useful and understandable than annualized metrics.

In the midst of this public debate, both legislators and industry members have engaged in some efforts to standardize the information disclosed to business owners. For example, California recently enacted a law that requires small business finance providers to disclose several features before consummating a financing agreement, including: the total amount of funds provided; total dollar cost of the financing; term or estimated term; method, frequency, and amount of payment; a description of prepayment policies; and total cost of the financing expressed as an annualized rate.[25] Additionally, two prominent industry groups — both of whom had members at the Forum — have promulgated self-regulatory codes requiring standardized disclosures of financing costs and other key terms.[26] Small business consumers would likely benefit from more uniform and understandable financing disclosures to help them compare the costs and other features of products in this marketplace.

Given the possibility of consumer confusion in the small business financing marketplace, providers should keep in mind that the FTC Act’s prohibition against misleading claims applies to these products. Specifically, it prohibits finance providers from making claims that would be likely to mislead small business owners acting reasonably in the circumstances. Especially given that the overwhelming majority of small businesses are sole proprietorships or very small employers,[27] finance companies and their marketers should be aware that these consumers’ understanding of financing products may often be similar to that of individual consumers in *personal* credit transactions. Thus, small business finance providers should avoid the sorts of practices that the Commission has alleged to be deceptive in our enforcement actions involving either small business consumers or individual consumers, including our actions involving personal loans in which we charged lenders with making misleading claims regarding fees, consumer savings, payment amounts, and interest rates.[28]

Thus, small business finance providers should avoid the sorts of practices that the Commission has alleged to be deceptive in our enforcement actions involving either small business consumers or individual consumers, including our actions involving personal loans…

Concerns regarding MCAs.

As discussed during the Forum, MCA providers generally offer high-cost, short-term cash advances to small businesses to purchase a fixed amount of their future receivables. In exchange, the business must repay the advanced amount plus a "factor"— often between 20% to 50% of that amount. The MCA provider generally collects a fixed percentage or amount (estimating the percentage) of the business's daily revenue. Thus, the small business's daily payments are supposed to rise or fall to reflect its daily sales. According to MCA providers, the business makes these payments until the MCA is repaid, or, alternatively, the business simply fails, in which case the repayment obligation is extinguished. Additionally, although MCAs do not technically include a set term length, they are typically repaid within a few months to one year.

Panelists at our Forum and other experts have expressed a variety of concerns about MCAs. First, they note that MCAs have very high costs — including, in some cases, estimated APRs in the triple digits. As a result, many business owners who obtain MCAs may struggle to successfully repay them. One panelist noted that businesses desperate for funding often seek out MCAs in the short term because they are quick and easy to obtain, but then suffer negative long-term consequences. Such consequences include being forced to renew their advances or take out multiple MCAs at the same time, potentially encumbering the same receipts (a phenomenon known as "stacking"), in order to both meet their repayment obligations and avoid shutting down.

Second, observers have expressed concerns that some MCA providers and their marketers may engage in aggressive, and potentially misleading, marketing practices. Panelists at our Forum noted that MCA providers often rely on large networks of brokers (sometimes referred to as "independent sales organizations" or "ISOs") and lead generators to promote their products through telemarketing and other channels, often paying them large commissions for leads. While panelists from the MCA industry stated that they take steps to vet and monitor their marketing agents for potentially deceptive practices, they acknowledged that some MCA providers may be failing to do so sufficiently. The FTC has engaged in significant law enforcement and other efforts to stop deceptive and unfair practices by lead generators and the companies that use them for marketing.[29] Therefore, staff would caution ISOs, brokers, and lead generators that market MCAs and other financing products to avoid potentially false or unsubstantiated advertising claims. Additionally, finance providers should be aware that their use of these marketing intermediaries does not immunize them from liability under the FTC Act. To comply with the law, providers should take steps to ensure that their marketers do not engage in deception or other unlawful conduct by carefully vetting and monitoring their lead sources for warning signs (like consumer complaints), auditing marketers, and requiring and enforcing contractual compliance standards with these entities.[30]

