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August 17, 2009

In This Issue

FTC Takes Aim at Online Privacy

In separate interviews with *The Wall Street Journal*, *The New York Times*, and *Business Week*, two top officials with the Federal Trade Commission both said they plan to make online privacy a top priority.

FTC Chairman Jon Leibowitz told the *Journal* that he has behavioral targeting – tracking online behavior and using the data to send targeted ads to users – in his sights. Behavioral targeting has become increasingly popular, as technology has made it easier and cheaper. Researcher eMarketer predicts advertisers will spend $960 million on targeted ads in 2010, accounting for roughly 20% of all online advertising.

Leibowitz frets that online advertisers are not always upfront about their use of targeting. In an interview with *Business Week*, he said, "There's a critical issue about whether consumers have notice of what companies are doing with their information and whether they're making informed choices about [sharing] information."

As an FTC commissioner since 2004, Leibowitz has also talked repeatedly about the need for stronger online privacy safeguards. For instance, in 2007, Leibowitz complained that a $1.5 million settlement of FTC charges against spyware company DirectRevenue was too lenient. He said the settlement was "a disappointment because it apparently leaves DirectRevenue's owners lining their pockets with more than $20 million from a business model based on deceit."

In the past, Leibowitz said he supported self-regulation; now he says he is

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not so sure. "It's not clear that [online marketers are] moving far enough or fast enough, even though they're making some progress," Leibowitz says. He says targeted ads should be "opt-in" – requiring user consent prior to collecting data from them – and has been working with federal lawmakers to make this happen. He recently met with Representative Rick Boucher (D-Va.), who plans to introduce a bill by September that may require opt-in consent for certain types of online ads.

In an interview with the *Times,* David Vladeck, the new head of the FTC's Bureau of Consumer Protection, similarly criticized the current state of online privacy. Privacy policies have become useless, the Commission's standards for the cases it reviews are too narrow, and some online tracking is "Orwellian," Vladeck said. "There is a sense of urgency around here. Consumers, I don't think, are sufficiently protected under the current regime."

Vladeck, who spent 26 years as a litigator with the Public Citizen Litigation Group, said he wants to redefine how the Commission views online privacy. In just over six weeks at his new job, he has asked Congress for a bigger budget and a streamlined way to create regulations. And he said he would bring in technologists to help analyze behavioral tracking.

Vladeck said his predecessors tended to focus on whether companies were harming consumers, and instructing companies to draft and post privacy policies, whereas he intends to focus more on whether consumer dignity has been violated. "There's a huge dignity interest wrapped up in having somebody looking at your financial records when they have no business doing that," he said. He added that detailed privacy policies are not enough: "I don't believe that most consumers either read them, or if they read them, really understand [them]."

Vladeck said he is not committed to new regulation, but rather wants "to figure out useful tools and a more comprehensive way of looking at privacy protections that may obviate the need for rules." For instance, Vladeck suggested that he might support an opt-in requirement. "The message is, you have to be more transparent about what it is you're doing."

Why it matters: Many Internet industry executives viewed Leibowitz's appointment as Chairman and Vladeck's appointment as head of the Bureau of Consumer Protection as clear signals that the Obama administration intends to have a more consumer-friendly FTC. From their public statements, it is apparent that at least in the area of online privacy and behavioral tracking, both officials intend to establish what they consider to be a more consumer-friendly regime.

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Topic: Women in Direct Response

Moderator: Linda Goldstein

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September 13, 2009

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Topic: The B2C Claim; Health and Beauty Edition

Speaker: Ivan Wasserman

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Reality Show Breaches UK Product Placement Rules

***Running in Heels*, a reality show that follows three interns working for *Marie Claire* magazine, has been found to be in breach of British broadcasting product placement rules.**

The show, which aired on the Style Network in the UK, had a product placement deal with the makeup brand Maybelline in the U.S. for its new Lash Stiletto mascara.

However, E! Entertainment, the licensee for the Style Network in the UK, said it had not received any payment itself and that the episode was reviewed by its British compliance agent before broadcast and no concerns were raised.

The controversy centered around a 23-second sequence in an episode broadcast on May 19. In the segment, one of the interns displays three mascaras and describes them as "the new Maybelline mascara." Another one of the interns adds “Lash Stiletto.” The mascara is then shown in a close-up shot, with the packaging and the name of the mascara clearly displayed.

The interns then apply the mascara on their own lashes. One comments, "My lashes look so much longer." Another says, "It really does make them look glossy."

“The series takes place entirely in the world of fashion and contains numerous references to fashion brands,” said the Style Network in a statement addressed to UK broadcasting watchdog Ofcom. “The reference to a new brand of mascara and a sequence where the protagonists try out makeup while getting ready for a night out did not appear out of place in such a format.”

However, after viewing the episode, E! Entertainment decided to edit out the close-up shot of the Maybelline mascara.

