

**Remarks by Commissioner Julie Brill  
United States Federal Trade Commission**

**before the  
Trans Atlantic Consumer Dialogue  
27 April 2010  
Washington, DC**

Good afternoon. I am honored to be here today, and I would like to thank TACD for the invitation to speak to you. As you may know, I am a newcomer to the Federal Trade Commission: I was sworn in as a Commissioner just a couple of weeks ago. But I am not a newcomer to working on behalf of consumers. For more than 20 years, I have worked with state attorneys general throughout the United States to protect consumers from unscrupulous business practices, first from my position in the Vermont Attorney General's office, and more recently in the North Carolina Attorney General's office. I see quite a few long-time friends among the crowd. I look forward to working with all of our transatlantic counterparts from the European Commission and European consumer organizations in the coming months and years.

TACD is an important forum for government officials and consumer advocates to speak directly to each other about critical issues affecting consumers in today's global economy. Today's agenda has covered a lot of ground. Many of the topics discussed today — consumer finance, food marketing, and privacy — are not only important to European and American consumers. They are core areas of focus at the FTC, and they are also issues that I have worked on throughout my career. I'd like to take a few minutes to share with you some of my thoughts about these issues.

First, the financial crisis. As we are all acutely aware, the recent global economic downturn was just that: global. And it has taken a toll on consumers everywhere. At the FTC, we've learned that when hard times hit, scam artists hit harder.

One of the greatest challenges that many consumers face today is holding on to their homes when they've lost their jobs, seen their working hours cut back, or just can't manage to pay their mortgage. Such financially-distressed consumers are vulnerable to schemes that promise miraculous solutions to their financial problems. If a TV advertisement promises a consumer that she can stop paying her mortgage without ruining her credit, or that she can keep her home despite a pending foreclosure, that consumer is going to do whatever the ad says. She's going to call the telephone number on the screen. She may even shell out a large sum of money — hundreds, or even thousands of dollars. But what does she get in return for her money? Nothing but empty promises. And, worst of all, after following all of the advice that she paid her last few dollars to receive, she may still lose her home, ruin her credit, and wind up in far worse straits than she was before.

The FTC has aggressively pursued these types of mortgage assistance scams. In the past two years, we've brought 28 cases against more than 150 individual and corporate defendants for violations of the FTC Act and existing rules enforced by the Commission. We have also

partnered with numerous state and federal law enforcement agencies in two nationwide sweeps, involving more than 200 lawsuits against loan modification and foreclosure rescue providers.<sup>1</sup>

Several months ago, as part of a stepped-up enforcement strategy, the Commission proposed a new rule to address unfair and deceptive acts in connection with the marketing of mortgage assistance relief services.<sup>2</sup> The Commission's proposed rule would ban providers from collecting fees prior to delivering promised results. The proposed rule also would require certain affirmative disclosures about the nature and terms of the service being provided. In addition to the proposed mortgage assistance relief services rule, we are in the planning stages for two other rules: one addressing mortgage advertising practices, and the other addressing mortgage servicing.

Mortgage scams, however, are not the only game in town. We're also facing scammers who promise consumers jobs or government grants that don't materialize. Other scammers promise that they can alleviate or eliminate consumers' ever-burgeoning credit card debts. The FTC and our state and local law enforcement partners are bringing enforcement actions in these areas, as well.

Another important area in today's environment is food marketing to children. I know this has long been a priority for TACD, and we share your concern. The statistics are alarming.<sup>3</sup> Childhood obesity is a real threat to the health of our children.

The FTC has conducted a number of meetings and workshops on food marketing and childhood obesity. We held our first workshop on this subject back in 2005,<sup>4</sup> and we had our most recent conference in December 2009.<sup>5</sup>

Industry's response to our workshops has been encouraging. A number of companies have pledged to make changes to what, and how, they advertised to children. And some changes have been made.

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<sup>1</sup> See FTC Press Release, Federal and State Agencies Target Mortgage Relief Scams (Nov. 24, 2009), available at <http://www.ftc.gov/opa/2009/11/stolenhope.shtm>; FTC Press Release, Federal and State Agencies Target Mortgage Foreclosure Rescue and Loan Modification Scams (July 15, 2009), available at <http://www.ftc.gov/opa/2009/07/loanlies.shtm>.

<sup>2</sup> See FTC Press Release, FTC Proposes Rule That Would Bar Mortgage Relief Companies from Charging Up-Front Fees (Feb. 4, 2010), available at <http://www.ftc.gov/opa/2010/02/mars.shtm>.

<sup>3</sup> See, e.g., Centers for Disease Control, Childhood Obesity — DASH/HealthyYouth Website, available at <http://www.cdc.gov/HealthyYouth/obesity/> ("The prevalence of obesity among children aged 6 to 11 years increased from 6.5% in 1980 to 19.6% in 2008. The prevalence of obesity among adolescents aged 12 to 19 years increased from 5.0% to 18.1%.")

