



FEDERAL TRADE COMMISSION PROTECTING AMERICA'S CONSUMERS

Multi-party liability

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Today we are announcing another enforcement action seeking to hold companies responsible for consumer injury caused by others or in which they directly participated in the misconduct. In this [action against Seed Consulting](#), we allege, among other things, that Seed assisted and facilitated several deceptive schemes that cheated consumers out of thousands of dollars. For example, Seed arranged credit card financing for victims of an alleged real estate seminar scam, and, once the consumers received the cards, Seed communicated the credit limits to the alleged scammers, who then knew that the consumers had tens of thousands of dollars available for payment of "tuition." We allege that Seed actively participated in the scheme, while knowing of its wrongfulness. That is just one of many cases that we have brought alleging that a company can be liable for assisting and facilitating or otherwise participating with other companies in misconduct.

In the last two years alone, we have brought enforcement actions against companies that:

- finance purchases of fraudulent products by consumers (see [Seed Consulting](#) and [Equitable Acceptance Corp.](#));
- provide fulfillment services in connection with a deceptively sold product (see [Support.com](#));
- process payments for fraudulent merchants (see [RevenueWire](#), [Qualpay](#), and [Complete Merchant Solutions](#));
- conduct fundraising for sham charities (see [Outreach Calling](#));
- provide VoIP services to scam robocallers (see [Globex](#), [Alcazar](#), [FTC warning letters](#), and [FTC/FCC warning letters](#));
- create deceptive campaigns for advertisers (see [Traffic Jams](#));
- operate an advertising platform on which deceptive claims are made (see [Tapjoy](#));
- purchase leads that were generated through deception or other law violations (see [Career Education Corp. \(CEC\)](#), [Media Mix](#), [EduTrek](#), [Grand Bahama Cruise Line](#), and [Alliance Security](#));
- profit from sales by distributors who make misleading earnings or product claims (see [AdvoCare](#), as well as MLM warning letters sent in [April](#) and [June 2020](#); or
- sell fake debts to debt collectors (see [GAFS](#)).

This general concept is nothing new. Thirty years ago, Barry Cutler, who was at the time the Director of the Bureau of Consumer Protection, espoused his “dandelion theory” of law enforcement, based on “the notion that if we just pick dandelions, they will sprout right back; we have to attack roots.”¹ According to Cutler, this meant “going after the people who are the spokes of the wheel supplying post cards, product, sales scripts, and collecting the money, in effect laundering the credit card payments, for the [scammers].”² Although we have expanded this concept to include new types of businesses, such as finance companies and providers of VoIP services, the general idea is the same: We will not permit these parties to profit from wrongdoing, and we will seek to hold them liable when they actively participate in illegal conduct, with knowledge of its wrongfulness.³

We have used a variety of legal theories to impose liability on companies where their customers, vendors, or business partners were also engaged in misconduct. For example:

- holding a principal liable for deceptive conduct by its agent (see [CEC](#) and [Progressive Leasing](#));
- means and instrumentalities – providing a false representation (or a forged or counterfeit item) to another with knowledge that it was possible that the means could be placed in the stream of commerce and passed on to consumers (see [Support.com](#) and [Nerium/Signum Biosciences](#));
- unfair conduct – action or inaction subjecting consumers to risk of substantial harm which is not reasonably avoidable, where the benefits of the action or inaction do not outweigh the costs;
- liability under the Telemarketing Sales Rule (TSR) for “causing [another] to make a call” in violation of the TSR; or “assisting and facilitating” a violation of the TSR, by providing substantial assistance and support, while knowing, or consciously avoiding knowing, that the conduct was unlawful.

The relief that we have sought in these cases has often included redress for injured consumers, but also injunctive provisions requiring vetting and monitoring of vendors or customers going forward, including:

- diligence of business partners;
- establishment of contractual requirements and service level standards for compliance and performance;
- ongoing monitoring and auditing to determine compliance; and
- requiring business partners to push down these requirements to contractors.

While we do not want to discourage companies from hiring vendors or doing business with other parties, we also do not want companies to be able to outsource illegal conduct and profit from it. Moreover, we want to encourage companies to engage in sensible vetting and monitoring of their vendors, customers and business partners. When looking for good candidates for enforcement where multiple players are involved, we look at the entire ecosystem supporting or enabling the misconduct as we consider the following factors:

- Is going after only some of the responsible parties sufficient for enforcement?
- Are market or other private incentives sufficient to induce the desired behavior amongst all participants?
- Do the companies in question have the ability to withhold needed support from wrongdoers?
- To what extent did the companies in question injure consumers or profit from their involvement?
- Would the benefits of monitoring exceed the costs?
- Is the potentially liable vendor, customer, or business partner working with defendants or respondents in other cases brought by the FTC or other law enforcement agencies?

¹ Barry J. Cutler, *Developments in Consumer Protection at the Federal Trade Commission*, 60 *Antitrust Law Journal* 123, 130 (1991).

² *Id.*

³ See, e.g., Prepared Statement of the Commission On FTC Enforcement of Operation Chokepoint-Related Businesses, before the Subcommittees on National Security and Government Operations of the Committee on Oversight and Government Reform, U.S. House of Representatives at 10 (July 26, 2018) (“When a payment processor helps a fraudulent merchant take money from consumers – either by actively helping the merchant hide its fraudulent conduct from the acquiring banks and payment networks or by turning a blind eye to the merchant’s fraud – the Commission will pursue appropriate law enforcement, to protect consumers and competition.”).



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