…finance providers should be aware that their use of these marketing intermediaries does not immunize them from liability under the FTC Act. To comply with the law, providers should take steps to ensure that their marketers do not engage in deception or other unlawful conduct…

Third, two MCA providers at the Forum expressed concerns that, during the repayment of MCAs, some providers may fail to conduct promised “true-ups” or “reconciliations” to lower merchants’ daily payment amounts to reflect drops in their sales. As noted above, MCAs are designed to require businesses to repay a fixed percentage of their daily revenues. Accordingly, it would be concerning, and potentially unlawful, if MCA providers fail to adjust payment amounts to reflect a decrease in sales.

... it would be concerning, and potentially unlawful, if MCA providers fail to adjust payment amounts to reflect a decrease in sales.

Fourth, our panelists and other observers have expressed concerns about the use of potentially abusive collection tactics by MCA providers and their agents against business owners who struggle with repayments. In particular, in recent years, some MCA providers have required that business owners execute a “confession of judgment” (“COJ”) — in which the business owner waives his or her right to contest any collection lawsuit to obtain the unpaid MCA amount and collection-related fees. Although the FTC’s Credit Practices Rule prohibits the use of COJs in personal credit contracts, it generally does not apply to contracts with small business.[31] The FTC Act, however, applies to any deceptive or unfair conduct.[32] For example, if an MCA provider is required by contract to lower a merchant’s daily payments if revenue falls, but instead simply declares the merchant to be in default and files a COJ, this conduct could violate the FTC Act. MCA providers should not exercise default remedies – such as enforcing a COJ – in the absence of a default condition.

… if an MCA provider is required by contract to lower a merchant’s daily payments if revenue falls, but instead simply declares the merchant to be in default and files a COJ, this conduct could violate the FTC Act.

While MCA providers at our Forum stated that they rarely or never require COJs, they noted that other MCA providers may frequently use them. In fact, there have been reports that some MCA providers have aggressively enforced their COJs against merchants in order to freeze or seize their assets — often with little or no notice. In response to this conduct, the state of New York — where many COJs of this sort have been filed — recently enacted a law that prohibits creditors from using COJs against small businesses outside of that state.[33] Additionally, a representative of one industry trade association that includes MCA providers stated that it prohibits members from using COJs in their contracts.

Beyond the use of COJs, news reports have noted that some MCA providers may engage in other problematic collections practices, like making egregious, harassing threats against business owners who fall behind on repayments. In light of these reports, it is important to highlight that the FTC has the authority under the FTC Act to stop unfair or deceptive debt collection practices, including by small business finance providers and their collectors.[34] The Commission has engaged in extensive enforcement efforts to stop unlawful collections practices used to collect personal debts, and many of the same protections apply to small businesses. Staff would caution small business finance providers and their collectors to avoid the types of conduct we have alleged to be unlawful — such as collecting amounts consumers do not owe, making egregious false threats of arrest or other severe consequences, disclosing private debt information to third parties (such as family members), or harassing consumers with continuous calls or abusive language.[35]

> Staff would caution small business finance providers and their collectors to avoid the types of conduct we have alleged to be unlawful…

Conclusion

As the small business financing marketplace continues to evolve, the FTC remains committed to protecting businesses and their owners from potentially unlawful practices. Through our "Strictly Business" Forum, and this Staff Perspective paper, we have worked to engage in a dialogue with stakeholders in this marketplace, and to better inform the public understanding of these products and our relevant law enforcement work.

Endnotes

[1] This Staff Perspective uses the terms "online financing" and "online lending" generally to describe all of these new products, despite the fact that some companies may promote and offer them through other channels, like telemarketing.

[2] *See, e.g.*, Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x; Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq.