Ofcom said that the statements of the interns sounded like a promotion and the undue prominence of the mascara was exacerbated by the storyline that was crafted around the product.

Why it matters: Product placement is becoming increasingly popular as reality shows proliferate, and broadcasters and advertisers worry that consumers increasingly use TiVo and other recording devices to skip commercials entirely. At the same time, it is important that companies using product placement to plug merchandise are careful to comply with the rules of any country in which the shows air.

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Speaker: Linda Goldstein

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September 24, 2009

From The Source: AAF's Web Seminar Series

Topic: "Budget Busters: Bongs, Blogs and Brand Wars"

Speaker: Jeff Edelstein

for more information

Facebook Faces Click Fraud Claims

For the third time since July, a pay-per-click advertiser has charged Facebook with billing him for nonexistent clicks.

In a complaint filed last month in federal district court in San Jose, California, resident Steven Price claims that Facebook overcharged him for ads that ran from May 26 to June 21. Price alleges that analytics programs from Google and Statcounter.com demonstrate that roughly two-thirds of the clicks he was charged for never occurred.

Price alleges that Facebook, which charged him $500 for the ads, admitted it had charged him for invalid clicks and credited him $105.01 toward the purchase of additional ads. But Price alleges that the ad credits, which expire at the end of the year, are an insufficient remedy, and is suing for a cash refund. He also alleges that the credits "do not even come close to compensating plaintiff for the monies that he has been wrongfully charged."

Last month, sports site RootZoo and software marketer United ECM also sued Facebook for click fraud.

The wave of lawsuits came within weeks of a widely disseminated post on the blog TechCrunch about alleged click fraud on Facebook that discussed recent marketer complaints made on the WickedFire forum. At the time, Facebook conceded that it had seen an uptick in "suspicious clicks" and was working on a remedy. The company also said it would credit the accounts of affected advertisers.

Calling the lawsuits "unnecessary and baseless," a Facebook spokesperson said the company has "developed a series of sophisticated systems to detect anomalous activity and ensure advertisers are not charged for this activity." In the "rare cases" in which charges for invalid clicks are discovered, the spokesperson said, the company issues credits to affected advertisers.

Why it matters: Click fraud has been one of the concerns that has plagued advertisers and the search engines that host ads for some time. These three lawsuits against Facebook feature a new defendant but a familiar problem for online advertisers.

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FTC Proposes New Debt Relief Rules

Spurred by an increasing number of complaints about debt relief scams, the Federal Trade Commission is proposing changes to its rules defining and governing telemarketers to cover debt relief operations.

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October 5-6, 2009

NAD Annual Conference 2009

Moderator: Jeff Edelstein

W Hotel

New York, NY

for more information

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October 27, 2009

American Conference Institute's 3rd Annual Forum on Sweepstakes Contests and Promotions

Speaker: Linda Goldstein

The Carlton Hotel

New York, NY

for more information

The proposal would apply telemarketing rules to debt relief companies that receive phone calls in response to advertising, as well as to those that call consumers. It would prohibit debt relief companies from charging fees before providing services, disguising themselves as nonprofit agencies, and making misleading claims about how quickly they can help or how much money they can save a consumer.

Under the new rules, debt relief companies would also have to inform consumers how long it would take to achieve the results they are promising; detail how any settlement offer the company makes would work; and explain that not all creditors will accept balance, fee, or interest rate reductions. In addition, the companies would have to tell consumers that their efforts may not stop creditors from trying to collect debts, disclose that the use of debt settlement may hurt a consumer's credit rating, and explain that any debt written off by creditors may be considered taxable income by the Internal Revenue Service.

The agency estimates that the proposed rules would apply to about 2,000 companies. The proposed rules are open for public comment until October 9.

FTC attorney Alice Hrdy said the agency does not have a timetable for enacting the final rules, but suggested they hoped to move soon. "Giving how pressing these issues of debt relief are to consumers, we want to get the best rules in place as quickly as possible," she said. The full proposal and instructions for submitting comments can be found on the FTC Web site.

Why it matters: One issue likely to raise debate is the question of upfront fees. The FTC is of the view that a ban on advance fees is warranted in light of the many complaints it is receiving about companies that charge fees for services they never provide. Industry representatives counter that banning up-front fees could put legitimate companies out of business, since debt settlement is frequently a lengthy, involved process.

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November 5-6, 2009

31st Annual Promotion Marketing Law Conference

Topic: "The Battle of the Brands"

Moderator: Chris Cole

Fairmont Hotel

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November 5-6, 2009

31st Annual Promotion Marketing Law Conference

Topic: "Sweepstakes & Contests: Lend Me Your Ear and I'll Sing You a Song..."

Speaker: Linda Goldstein

Fairmont Hotel

Chicago, IL

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