

**ABA Breakfast with the Bureau Directors  
56<sup>th</sup> Annual Antitrust Spring Meeting**

**Remarks of Lydia Parnes  
March 28, 2008**

Good morning. Susan, thank you for your kind introduction. It's a pleasure to be here this morning to talk about the Bureau of Consumer Protection. But, any discussion this morning will be a lot different because, at the FTC we are in a bit of a mini-transition. Chairman Majoras announced her resignation last month and is leaving the FTC this week after four highly successful years. Yesterday, the President announced that he is appointing Bill Kovacic the FTC's 57<sup>th</sup> Chairman. Bill is no stranger to the FTC or the Antitrust Bar, and we are very excited about his appointment.

Over the past several weeks, I have been reflecting upon the many transitions that I have experienced at the FTC. I know that at some agencies transitions can be a painful process, a period of uncertainty, a time to clean house and reverse course. I have to say, that's just not my experience at the FTC. For a long time, transitions at the FTC have been very smooth. I anticipate that will continue to be the case in the foreseeable future.

One of the reasons we have been so successful – particularly on the consumer protection side – is that there is widespread agreement on our mission. A great illustration of this is a conversation that took place between Bob Pitofsky and Tim Muris at the FTC 90<sup>th</sup> Anniversary Symposium held in September 2004. That conversation was memorialized in an ABA article, “More Than Law Enforcement: The FTC’s Many Tools – A Conversation with Tim Muris and Bob Pitofsky.”<sup>1</sup>

In this article, Tim emphasized that “in most areas, there was great continuity” from Pitofsky’s tenure. For example, he noted that “many ...initiatives during [Muris’] tenure can be

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<sup>1</sup>Muris, Timothy J. and Robert Pitofsky, “More than Law Enforcement: The FTC's Many Tools - A Conversation with Tim Muris and Bob Pitofsky,” *Antitrust Law Journal*, Vol. 72, No. 3, pp. 773-860, 2005.

traced back to the 1995 globalization hearings” and other Pitofsky initiatives. They both agreed passionately that combining consumer protection and competition missions in one agency is, as Bob put it, a “winning combination.” You don’t need me to tell you that Debbie and Bill are on the same page.

In addition, Debbie, like Bob and Tim before her, placed tremendous emphasis on the FTC’s non-enforcement tools, what Debbie has called our “R & D” role. Interestingly, Tim gives Bob the credit for “revitalizing this role” for the agency. Calls for robust industry self-regulation are another constant, as Tim noted that he “share(s) Bob’s view that self-regulation can provide a better, more flexible response than the government....” Now consider Debbie’s April 2006 remarks that “[a]t the FTC we have long believed that well-constructed industry self-regulatory programs offer several advantages for consumers, regulators, and the industry.”

Although there has been remarkable continuity in BCP, every Chairman, every Bureau Director, has left behind an impressive legacy of “firsts.” And so what I’d like to do this morning is talk about some BCP firsts that have occurred over the past eight or so years. Because “firsts” – like the first automobile, the first trans-Atlantic flight, the first transcontinental railway – demonstrate the innovation, the nimbleness, and the ability to address new challenges that makes the FTC, and BCP in particular, effective.

Now I did say that I’m going to look back on the past eight or so years. Obviously, I have not been Bureau Director for eight years. However, I think of this story like a painting by George Seurat. In order to understand the painting – which is thousands of dots – you need to back up. Similarly, to understand the past few years at the FTC – you need to back up in time. My intent is not to take credit for the accomplishments of my predecessors or the successes of BCP over the past decade. In fact, if you really want to know who is responsible for the

successes of BCP, look to the Bureau's senior managers, many of whom are here, as well as the fabulous BCP staff down the block.

I can't run through every "first" in the short time that I have this morning, nor can I touch on every BCP program. But these "firsts" help paint a picture of the evolution of BCP and some of our more innovative approaches to protecting consumers in the still young 21<sup>st</sup> Century.

