

**Connecticut State Bar Association**  
**Antitrust and Trade Regulation, Consumer Law and Federal Practice Sections**  
**Keynote Address**  
**March 15, 2011**

“Hot Topics at the Federal Trade Commission”

Good evening. Thank you, Bob [and Erika] for inviting me to be with you this evening, and for that kind introduction.

It is great to be here in New England. As you just heard, I came to the Federal Trade Commission from Vermont via North Carolina. When I moved to our nation’s capitol, I knew I would have to adjust a bit: to big city life, big city politics – and even a whole new lingo. In Washington, just as Steve Martin once said about the French, “they have a different word for *everything*.”

“Spin” has nothing to do with wash cycles. The “tea party” does not serve cucumber sandwiches. And “shovel ready” is not the back-up plan for when the plow truck runs out of gas.

And perhaps the hardest for me to adjust to: in D.C., “snow” means “panic” – all out, abandoned cars, closed freeways, shutdown-the-government panic. And, of course, they have their own, typically hyperbolic, words for a blizzard: “Snowmageddon” and “Snowpocalypse.” Honestly, New Englanders drive better in a white-out than Washingtonians do in chilly rain.

So it’s a pleasure to be speaking to you here tonight, secure in the knowledge that a forecast of light flurries would not have kept half of you away from this event.

I’ve seen the fairly ambitious description of my talk tonight on the Connecticut Bar’s web site: privacy, federal/state relations, competition initiatives, and the new Dodd-Frank law. Sadly, this was after I’d already agreed to speak to you. But I’ll do my best, and whatever I don’t get to, I’d be very happy to address in Q&A.

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Let’s start with privacy. I have spent much of my career focusing on privacy, so I’ve been delighted to be at the Federal Trade Commission at such an interesting and exciting time. Many of the critical players – industry, consumer advocates, regulators and policy makers – are focused on developments in privacy, especially online privacy. And as you know, “online” is no longer limited to a desk at home or in the office. Consumers are as likely to be surfing the web on a smart phone, or working on documents “in the cloud”. It’s amazing how much has changed in the last few years. These changes present tremendous opportunities for business and consumers, but also raise significant consumer privacy issues.

We have been looking at these issues very carefully at the FTC. A few months ago we issued a preliminary staff report entitled “Protecting Consumer Privacy in an Era of Rapid

Change: A Proposed Framework for Business and Policymakers.” In that report, we highlight several threats to consumer privacy that most consumers don’t even know exist.

For example, if you browse for products and services online, entities that place ads on the sites you visit might collect and share information about your activities, including your searches, the websites you visit, and the content you view. If you participate in social networking, third-party applications are likely to have access to the information you or your friends post on the site. If you use location-enabled Smartphone applications, multiple entities might have access to your precise whereabouts. And if you use loyalty cards at a grocery store or send in a product warranty card, your name, address, and information about your purchase may be shared with data brokers and combined with other data.

These practices go from creepy to downright disturbing when they involve sensitive data, like medical conditions, and sensitive users, such as children. We’ve heard that some consumers refuse to seek early treatment and online information for cancer for fear that information about their condition will get out. A Wall Street Journal article reported that some data brokers list elderly patients who suffer from Alzheimer’s disease and similar maladies as “perfect prospects for holistic remedies, financial services, subscriptions and insurance.”

We hear and read about businesses that “scrape” and “sniff” for information about particular consumers on the web – including on social network sites – and provide that information to insurers, lenders, and other financial firms. These financial firms then use this information in making decisions about whether – and on what terms – to provide financial products to the consumers.

Last fall, the Wall Street Journal published a report about a life insurer that had developed a way to use information – bought from third party data brokers – about consumers’ consumption patterns to make decisions about their life expectancy, and hence rates and coverage. Other larger insurers are also interested in using this technology.

The insurers justify this as a convenience and cost saving measure for their customers. Maybe. But I hope that doesn’t mean that your membership in the cupcake-of-the-month club and clicking on that “lose embarrassing belly flab” link starts to identify you as at risk for diabetes, causing your insurance rates to go up.

In essence, whenever we go online, we unwittingly allow invisible cookies to follow our every perusal, post, and purchase. Again without our consent, and often without our knowledge, this information – data miner’s gold – is bought and sold in a thriving market. There is no doubt that there is big money in information about what makes the American consumer click – literally.