[3] For example, the Commission recently engaged in "Operation Main Street," a joint effort by the FTC and law enforcement partners that brought 24 cases against frauds targeting small businesses. *See* FTC Press Release, *FTC, BBB, and Law Enforcement Partners Announce Results of Operation Main Street: Stopping Small Business Scams Law Enforcement and Education Initiative* (June 18, 2018), at https://www.ftc.gov/news-events/press-releases/2018/06/ftc-bbb-law-enforcement-partners-announce-results-operation-main.

[4] *See, e.g.*, *FTC v Avant, LLC*, No 19-cv-02517 (N.D. Ill filed Apr. 15, 2019); FTC Press Release, *Online Lending Company Agrees to Settle FTC Charges It Engaged in Deceptive and Unfair Loan Servicing Practices* (Apr. 15, 2019), at https://www.ftc.gov/news-events/press-releases/2019/04/online-lending-company-agrees-settle-ftc-charges-it-engaged; *In re Social Finance*, No 162-3197 (FTC issued Feb. 22, 2019); FTC Press Release, *Online Student Loan Refinance Company SoFi Settles FTC Charges, Agrees to Stop Making False Claims About Loan Refinancing Savings* (Oct. 29, 2019), at https://www.ftc.gov/news-events/press-releases/2018/10/online-student-loan-refinance-company-sofi-settles-ftc-charges; *FTC v. LendingClub Corp.*, No. 18-cv-02454 (N.D. Cal. filed Apr. 25, 2018); FTC Press Release, *FTC Charges Lending Club with Deceiving Consumers* (Apr. 25, 2019), at https://www.ftc.gov/news-events/press-releases/2018/04/ftc-charges-lending-club-deceiving-consumers-0; *FTC v. AMG Services*, 2:12-cv-00536 (D. Nev. Sept. 30, 2016) (Order); FTC Press Release, *U.S. Court Finds in FTC's Favor and Imposes Record $1.3 Billion Judgment Against Defendants Behind AMG Payday Lending Scheme* (Oct. 4, 2016), at https://www.ftc.gov/news-events/press-releases/2016/10/us-court-finds-ftcs-favor-imposes-record-13-billion-judgment.

[5] Video and other materials from the Forum are available at https://www.ftc.gov/news-events/events-calendar/strictly-business-ftc-forum-small-business-financing.

[6] *See* Small Business Administration ("SBA"), Frequently Asked Questions About Small Business (Aug. 2017), *available at* https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf.

[7] *See* SBA, Small Business Facts (Sept. 2017), *available at* https://www.sba.gov/sites/default/files/Job_Creation_fact_sheet_FINAL_0.pdf.

[8] *See* SBA, FAQs, *supra* note 6.

[9] *See* Federal Reserve Banks, Small Business Credit Survey (2019) (hereinafter "SBCS") at 29, *available at* https://www.newyorkfed.org/smallbusiness/small-business-credit-survey-2018.

[10] *See* Bureau of Consumer Financial Protection, Key Dimensions of the Small Business Lending Landscape (May 2017), at 11-16 (summarizing research estimating that between 2007 and 2016 the number of women-owned firms increased by 45%, and between 2007 and 2012 the number of minority-owned businesses increased by 38%), *available at* https://www.consumerfinance.gov/data-research/research-reports/key-dimensions-small-business-lending-landscape/.

[11] *See also* SBCS, *supra* note 9, at 6 (noting that, out of employer firms that faced financial challenges in prior year, over two-thirds used owners' personal funds to address them).

[12] *See id.* at 10.

[13] *See id.* at 13 ("Funding shortfalls were most acute for firms seeking $100K–$250K").

[14] *See, e.g.*, Mills, Karen G., FINTECH, SMALL BUSINESS & THE AMERICAN DREAM (2019), at 27-54.

[15] *See* SBCS, *supra* note 9, at iii.

[16] *See, e.g.*, Barbara J. Lipman & Ann Marie Wiersch, Federal Reserve Board & Bank of Cleveland, Browsing to Borrow: "Mom & Pop" Small Business Perspectives on Online Lenders (June 2018), at 4, *available at* https://www.federalreserve.gov/publications/small-business-perspectives-on-online-lenders.htm.

