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Rebate-Processing Company Goes Bankrupt

One of the nation's biggest rebate processors has filed for Chapter 11 bankruptcy protection, leaving the status of "several million dollars" in rebate checks to about 300,000 consumers in question.

Continental Promotion Group, Inc., filed for bankruptcy in Florida on November 14, claiming liquidity problems. According to the filing, the court has approved CPG's plans to pay the rebates by borrowing money from its clients, who in turn are prepared to advance the funds. The company stated it was unsuccessful in obtaining credit from any other source.

CPG stated in its filing that it intends to borrow \$1.7 million from Canon USA for 30,117 rebate checks; \$1.2 million from Behr Process Corp. via The Home Depot for 68,865 checks; and \$197,790 from Bed Bath & Beyond for 21,861 checks.

"We are working with our clients to the extent possible to assist with the honoring of consumer rebate checks outstanding prior to the bankruptcy filing or providing alternate direction to consumers," the company said in a statement.

CPG has petitioned the court on an emergency basis to put potential lawsuits from dissatisfied consumers on hold. It also appears to be reducing its workforce by about 75 percent from 242 employees to 61.



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FTC Proposes New Ad Guides for Endorsements

The Federal Trade Commission is seeking comments on proposed revisions to its Guides covering the use of endorsements in advertising. The proposed Guides were published in a *Federal Register* notice posted on the FTC's Web site on November 21.

Endorsements by celebrities and "ordinary" consumers came under agency scrutiny last year. The FTC is concerned that when, for example, a celebrity claims that she lost 100 pounds using a weight-loss product, consumers might believe such results are typical despite the use of a small print disclaimer that appears on-screen or at the bottom of such ads, such as "Results may vary."

Among the more noteworthy proposed changes are new guidelines for commercial endorsements by bloggers. Bloggers and advertisers who use blogs to promote their products would be subject to potential liability for false or misleading advertising. As an example, the FTC describes a hypothetical blog that includes a post talking about a skin care product that does not reveal a commercial relationship with the marketer, even if the post contains no specific claims regarding the product. Should they become final, the revised Guides could affect not just marketers and bloggers, but specialized services such as Pay Per Post used by marketers to pay bloggers to mention or review certain products.

In addition, the proposed guidelines state that "endorsers may also be subject to liability for their statements." This includes celebrity endorsers.

The proposed Guides would also require advertisers to "clearly and conspicuously disclose what the generally expected performance would be in the depicted circumstances [involving the endorsement], or disclose the limited applicability of the endorser's experience to what consumers may generally expect to achieve, i.e., that the depicted results are not representative." This provision addresses the agency's longstanding concern "about potential deception arising from the use of "disclaimers of typicality."

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Facebook Spammer Slapped With \$873

Million Fine

In a November 22 decision, a Northern California district judge has ordered a Canadian spammer to pay \$873 million for sending roughly 4 million unsolicited commercial e-mails to Facebook users – the biggest fine ever issued under the federal CAN-SPAM Act.

In the spring of this year, Adam Guerbuez and his company, Atlantis Blue Capital, sent spam advertising marijuana, male enhancement drugs, and sexually oriented material to users' Facebook "walls" and in-boxes. Guerbuez used autobots to send the messages, which appeared to come from users' friends. He used Facebook login information collected through phishing schemes and third parties to send the messages.

In August, Facebook sued Guerbuez. "The voluminous and illicit nature of defendants' advertisements has tainted the Facebook experience for affected Facebook users," the complaint stated. Facebook also said it spent about \$5,000 monitoring, reviewing and trying to stop other spam e-mails and wall posts.

The court did not explain how it calculated the \$873 million damage award, which includes about \$437 million for statutory damages and \$437 million for aggravated statutory damages. Under the CAN-SPAM Act, a spammer may be liable for up to \$11,000 per violation. Guerbuez will also be liable for attorneys' fees and costs, in an amount to be decided no later than December 12. The court also banned Guerbuez from accessing Facebook or from asking others to access Facebook on his behalf.

"Does Facebook expect to quickly collect \$873 million and share the proceeds in some way with our users? Alas, no. It's unlikely that Guerbuez and Atlantis Blue Capital could ever honor the judgment rendered against them—though we will certainly collect everything we can," Facebook director of security Max Kelly wrote in a blog post. "But we are confident that this award represents a powerful deterrent to anyone and everyone who would seek to abuse Facebook and its users."

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FTC Fines Debt Collector \$2.25 Million

A Philadelphia debt collection agency has agreed to pay a \$2.25 million fine to settle an investigation by the Federal Trade Commission into multiple alleged violations of the Fair

Debt Collection Practices Act (FDCPA) and other unfair business practices.

In its November 21 announcement of the settlement, the FTC stated that the fine is the largest civil penalty it has ever received in a debt collection case.

Academy Collection Service, Inc., and owner Keith Dickstein agreed to the fine in partial settlement of charges that the company and its collectors misled, threatened, and harassed consumers; disclosed their debts to third parties; and deposited postdated checks early, in violation of federal law. Dickstein was cited for not stopping the violations.

The FTC said in a statement that more than 1,000 complaints had been filed against the company with the Commission, various state attorneys general, the Nevada and Pennsylvania Better Business Bureaus, and the company itself. In the course of its investigation, the FTC found that the company frequently ignored consumer complaints.

Two other company executives, Edward L. Hurt III and Albert S. Bastian, were also named in the complaint, but did not participate in the settlement. According to the FTC, Bastian and Hurt led the company's Las Vegas collection operation. The agency's case against the two is ongoing.

In addition to the fine, Academy Collection Service agreed to reform many of its business practices and stop certain practices, such as misrepresenting debts to consumers, improperly communicating with third parties about a debt; using false, deceptive, or misleading representations in debt collection efforts; communicating with a consumer at any unusual time or place, including the workplace; or harassing, oppressing, or abusing any person in connection with debt collection.

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