<sup>4</sup> See Marketing, Self-Regulation, and Childhood Obesity: A Joint Workshop of the Federal Trade Commission and the Department of Health and Human Services (July 2005), available at <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/index.shtm>.

<sup>5</sup> See Sizing Up: Food Marketing and Childhood Obesity (Dec. 2009), available at <http://www.ftc.gov/bcp/workshops/sizingup/index.shtml>.

But it's not enough. Obesity rates continue to spiral out of control.

Of course, the problem of childhood obesity is not going to be solved by industry alone. As a parent, I know that children are impressionable; parents, caregivers and schools must also do their part.

This is no easy task. We all must work together. Industry — we're asking you to take the lead and do more to change the landscape.

The FTC's research into the marketing of food to children has provided us with great insight into the challenges we're facing, and what we need to do next. I won't go through all of the recommendations that we've already made based upon our in-depth research, but I'd like to share with you some highlights.

First: We need to adhere to meaningful standards for foods marketed to children based on their nutritional value. Some companies have pledged to do that. We know that in the EU, companies are making similar pledges. But many companies have not yet stepped up to the plate.

Second: Don't be cute. Just because something has "less" sugar or "reduced" calories, doesn't mean it's a good choice for children and doesn't mean it's "better for you."

Third: Companies need to do the right thing, all the time, everywhere. Not just in commercials on Saturday morning cartoons, but also in product packaging, in-store promotions, viral marketing, and other information streams that are now used to reach out to children.

Fourth: We need to wake up the media. The entertainment industry must play a role and filter the products advertised on children's programming, particularly on children's networks.

At the FTC, we are continuing to monitor industry and the media. Are they acting on our recommendations? How can we measure meaningful change? We are collecting marketing data for 2009, and we will assess whether the nutritional quality of children's food has improved since 2006.

Congress has called on the FTC and other agencies to take a more active role in tracking industry progress and in developing nutrition standards for children's food marketing. The FTC is part of an Interagency Working Group consisting of representatives from the FTC, the Department of Agriculture, the Food and Drug Administration, and the Centers for Disease Control. Congress directed this group to develop recommendations for nutritional standards for foods marketed to children ages 17 and under, and to report these recommendations to Congress.

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<sup>6</sup> See **Error! Main Document Only**. FY 2009 Omnibus Appropriations Act (H.R. 1105).

The Interagency Working Group's recommendations will not be in the form of proposed regulations. But that doesn't mean the recommendations shouldn't be taken very seriously. They will represent the collective thinking of the best experts in health, nutrition, and marketing in the government. We expect that the food industry will voluntarily comply with the final standards the Working Group develops.

While the Working Group's report has not yet been issued, I'd like to share with you some of its tentative recommendations:

1. 100% healthful foods may be marketed to children without restrictions: Children should be encouraged to eat healthful foods. Water is good. Well, not just water of course. 100% fruits, vegetables, whole grains, non-fat and low-fat dairy. These are the foods we most want to see marketed to children.
2. All other foods marketed to children should provide a meaningful contribution to a healthful diet: In other words, the food should contain a significant amount of fruit, vegetables, low-fat dairy, lean protein, or whole grain.
3. Finally, all other foods marketed to children should not exceed limits on saturated fats, trans fats, sugar, and sodium. This is really important. Entirely too many foods currently marketed to children are too high in sugar, fat, or salt.

And when I say "marketed to children," that means not just traditional advertising, but the full range of advertising techniques used in to reach this fully "wired" generation of kids. Techniques that I'm afraid have not yet been sufficiently addressed by self-regulation — product placement, video games, contests, character licensing, sports teams, and the like. To be effective, the Interagency Working Group's recommendations must apply to a wide range of advertising and marketing media.

Back in 2005, at the FTC's first conference on the marketing of food to kids, Senator Tom Harkin distilled the issue down to its essence: He urged the industry to "do what's right for our kids." That really says it all, and that's what we're urging industry to do.

Finally, I'd like to talk about another area that has been at the forefront of our consumer protection agenda, and that I know has been a focus of TACD — privacy. As some of you know, I have worked on privacy issues for 20 years. One of the FTC's most important privacy initiatives is our examination of emerging technologies and the effectiveness of existing frameworks to protect consumer privacy in an ever-changing e-landscape. Are current privacy models effective? I'm known for being plainspoken, so I won't couch my response. The answer is "no." As some of you know, I have long believed that the traditional opt-out, "notice and choice" model inappropriately places the burden on consumers to read and understand lengthy, complicated privacy policies that almost no one reads, and no one understands.

