



Office of Commissioner
Rohit Chopra

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

STATEMENT OF COMMISSIONER ROHIT CHOPRA, JOINED BY COMMISSIONER REBECCA KELLY SLAUGHTER

*In the Matter of Sunkey Publishing
Commission File Number 1623211*

September 6, 2018

Summary

- The fake military recruiting scheme perpetrated by Sunkey Publishing and Fanmail, their related entities, and their executives, Christopher Upp, Mark Van Dyke, Lon Broliar, and Andrew Dorman, harmed young people looking to serve their country, as well as the public more broadly. Not only was the alleged conduct unlawful, it was also un-American.
- Colleges and universities may be enabling disturbing conduct in the lead generation industry. Their failure to oversee their vendors raises serious concerns.
- While it is difficult to quantify the damage done to Americans whose dreams were crushed or whose time and money were wasted, there is no question that the injury was substantial and cannot be undone.

Discussion

Sunkey and Fanmail are lead generators. As described in an FTC staff report, lead generation is the process of identifying and cultivating individual consumers who are potentially interested in purchasing a product or service.¹ The rise and ubiquity of online search has helped marketers connect companies to potential customers, or “leads.”

Colleges and universities purchased leads from these companies, presumably to enroll students into their programs, which are financed by student loans and other education benefits. But according to the FTC’s investigation, Defendants obtained these leads by posing as military recruiters. How they did so is disturbing.

Consider a 17-year-old who is interested in joining the Army after graduation. She searches online for Army recruitment information, and encounters an ad reading “Army.com: Enlist,

¹ See FTC Staff Perspective, “Follow the Lead” Workshop, September 2016, available at https://www.ftc.gov/system/files/documents/reports/staff-perspective-follow-lead/staff_perspective_follow_the_lead_workshop.pdf.

Reenlist, Benefits.” Believing she has found exactly what she was looking for, she clicks a link to Army.com and arrives at an official-looking website with the text “Be More. Join or reenlist today.” The website requests her personal information and she provides it, believing it is being collected on behalf of the Army. And the response she receives is encouraging: a message that reads: “We Salute You! You have chosen the path of honor through service to your country.”

But it is not long before she is steered away from military service. First, she encounters a message on the Army.com website advising her to consider non-military options:

Please be aware that our military is currently downsizing. Army.com wants you to know that there are more ways for you to serve your country than just military service. If you had a college education you could contribute through engineering, science, law, health care, and more. For every soldier that serves our country there are many more citizens who provide the technology and service that give them the ability to serve safely. We urge you to understand all your options as you make the choices that shape the rest of your life....²

Then, someone claiming to be calling on behalf of the Army calls her and suggests she instead consider enrolling in a “military-friendly” college, perhaps one that was “recommended” by the Army. This causes her to question whether she was really cut out for military service, and she agrees to hear more about the college instead.

But this was all a ruse. According to the FTC’s complaint, Army.com is not an official recruiting channel but simply a website set up by the Defendants to harvest leads -- individuals who may be ripe for recruitment by colleges. Would-be recruits who turn over their information are providing it not to the Army,³ but to a network of marketers intent on selling and reselling it.

And the person who contacts the “lead” over the phone on behalf of the Defendants is not a military recruiter but a salesperson whose goal is to generate interest in whichever school or schools purchased the lead.

Thousands of Americans have been affected by this scheme. Because of the hard work by FTC staff, the Court’s order requires the Defendants to cease their deceptive practices and turn over military-themed domain names as civil penalties.

Lead Generation in the Higher Education Industry

The lead generation industry has been of interest to the FTC for many years. As the agency noted following its 2015 workshop on lead generation,⁴ the industry is not new -- companies have long sought to identify potential customers. What is new is how sophisticated and data-intensive the

² Complaint, *In the Matter of Sunkey Publishing.*, File No. 1623211, at 27.

³ The Department of Defense requires its marketing contractors to route leads through a central and secure clearinghouse. Defendants do not do so, routing them instead to their call centers or client schools. *See* Complaint at 28-29.

⁴ *See* FTC Follow the Lead Workshop, *supra* note 1.

industry has become. Today, an ecosystem of publishers, affiliates, and aggregators collect vast amounts of information on American consumers, and sell and resell that information to lead-hungry merchants, such as the schools here.