[17] *See* SBCS, *supra* note 9, at 17 ("Speed of decisionmaking and perceived chance of funding were the top reasons firms applied to online lenders.").

[18] *See also id.* at 19 (showing that both low- and higher-credit risk consumers reported higher approval rates for online financing when compared to bank credit); Federal Reserve Bank of Cleveland, Click, Submit 2.0: An Update on Online Lender Applicants from the Small Business Credit Survey (Dec. 2019), at 1, *available at* https://www.clevelandfed.org/en/newsroom-and-events/publications/special-reports/sr-20191216-click-submit-2.aspx ("Compared to firms that apply at only traditional lenders, firms that apply at online lenders are more likely to be smaller, have lower credit scores, report more financial challenges, and be less profitable.").

[19] *See* SBCS, *supra* note 9, at 18 (employer firms reporting a 85% approval rate when applying for MCAs).

[20] *See* 15 U.S.C. §§ 1601-1667f.

[21] *See also* Barbara J. Lipman & Ann Marie Wiersch, Federal Reserve Board & Bank of Cleveland, Uncertain Terms: What Small Business Borrowers Find When Browsing Online Lender Websites (Dec. 2019), at 1, *available at* https://www.federalreserve.gov/publications/what-small-business-borrowers-find-when-browsing-online-lender-websites.htm ("Online lenders varied significantly in the amount of information provided, especially on costs. Lenders that offer term loan products were likely to show costs as an annual rate, while others convey costs using terminology that may be unfamiliar to prospective borrowers. Still others, particularly those that offer merchant cash advances, provide no information at all.").

[22] *See* Browsing to Borrow, *supra* note 16, at 18-19; *see also* Uncertain Terms, *supra* note 21, at 17-18.

[23] *See, e.g.*, SBCS, *supra* note 9, at 20 ("Online lender applicants were most dissatisfied with high interest rates" — with 53% of employer firms reporting high interest rates to be a challenge associated with online lenders, compared with only 19% and 14% reporting the same challenge with large or small banks, respectively).

[24] In educational publications regarding personal credit, FTC staff has advised consumers to look for the APR of credit products as a key tool for comparison shopping. *See, e.g.*, FTC, Shopping for a Mortgage, *available at* https://www.consumer.ftc.gov/articles/0189-shopping-mortgage; Online Payday Loans, *available at* https://www.consumer.ftc.gov/articles/0249-online-payday-loans; Car Title Loans, *available at* https://www.consumer.ftc.gov/articles/0514-car-title-loans.

[25] *See* Cal. Fin. Code § 22800 et seq. (effective Jan. 1, 2019).

[26] *See* Innovative Lending Platform Association, The SMART Box™ Model Disclosure – In Depth, *available at* https://innovativelending.org/smart-box-model-disclosure-depth/ (requiring disclosure of, among other things, APR, total cost of capital, and ramifications of repayment); Responsible Business Lending Coalition, Small Business Borrowers’ Bill of Rights, *available at* http://www.borrowersbillofrights.org/bill-of-rights.html (requiring disclosure of, among other things, APR). As FTC staff has noted previously, for self-regulatory programs to be effective, industry participants should ensure that such programs include mechanisms for robust monitoring and enforcement, such as dismissal from the program and referral to the FTC for companies that fail to comply with the standards outlined in the code. *See, e.g.*, FTC Staff Perspective, *“Follow the Lead” Workshop* (Sept. 2016), at 7, *available at* https://www.ftc.gov/reports/follow-lead-workshop-staff-perspective.

[27] *See supra* notes 8-9 and accompanying text.

[28] *See supra* note 4; *infra* note 29.