One of the FTC's recent enforcement actions drives this point home. This case against a major American department store chain, Sears, involved a failure to adequately disclose the

scope of personal information Sears collected from consumers via a downloadable software application.<sup>7</sup> According to the FTC’s complaint, Sears paid \$10 to consumers who visited the company’s websites and agreed to download “research” software that the company said would confidentially track their “online browsing.” In fact, the software collected vast amounts of information, including the contents of consumers’ shopping carts, online bank statements, prescription drug records, video rental records, passwords, and library borrowing histories. Only in a lengthy user license agreement, available to consumers at the end of a multi-step registration process, did the company disclose the extent of the information the software tracked. The FTC’s settlement with Sears requires the company to stop collecting data from consumers who downloaded the software, to destroy all data it had previously collected, and not to engage in similar conduct in the future.

The challenge today is to create an on-line ecosystem with meaningful consent and more transparency. In the context of online behavioral advertising, we have encouraged companies to come up with innovative ways to provide greater transparency in their interactions with consumers. This does not mean privacy policies hidden somewhere on the company’s web site. What is needed instead is a more dynamic form of disclosure, what some call “just-in-time” disclosure. For example, when serving a consumer an ad, a link in close proximity could say “why am I getting this ad?” The linked text could explain that the consumer’s information had been collected in order to deliver the targeted ad.

Another model that we are revisiting is one concerning consumer harm that results from privacy breaches. Currently, the formulations for consumer harm only recognize a narrow set of tangible harms in assessing whether privacy violations occurred. But we know that, in today’s environment, consumers experience a broader range of privacy-related harms, including reputational harm and unexpected or surprising uses of their information. In the department store case I just described, consumers suffered a real harm even if their wallets didn’t suffer, and even if they didn’t realize it. Most of the consumers didn’t know about the massive harvesting of information that was taking place.

Assessing emerging technologies and anticipating what lies ahead is critical in contemplating frameworks that might be more appropriate for evaluating whether certain practices impact consumer privacy. Online behavioral advertising, cloud computing, and mobile marketing are just a few areas that we are taking a hard look at to identify how they impact consumer privacy. For example, in connection with cloud computing, we are engaging with industry players to try to get a better understanding of how to define cloud computing, how the model is evolving, and what new or unique issues it might pose for consumers. Industry’s views — and actions — around these issues will likely have an impact on whether new rules are warranted.

We are also looking closely at third party applications on social networking sites and P2P file sharing. Many consumers may not be familiar with how such applications could be used to

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<sup>7</sup> *In the Matter of Sears Holding Corp.*, FTC Docket No. C-4264 (Decision and Order entered Sept. 9, 2009) (press release available at <http://www.ftc.gov/os/caselist/0823099/index.shtm>).

gain access to their data. For instance, consumers may not be aware that the software they download to share music files can give strangers access to all of the personal data from their computers.

Another privacy issue we are focusing on is health privacy. The electronic processing and storage of personal health records allows that information to be shared more readily and no doubt will improve delivery of health care through greater accuracy in tracking disease, creating personalized medicine, and medical research. But more universal use of electronic health records will also entail privacy and security risks. Because of these concerns, the Recovery Act of 2009 required health record breach notification rules to be put in place. These rules, which are now effective, are enforced by the FTC and the Department of Health and Human Services.<sup>8</sup>

Breach notification is not a new area to me — more than 45 states have legislation requiring notification of security breaches involving personal information. Indeed, as some of you know, the states have long been the national leaders in the area of security breach notification. I am pleased to see that the federal government is catching up to the states in this area.

Another FTC priority in the privacy realm is international enforcement cooperation. As in many other consumer protection areas, we work directly with our counterparts at a national level and also in the European Commission. We also work through numerous international organizations and are actively engaged in a number of efforts devoted to privacy issues in the international arena. The OECD and APEC have brought jurisdictions together to develop solutions to challenges that arise due to differing privacy frameworks. The FTC — along with several other privacy enforcement agencies within Europe and elsewhere, including Canada, Australia, New Zealand, and Israel — recently spearheaded a project to create the Global Privacy Enforcement Network, a new network devoted to fostering greater cooperation in the enforcement of privacy laws. This effort builds on the work being done within the OECD and APEC. There are now 12 agencies participating in the Global Privacy Enforcement Network, and we expect that others will express interest in joining us.

Thank you so much for your attention. It has been a very fruitful day, and I look forward to continuing to work with advocates and officials on both sides of the Atlantic to ensure that we develop policies and enforce laws that protect and benefit all consumers.

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<sup>8</sup> See Health Breach Notification Rule, 74 Fed. Reg. 42962 (Aug. 25, 2009) (codified at 16 C.F.R. Part 318), available at <http://www.ftc.gov/os/2009/08/R911002hbn.pdf>.