## **I. Privacy and Data Security**

Over the past eight years, we have had many firsts in the privacy and data security arena. In the FTC's **first** data security case, just over six years ago, Eli Lilly and Company settled charges regarding the unauthorized disclosure of sensitive personal information collected from consumers through its Prozac.com Web site. As part of the settlement, Lilly was required to implement appropriate security measures to protect consumers' privacy.<sup>2</sup>

Eli Lilly was a deception case: we alleged that Lilly promised to take steps appropriate under the circumstances to maintain and protect the privacy and confidentiality of personal information. But deception is just one part of our aggressive data security enforcement program. The case against BJ's Wholesale Club filed in 2005 marked the **first** time the FTC brought a data security case based on unfairness rather than deception.<sup>3</sup>

As of yesterday, when we announced settlements with Lexis Nexis and TJX, the Commission has brought 20 law enforcement actions against companies that have failed to take reasonable measures to keep consumer information secure. Both the Lexis Nexis and TJX cases

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<sup>2</sup>*In the Matter of Eli Lilly and Company*, File No. 012 3214 (January 2002), available at <http://www.ftc.gov/opa/2002/01/elililly.shtm>.

<sup>3</sup>*In the Matter of BJ's Wholesale Club, Inc.*, File No. 042 3160 (June 2005), available at <http://www.ftc.gov/opa/2005/06/bjswholesale.shtm>.

allege that the companies engaged in unfair practices by failing to employ reasonable and appropriate security measures to safeguard sensitive data. As in our other data security cases, the settlements require the companies to implement comprehensive data security programs and third-party assessments biennially for 20 years.<sup>4</sup>

We also obtained our **first** “eight figure” civil penalty in a data security case. Consumer data broker ChoicePoint, Inc paid \$10 million in civil penalties and \$5 million in consumer redress to settle charges that its security and record-handling procedures violated consumers’ privacy rights and federal laws.<sup>5</sup> This was not just the **first** “eight figure” civil penalty, but the largest consumer protection civil penalty in FTC history.

Whether we allege violations of the FTC Act, FCRA, or GLB Safeguards Rule, our message is the same – companies must maintain reasonable and appropriate measures to protect sensitive consumer information.

We have also been active on the education front. In 2007, we released our **first** ever interactive online video tutorial on data security.<sup>6</sup> In its first month online, it was accessed over 21,000 times. Business employees who watch the tutorial can create and download their own customized tip sheets on data security. If you haven’t seen this video yet, go home, get online, and check it out.

Finally, I cannot leave privacy without mentioning the Do Not Call Registry. The **first**

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<sup>4</sup>*In the Matter of TJX*, File No. 072-3055, available at <http://www.ftc.gov/os/caselist/0723055/index.shtm>; *In the Matter of Reed Elsevier, Inc. and Seisint, Inc.*, File No. 052-3094, available at <http://www.ftc.gov/os/caselist/0523094/index.shtm>.

<sup>5</sup>*United States v. Choicepoint*, Civ. Action No. 1-06-CV-0198 (N.D. Ga. filed January 30, 2006), available at <http://www.ftc.gov/os/caselist/choicepoint/choicepoint.shtm>.

<sup>6</sup>See [www.ftc.gov/infosecurity](http://www.ftc.gov/infosecurity).

telephone number was entered on the Registry in 2003. Within the first 72 hours, over ten million telephone numbers had been entered. By its effective date in October 2003, the Registry contained over 53 million telephone numbers and now tops 155 million numbers. By any measure, the Registry has been a phenomenal success. And as I'm sure that you all now know, those telephone numbers will remain on the Registry permanently.

The National Do Not Call Registry would not have been a huge success without a commitment by us to enforce the law - and enforce we have! We filed the **first** Do Not Call case in May 2004 against National Consumer Council.<sup>7</sup> Since then, we have brought 36 cases alleging Do-Not-Call and/or Abandoned Call violations, resulting in more than \$16 million in civil penalties and more than \$8 million in consumer redress or disgorgement ordered.