There is also no doubt that that same money helps keep the content on the web creative and free. Most people like that, and would be quite upset if all of the companies that provide free content on the web started to charge consumers before they could access it. And many – including me – prefer the targeted ads that behavioral advertisers generate, even when we know those ads are based on unauthorized, undetected snooping.

But what if my health insurer raises my rates when I go online to cancel my fruit-of-the-month club membership and sign up for a cake baking class instead? Or what if the rates on credit cards that I'm offered go up as a result of my online searches for debt relief services?

When we enter cyberspace, we not only lose control over what information about us is collected; we also lose control over who gets access to that information and what they do with it.

The FTC is determined to return some of that control to the consumer – without stifling the rapid and exciting growth of the online market. We have called on companies to build privacy protections into their everyday business practices. We've also asked online sellers to simplify privacy policies so consumers can understand them without having to retain counsel. And finally we have called for data collectors to be clearer about how they gather data, use it, and retain it.

You may have heard about our proposal for a Do Not Track mechanism to allow consumers some meaningful control over how their information is collected and used. In December, we recommended a browser-based approach, which will allow consumers to make persistent choices that travel with them through cyberspace, communicating their tracking preferences to every website they visit. Consumers could have meaningful control over the information that is collected and the sort of targeted ads they receive.

In the three months since we issued our recommendation, browser providers like Microsoft and Mozilla, as well as the online ad industry, have all come forward with some of their own proposals to give consumers some control over how their information will be used. I commend the browser providers and those members of the ad industry who are now experimenting with how to provide these controls to consumers in a more user friendly, meaningful way. I am looking forward to seeing these proposals implemented in the very near future, so we can assess their effectiveness. I know there is also Congressional interest in these issues; indeed, Chairman Leibowitz is testifying at a Senate hearing on this topic tomorrow. In the event that industry does not step up to the plate to provide consumers with meaningful information and choice, I expect Congress to examine whether legislative action is needed.

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The evolving online marketplace has raised consumer protection issues in another arena: endorsements in advertising, including in social media – Twitter, Facebook, and the like. If you don't know that celebrity Twitter endorsements are a big deal, then you haven't been following Charlie Sheen's career lately. He joined Twitter a couple of weeks ago and within about 24 hours, had a million followers – which, according to the Guinness book, is a world record. And why did he join Twitter? Reportedly because it's a "cash cow" – after all, Kim Kardashian supposedly makes \$10,000 a tweet.

Advertising through celebrating endorsements is certainly not new. But the speed with which information travels through cyberspace has made even more apt Winston's Churchill's comment from over 50 years ago that "a lie gets halfway around the world before the truth has a chance to get its pants on." And the informal nature of communications through social media

can make some of those speedy lies and half-truths seem like the unbiased opinion of a trusted friend.

We saw that just recently when the rapper 50 Cent mentioned the penny stock H&H Imports in a series of tweets. The stock price jumped 240%. 50 Cent later tweeted two further messages to his network: one said, “I own HNHI stock. Thoughts on it are my opinion. Talk to financial advisor about it.” He followed this with: “HNHI stock is the right investment for me it may or may not be right for u! Do ur homework”.

Let’s leave aside for a moment the question of whether people who take investment advice from rappers named after money – and not a lot of money at that – deserve what they get. But H&H Imports reportedly has an interest in a line of high-end headphones called “Sleek by 50 Cent” – as does 50 Cent, needless to say. 50 Cent didn’t mention this connection or his stock ownership in his first tweets – at that time, no one knew that he stood to benefit when the stock price rose. I’m not telling you this to suggest that the FTC or any other regulatory agency has 50 Cent in its cross-hairs – I don’t know – but the episode does illustrate the speed at which information can fly through cyberspace and have dramatic effects.

A few may be skeptical enough to suspect that businesses, with a lot of potential sales, are behind many of these online endorsements. But that is not always clear to consumers.

The FTC was very quick to focus on this emerging concern. Because it is so difficult for most consumers to ascertain whether these seemingly independent reviews are actually paid advertising, we updated our “Guides on Endorsements and Testimonials in Advertising” to address new media. These guides are intended to help advertisers comply with the FTC Act.

First, the guides require advertisers to disclose when they pay bloggers and the like to endorse products. The FTC has already applied this principle in a case from last August: We stopped Reverb, a public relations agency paid to promote new video games, from having employees pose as average consumers and post game reviews on iTunes sites.

And second, the guides require that, when an advertiser pays a celebrity to talk up a product on TV interviews, on Twitter, or in other social media, the advertiser has to disclose that – plain and simple.