While this model can offer benefits, it can also invite abuse. I am concerned that buyers of these leads may be turning a blind eye to the deceptive tactics employed by lead generators.⁵ What is particularly concerning about this case is that the buyers were colleges and universities that enjoy substantial subsidies from taxpayers.

I believe it would be in the public interest to disclose Defendants' full list of purchasers of their leads, regardless of whether they are public or private, or whether they are for-profit or nonprofit.⁶ We should all be worried that some institutions of higher education see students as nothing more than potential revenue and are willing to turn to outfits employing unsavory tactics to meet their financial objectives.⁷

Harm to Consumers and the Broader Public

When schools and marketers collude to steer young people away from military service, it enriches them but costs all of us. Preying on young people who want to serve our country in uniform is particularly troubling.

The United States already faces recruitment challenges for our military.⁸ Diverting young people from that path of service may not only have crushed their dreams, but also deprived the five service branches the chance to carefully consider them. This loss is difficult to quantify, but it is

⁵ Unfortunately, this is not an isolated incident. In 2012, the Office of Servicemember Affairs at the Consumer Financial Protection Bureau referred a similar matter to the state Attorneys General for action. The Kentucky Attorney General led a multistate investigation against QuinStreet (NYSE: QNST), a lead generator that deceptively targeted veterans online on behalf of for-profit colleges. After action by the Attorneys General, GIBill.com is now under the ownership of the Department of Veterans Affairs. *See* Press Release, Office of the Kentucky Attorney General, Attorney General Conway Announces Win for Veterans against Predatory Practices (Jun. 27, 2012), available at <http://migration.kentucky.gov/Newsroom/ag/quinstreetavc.htm>. Last year, the FTC brought claims against Victory Media, which targeted service members through magazines like "Guide to Military Friendly Schools." *See* Press Release, Fed. Trade Comm'n, Victory Media Settles FTC Charges Concerning Its Promotion of Post-Secondary Schools to Military Consumers (Oct. 19, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/10/victory-media-settles-ftc-charges-concerning-its-promotion-post>. The targeting of service members, veterans, and military families by predatory businesses requires continued vigilance by law enforcement agencies.

⁶ Under its rules, the Commission may vote to initiate a process to release this information, which may be appropriate under certain circumstances.

⁷ This agency has taken the position that companies can be liable for deceptive third-party marketing conducted on their behalf, and courts agree. *See, e.g.* Press Release, Fed. Trade Comm'n, U.S. Circuit Court Finds Operator of Affiliate Marketing Network Responsible for Deceptive Third-Party Claims Made for LeanSpa Weight-loss Supplement (Oct. 4, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/10/us-circuit-court-finds-operator-affiliate-marketing-network>.

⁸ Among Americans aged 17 to 24, 71% are considered unqualified for military service, while only 4% of the remaining 29% would consider a career in military service. *See* Devon L. Suits, *Esper: Army to Focus on Recruiting, Training Modernization to Prepare for Future Conflict*, United States Army, May 2, 2018, available at https://www.army.mil/article/204675/esper_army_to_focus_on_recruiting_training_modernization_to_prepare_for_future_conflict.

undoubtedly substantial for those affected.⁹ It is therefore critical that the FTC continue to vigorously pursue deceptive lead generators and those who enable them.¹⁰

Conclusion

Companies that prey on current and prospective service members not only harm military families, but also the broader American public. They need to be stopped cold. By halting a scheme in which marketers posed as military recruiters to harvest and sell young people's personal information, the settlement announced today does just that, and I strongly support it.

Colleges and universities should take greater care to ensure that they are not enabling schemes like the one perpetrated by Sunkey Publishing, Sun Key Publishing, WhereData, Fanmail, Christopher Upp, Mark Van Dyke, Lon Broliar, and Andrew Dorman.

⁹ Were more funds available, restitution for Defendants' victims -- even if difficult to measure -- would have been an ideal outcome in this case.

¹⁰ I will observe with interest whether institutions of higher education and online search advertising platforms take any steps with respect to deceptive lead generation.