## **II. Technology**

Next, I'd like to mention some firsts in the technology area. In October 2004, the Commission filed its **first** spyware case, Seismic Entertainment, alleging that the defendants unfairly downloaded adware and other software programs to consumers' computers without authorization and then advertised "anti-spyware" products to these same consumers.<sup>8</sup> To date, we have filed 11 spyware cases, which established three key principles:

1. A consumer's computer belongs to him or her, not the software distributor.
2. Buried disclosures about software and its effects are not adequate, just as they have never been adequate in traditional areas of commerce.

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<sup>7</sup>*FTC v. National Consumer Council*, Civ. No. SACV04-0474CJC(JWJX) (C.D. Cal., filed May 2004), available at <http://www.ftc.gov/os/caselist/0323185/0323185.shtm>.

<sup>8</sup>*FTC v. Seismic Entertainment Inc., et al.*, Civ. No. 04-377-JD (D.N.H. filed Oct. 6, 2004), available at <http://www.ftc.gov/os/caselist/0423142/0423142.shtm>.

3. If a distributor puts an unwanted program on a consumer's computer, the consumer must be able to uninstall or disable it.

2004 also was the year that the FTC filed its **first** CAN-SPAM cases against two sellers who hired spammers to promote their products. The defendants' activities generated nearly one million consumer complaints. The FTC alleged that the defendants – Phoenix Avatar and Global Web Promotions – clogged the Internet with millions of deceptive messages.<sup>9</sup> To date, we have filed 31 cases enforcing the CAN-SPAM Act, in addition to the 63 cases involving spam that predate the Act.

Our work in the spam arena continues. I expect that later this year, the FTC will publish in the Federal Register the CAN-SPAM discretionary rulemaking.

### **III. Advertising**

Data security, privacy, and technology are not the only emerging issues that the FTC is addressing. Let me mention two “firsts” in more traditional advertising areas.

Back in July 2005, the Commission and the Department of Health and Human Services co-hosted the **first** workshop to address the role of industry and self-regulation in combating childhood obesity.<sup>10</sup> The workshop report, published in April 2006, contained various recommendations for product reformulation; improved public education about nutrition and fitness; use of popular licensed characters to promote nutritious, low calorie foods; and

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<sup>9</sup>See Press Release, “FTC Announces First CAN-SPAM Act Cases,” Apr. 29, 2004, <http://www.ftc.gov/opa/2004/04/040429canspam.shtm>.

<sup>10</sup>See <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/index.shtm>.

modification of the Better Business Bureau's guides with respect to advertising to children.<sup>11</sup>

At a follow-up forum held in July 2007,<sup>12</sup> the FTC and HHS were able report significant progress in addressing these issues, particularly by the Council of BBB's Children's Food and Beverage Advertising Initiative. To date, 13 major food and beverage companies have joined the Initiative, pledging either to direct no advertising to children under 12 or generally to limit such advertising to the promotion of foods meeting certain nutritional criteria. If any members of the audience represent companies in the food industry, I urge you to encourage your clients to join this important initiative.

In another first in this area, the Commission, at the direction of Congress, is preparing the **first** comprehensive study of expenditures and activities in the marketing of foods to children and adolescents. Last August, we sent compulsory process orders to 44 food, beverage, and quick-serve restaurant companies to gather data for the study, which will look beyond measured media, like television and print, to all forms of marketing and promotion. We are looking at how the food industry uses such techniques as product packaging, in-store promotions, character licensing, event sponsorship, and word-of-mouth marketing. No researcher has ever had access to the data we are collecting on many of these marketing techniques. In many cases, even the food companies themselves have never before compiled the data.