Social media is a whirl of technological complexity, mixed messages, and swirling conversations, but the FTC’s rules for advertising on social media, when boiled down to their essence, remain simple: Stick to the truth, and tell consumers what they are entitled to know.

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This basic rule is one that we continue to apply in our core program of cracking down on unscrupulous scammers who try to take advantage of consumers down on their luck. Our law enforcement efforts have been especially important as high unemployment and other effects of the economic downturn have continued to linger. Two weeks ago we announced “Operation Empty Promises,” an enforcement sweep that targeted scammers who falsely promise guaranteed

jobs and work-at-home opportunities. One company advertised fake jobs on careerbuilder.com and charged job-seekers fees covering supposed background checks. The company raked in at least \$8 million from defrauded consumers.

This coordinated law enforcement sweep was impressive in its scope: It included three new FTC enforcement actions, 48 criminal actions by the Department of Justice, seven civil actions by the U.S. Postal Inspection Service – and 28 actions by 10 states and the District of Columbia.

We have brought many consumer protection cases involving scams intended to take the last dime from consumers suffering from the downturn. In the past 2 years, we have brought 30 cases against scams designed to fool consumers into purchasing plans that will reduce their mortgages or prevent foreclosure, and our partners in the states have brought over 200 similar cases.

And last August, the FTC and 24 states worked together in “Operation Healthcare Hustle.” This coordinated law enforcement sweep involved a total of 54 lawsuits and regulatory actions against sellers of phony “medical discount plans” that masqueraded as health insurance.

We have also worked closely with the states in competition initiatives, including one of our highest priorities: promoting competition in health care markets. For example, in January we jointly filed suit with the State of Ohio to stop the merger of two competing hospitals in Toledo, Ohio. Our request for a preliminary injunction is pending in federal district court.

Last November, we entered a consent decree in a merger case that preserves competition among psychiatric hospitals in Delaware, Puerto Rico, and Las Vegas, Nevada. We worked very closely with state officials in that matter as well. Finally, our efforts to stop anticompetitive pay-for-delay agreements in the pharmaceutical industry continue.

Finally, I wanted to highlight a recent enforcement action that I know has made a difference here in Connecticut over this past winter. In November 2009, the Commission entered a consent decree in a merger case that preserved competition in markets for road salt in Connecticut and Maine. We worked very closely with the office of then-Attorney General Blumenthal, as well as other state attorneys general, in this investigation.

In general, our coordination with the states has never been better. Given my background in state law enforcement, I come to this issue with a perhaps unique perspective. I have been through the ups and downs of federal-state relations – mostly ups, but a few downs – and can definitively say that we are in an “up” right now when it comes to antitrust and consumer protection enforcement.

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I fully expect that we will have the same type of cooperative working relationship with the new Bureau of Consumer Financial Protection within the Federal Reserve. We have already detailed staff to the new Bureau to help get them up and running. And that is an important point:

The new Bureau is in its beginning stages. It will not be formally operational until July, and undoubtedly it will take some time after that to get to the point where it is exercising its full regulatory, enforcement, and supervisory authority. During this interim period, I believe it is critically important for the FTC – and the states – to fill the gap by continuing to use the tools and capabilities at our disposal to protect consumers during these tough economic times.

Looking further into the future, the FTC retains all of its current enforcement jurisdiction under Dodd-Frank. In fact, the FTC will have the authority to enforce certain rules promulgated by the CFPB – as the CFPB will have the authority to enforce certain FTC rules. But I don't think anyone should worry about the federal agencies playing "double team". I'm quite confident that – unfortunately – there will be plenty of work to go around. There are simply too many scam artists looking to prey on vulnerable consumers for either the FTC or the CFPB to double up on companies who violate the law. And Dodd-Frank requires the FTC and the CFPB to enter a Memorandum of Understanding to ensure that the agencies coordinate on enforcement actions and avoid wasting scarce government resources. I'm sure we will have a good working relationship with the new Bureau, just as we've had with our other partners at the federal level and in the states.

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Whether it be protecting consumer privacy or shutting down deceptive advertisers, the FTC strives to speak a language more common outside the beltway. We try to speak a language of honesty and clarity.

Because at the FTC, we believe that – as long as the rules are fair and direct – as long as individuals' rights are respected – as long as bad actors and unscrupulous scammers are kept at bay – American markets work, American businesses prosper, and the American economy produces high quality jobs.

Thank you for your attention. I'm happy to answer your questions.