Payday Lenders Find Themselves in FTC's Cross Hairs

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Like pawnbrokers, payday lenders cater to people in a tight squeeze. That means they can, in turn, put the squeeze on their customers, charging annual percentage interest rates above 300 percent for their short-term unsecured loans. That also means they are a popular target of federal regulators who are concerned about vulnerable consumers.

The FTC has recently brought a slew of cases against payday lenders. Some actions include one against a payday lender for allegedly tricking consumers into buying debit cards when they applied online for loans and another against a loan intermediary for allegedly tricking consumers into signing up for worthless continuity programs. The latest FTC action targeted a payday lender for garnishing borrowers' wages.

One thing to glean from these actions is that the FTC is focused on the payday loan industry as a whole and not on some specific type of bad behavior by these lenders. In a twist on "if you build it, they will come," if you have a payday lending operation, plan on a visit by the FTC. And any level of questionable behavior could very well become the basis of further FTC involvement.

The latest case, in which the FTC filed suit based upon Payday Financial LLC's practice of garnishing borrowers' wages, has an interesting twist: the FTC alleges that the payday lender deceived the borrowers' employers.

The FTC goes after people and companies for false and deceptive practices affecting commerce – that's its jurisdiction. Normally, its lawsuits allege practices that deceive consumers. So you would think in this case that the FTC would allege that the lender deceived borrowers, tricking them into giving permission for their wages to be garnished. Instead, the FTC alleges that Payday Financial deceived the borrowers' employers, causing them to believe that Payday Financial was authorized to garnish the borrowers' wages. The FTC alleged that the defendant's notice to employers for wage garnishment looked "very similar, in both form and substance, to the documents sent by federal agencies when seeking to garnish wages for nontax debts owed to the United States."

There are two unusual elements to this action. First, the FTC takes a bit of a circuitous route to get at jurisdiction, arguing that deceiving the borrowers/consumers' employers impacted commerce. It makes sense when the FTC alleges that consumers' actions, as a result of deceptive practices, impact commerce; it's a bit of a stretch to move to a third party's actions.

Secondly, the FTC argues that employers, normally considered sophisticated parties, were deceived. As we talked about earlier – the FTC focuses on protecting vulnerable consumers. Sophisticated parties are often held to a different standard.

So if you are a payday lender, a lesson from this may be: dot your I's and cross your T's. Your industry is not popular with the FTC. The agency is highly motivated to find that you have done something wrong.

FTC Beat is authored by the Ifrah Law Firm, a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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