The second "traditional advertising" area that I'd like to mention involves green

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<sup>11</sup>See "Perspectives on Marketing, Self-Regulation, and Childhood Obesity: A Report on a Joint Workshop of the Federal Trade Commission and Department of Health and Human Services," April 2006, *available at* <http://www.ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation&ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf>.

<sup>12</sup>See <http://www.ftc.gov/bcp/workshops/childobesity/index.shtml>.



marketing. Although companies have been making environmental claims for years, over the past year, there has been a virtual explosion of green marketing, with new claims such as “sustainable” and “carbon neutral,” that are not covered by our existing Green Guides. In response, the Commission accelerated its 10 year review of the Guides, and in January, held the **first** in a series of public workshops to explore these emerging issues.<sup>13</sup> The first workshop examined two new products – carbon offsets, which purportedly reduce greenhouse gas emissions, and renewable energy certificates, which serve as a new means to market green energy. The next workshop, focusing on green packaging, will be held in April, and you can expect additional workshops later this year.

#### **IV. Financial Firsts**

I’d also like to highlight some “financial practices firsts” because the Commission’s actions to protect consumers of financial services are a critical part of its consumer protection work. This is the **first** time in a long time we have a Division of Financial Practices that is truly devoted to financial issues. Until January of 2006, DFP also was responsible for the Commission’s work in the areas of privacy, data security, and credit reporting. Now, we have a Division of Privacy and Identity Protection dealing with these issues, and a new Division of Financial Practices to focus entirely on the financial services industry, including mortgage advertising, credit deception, and debt collection. Our program is designed to protect consumers at every stage of the consumer credit life cycle, from the advertising and marketing of financial products to debt collection and debt relief.

In the past decade, the agency has brought 21 actions focused on the mortgage lending

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<sup>13</sup>See Press Release, “FTC Reviews Environmental Marketing Guides, Announces Public Meetings,” November 26, 2007, available at <http://www.ftc.gov/opa/2007/11/enviro.shtm>.

industry, with particular attention to entities in the subprime market. These cases have alleged that mortgage brokers, lenders, and servicers have engaged in unfair or deceptive practices and have collectively returned more than \$320 million to consumers.

In addition, last fall the FTC conducted its **first** mortgage advertising sweep, in which we warned over 200 mortgage brokers and lenders, and the media outlets that carry their ads, that their advertising claims may violate federal law. The Commission currently is conducting several investigations of mortgage advertisers and will continue to monitor claims made in mortgage advertising.

In another **first** in the subprime area,, the FTC is participating in the **first** Interagency Pilot Project to review subprime lender conduct. I can't overstate the importance of this project. Working with the Federal Reserve Board, the Office of Thrift Supervision, and two associations of state regulators, we are jointly conducting consumer protection compliance reviews and investigations of nonbank subsidiaries of bank holding companies with significant subprime mortgage operations.

The Commission's actions to protect consumers of financial services extend beyond mortgage lending to a wide range of non-mortgage financial services. In a recent "**financial first**," this year three payday lenders agreed to settle FTC charges that their advertising violated the Truth in Lending Act by failing to provide information that would help consumers compare the costs of credit.<sup>14</sup>

Protecting consumers from debt collection abuses is a staple of the Commission's

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<sup>14</sup>*In the Matter of CashPro*, No. 072-3203 (February 2008); *In the Matter of American Cash Market, Inc.*, No. 072-3210 (February 2008); *In the Matter of Anderson Payday Loans*, No. 072-3212 (February 2008), available at <http://www.ftc.gov/opa/2008/02/amercash.shtm>.

mission. In fact, the agency receives more complaints about third-party debt collectors than it does about any other industry. In October 2007, we held our **first** workshop to examine the technological, economic, and legal developments in debt collection and their impact on consumers and businesses.<sup>15</sup>

The Commission also aggressively pursues abusive debt collection practices. In another **first**, last November we announced the largest civil penalty in a debt collection case – \$1.3 million.<sup>16</sup>

The Commission has also prosecuted more than 60 companies engaged in deceptive debt negotiation, debt consolidation, and credit repair practices. In its largest case, the FTC sued AmeriDebt, Inc., a purported credit counseling organization. The Commission alleged that AmeriDebt deceived consumers with claims that it was a non-profit organization that provided bona fide debt counseling services. On the eve of trial, AmeriDebt's founder agreed to a \$35 million settlement.<sup>17</sup>

## V. Looking Ahead

I have provided you with a sense of what we are doing, but before I close, I'd like to highlight some particularly important initiatives that are on the horizon.