[29] *See, e.g.*, *FTC v. Career Education Corp*., No. 19-cv-05739 (N.D. Ill. filed Aug, 27, 2019), FTC Press Release, *Operator of Colorado Technical University and American InterContinental University Will Pay $30 Million to Settle FTC Charges it Used Deceptive Lead Generators to Market its Schools* (Aug, 27, 2019), at https://www.ftc.gov/news-events/press-releases/2019/08/operator-colorado-technical-university-american-intercontinental; *FTC v. Edutrek*, No. 19-cv-01984 (N.D. Ill. filed Mar. 22, 2019); FTC Press Release, *FTC Charges Telemarketing Operation with Misleading Job Seekers and Making Millions of Illegal, Unsolicited Calls* (Apr. 12, 2019), at https://www.ftc.gov/news-events/press-releases/2019/04/ftc-charges-telemarketing-operation-misleading-job-seekers-making; *FTC v. Sunkey Publishing*, No. 18-cv-01444 (N.D. Ala. filed Sept. 6, 2018); FTC Press Release, *FTC Takes Action against the Operators of Copycat Military Websites* (Sept. 6, 2018), at https://www.ftc.gov/news-events/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites; *FTC v. Sequoia One, LLC*, No.15-1512 (D. Nev. filed Aug. 7, 2015); FTC Press Release, *FTC Puts An End to Data Broker Operation that Helped Scam More Than $7 Million from Consumers’ Accounts* (Nov. 30, 2016), at https://www.ftc.gov/news-events/press-releases/2016/11/ftc-puts-end-data-broker-operation-helped-scam-more-7-million; *FTC v. Intermundo Media, LLC*, No. 14-2529 (D. Colo. filed Sept. 12, 2014); FTC Press Release, *Mortgage Lead Generator Will Pay $500,000 to Settle FTC Charges That It Deceptively Advertised Mortgage Refinancing* (Sept. 12, 2014), at https://www.ftc.gov/news-events/press-releases/2014/09/mortgage-lead-generator-will-pay-500000-settle-ftc-charges-it; *U.S. v. GoLoansOnline.com*, No. 14-1262 (S.D. Tex. filed May 7, 2014); FTC Press Release, *Mortgage Lead Generator will Pay $225,000 to Settle FTC Charges That It Deceptively Advertised Mortgage Rates* (May 8, 2014), at https://www.ftc.gov/news-events/press-releases/2014/05/mortgage-lead-generator-will-pay-225000-settle-ftc-charges-it.

[30] *See* Andrew Smith, Companies Must Manage Lead Generators Responsibly, Law360 (Sept. 25, 2019), *available at* https://www.law360.com/articles/1202654/companies-must-manage-lead-generators-responsibly; FTC Staff Perspective, *“Follow the Lead” Workshop* (Sept. 2016), *available at* https://www.ftc.gov/reports/follow-lead-workshop-staff-perspective.

[31] *See* 16 C.F.R. pt. 444.

[32] The Commission recently brought an action, *FTC v. Grand Teton Professionals*, 19-cv-00933 (D. Conn. filed July 17, 2019), alleging that a credit repair scheme unfairly used COJs and other tactics to prevent consumers from exercising their rights under the Fair Credit Billing Act to dispute charges placed on their credit cards.

[33] *See* NY CPLR § 3218 (effective Aug. 1, 2019).

[34] *See, e.g.*, *FTC v. Rumson, Bolling & Assocs.*, No. 11-7484 (C.D. Cal., filed Sept. 12, 2011) (alleging that debt collection operation made false threats and other misrepresentations targeting small business consumers).

[35] *See, e.g.*, *FTC v. Global Asset Fin. Servs. Group*, No. 3:19-cv-55 (W.D.N.C. filed Feb. 4, 2019); *FTC v. Campbell Capital LLC et al.*, No. 1:18-cv-01163 (W.D.N.Y. filed Oct. 23, 2018); *U.S. v. Consumer Portfolio Services, Inc*., No. 14-00819 (C.D. Cal. filed May 28, 2014); *FTC and State of Nevada v. Cash Today, Ltd*., Civ. A. No. 3:08-CV-590 (D. Nev. filed Nov. 6, 2008).

Contributors

DIVISION OF FINANCIAL PRACTICES

Evan Zullow
Sandhya Brown
Malini Mithal