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<sup>15</sup>See <http://www.ftc.gov/bcp/workshops/debtcollection/index.shtml>.

<sup>16</sup>*United States v. LTD Financial Services, Inc.*, Civil Action No.: H-07-3741 (S.D. Tex. filed Nov. 5, 2007), available at <http://www.ftc.gov/os/caselist/0523012/index.shtm>.

<sup>17</sup>See *FTC v. AmeriDebt, Inc.*, No. 03-3317 (D. Md. Jan. 9, 2006) (Stipulated Final Judgment and Permanent Injunction as to DebtWorks, Inc. and Andris Pukke). Subsequently, the court-appointed receiver determined that primary defendant Andris Pukke had hidden assets from the FTC, and the court entered a judgment requiring him to turn over tens of millions of dollars' worth of additional assets. Because he resisted turning over his assets even after the court found him in contempt of court, the Court ordered his incarceration pending full cooperation, lasting almost a month.

First, I'd like to touch on the subject of behavioral advertising. As you know, last November we hosted a Town Hall meeting on behavioral advertising – the practice of tracking consumers' activities online to provide advertising targeted to individual consumers' interests.<sup>18</sup> In December 2007, drawing from the themes we discussed at the Town Hall, the FTC staff issued for public comment proposed self-regulatory principles for behavioral advertising.<sup>19</sup> At a high level, these principles address transparency, consumer control, reasonable security, and the use of sensitive data. The staff intentionally drafted the principles in general terms to encourage comment and discussion by a broad group of stakeholders. And so, I encourage those of you involved in this space to submit your written comments. Based on requests from stakeholders, we extended the deadline to file comments until April 11. We will carefully review the comments and determine next steps.

Second, to learn more about the many technological developments that are changing the marketplace – and to assess their effect on consumers and our consumer protection agenda – the FTC held hearings in 2006 on “Protecting Consumers in the Next Tech-ade.”<sup>20</sup> Later today, we are releasing a staff report that summarizes the major trends identified at the hearings. The report highlights the areas that are likely to influence the FTC's consumer protection agenda in the near term and discusses how BCP will respond to the challenges presented by the global,

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<sup>18</sup> See <http://www.ftc.gov/bcp/workshops/behavioral/index.shtml>.

<sup>19</sup> See Press Release, “FTC Staff Proposes Online Behavioral Advertising Privacy Principles,” December 20, 2007, available at <http://www.ftc.gov/opa/2007/12/principles.shtml>.

<sup>20</sup> See <http://www.ftc.gov/bcp/workshops/techade/who.html>.

high-tech marketplace.<sup>21</sup> Here are some thoughts:

- Just as we have always done, we will apply existing policies and create new ones, as necessary, to address emerging challenges regarding new technologies and consumer products.
- We'll work to ensure that consumers' private information, which will increasingly be collected, stored, and used, is maintained securely.
- We'll monitor the ever-expanding number of marketing channels in the worldwide marketplace for fraud and unlawful activities.
- We'll collaborate with law enforcers from around the world, and
- We'll continue to encourage self-regulatory initiatives to benefit consumers.

Thank you. I would be happy to take any questions.

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<sup>21</sup>See "Protecting Consumers in the Next Tech-Ade: A Report by Staff of the Federal Trade Commission," (Spring 2008), *available at* <http://www.ftc.gov/os/2008/03/P064101tech.pdf>.