



Federal Trade Commission

MARKETING AND ADVERTISING IN THE NEXT TECH-ADE

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Introductory Remarks
at the
Public Hearings on Protecting Consumers in the Next Tech-Ade

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Good morning. I'm Tom Rosch. I'm pleased to be able to offer some introductory comments – albeit through the “magic” of videotape – to open this morning’s panel on “Marketing and Advertising in the Next Tech-Ade.”

I'd like to start out by highlighting some of the types of issues that confronted the FTC's Bureau of Consumer Protection in the early 1970s, when I was a BCP staff member. During that period, one of our top law enforcement priorities was to target national advertising that we thought was either false or unsubstantiated. These were high profile cases that communicated the message that the cops were on the beat. The remedies we sought were “all product” orders that would serve as a basis for civil penalties if the respondent ever engaged in false or unsubstantiated advertising again, regardless of what product it advertised.

¹These comments are my own, and do not necessarily reflect the views of the Commission or of any individual Commissioner. I would like to express my gratitude to Beth Delaney and Serena Viswanathan, my attorney advisors, for their contributions to this speech.

The Commission also used its rulemaking authority during the 70s – issuing rules to regulate marketing practices in a number of industries.

We were also interested in protecting children. Back then there was a concern about the large amount of television advertising directed to young children, especially by so-called “host sellers” – characters from children’s programming who advertised the sponsor’s products. The Commission also explored a possible rule restricting the marketing of sugary foods to children, but ultimately terminated the rulemaking, in part because although the record showed some cause for concern, there did not appear to be a way to develop workable rules to address those concerns.

I should also point out what we *weren’t* concerned about. For example, back in the early 70s, two of today’s biggest consumer protection issues – privacy and data security – weren’t even on the horizon.

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Now fast forward to the mid 1990s. The Commission held the first set of hearings on the “High-Tech, Global Marketplace,” which focused primarily on communication technologies – the telephone, television, computer and internet. The Commission successfully predicted many changes that these technologies would foster – things like the unlimited amount of information that would be available to consumers; the development of a global marketplace; and dramatically

improved shopping convenience.

At the same time, the Commission didn't see coming a number of things that have adversely impacted consumers and their welfare – namely, spam, spyware, and data security vulnerabilities. Another development that was underestimated, and that has changed the way some of us experience life today, is the extent to which people can now create and share content by using technologies like the computer, telephone and internet. Things like chat rooms, message boards, blogs and social networking sites have affected the way that people communicate with each other and share thoughts. Broadband and high speed internet access allow people to share digital photographs, music and video – to an extent and in ways that were almost unimaginable 10 or 15 years ago. It's also worthwhile to note that such technological innovations may come with price tags – privacy implications and copyright issues, to name a few.

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So, the question now is, “what's the future of consumer protection in this arena”? It's first essential to identify some of the underlying technologies that are going to propel us forward in the next decade. Broadband and high speed internet access will continue to be a major mechanism for communication and the distribution of content. Already we've seen the deployment of Voice Over Internet Protocol or “VoIP,” and the dramatic popularity of the video and audio sharing capabilities of websites such as YouTube and My Space. Hand in hand with this technology comes the freedom of wireless communication. Other technologies, such as

Radio Frequency Identification or “RFID,” will continue to develop to offer a broad scope of consumer and business convenience and benefits, such as payment processes, inventory tracking systems, and identification mechanisms.

So, what are the underlying consumer protection issues that we’ll need to be concerned about in the near future? Most of them are the issues that we’re grappling with now – and have grappled with in the past – basic fraud and deception; privacy and data security; the importance of informed consumer choice; and protecting children.

Fortunately, in many instances, our “traditional” methods of addressing consumer protection issues will continue to serve consumers well. For example, *law enforcement* is an important tool that we’ll continue to use in our fight against deceptive and unfair practices, whatever form they may take.

Additionally, *education* will remain an important component in the future of consumer protection. By “education,” I refer not only to the agency’s efforts to educate consumers, but also to its efforts to inform policymakers and legislators.

Last but not least, it’s important to recognize that some of these emerging consumer protection issues will best be addressed through *self-regulatory initiatives* or *by private sector participation in our educational efforts*.

But, the development and deployment of new technologies will also pose some *new*

challenges for us. For example, *monitoring advertising and marketing* is a bread-and-butter investigatory technique used by FTC staff. In a growing media universe, that's a daunting task. Today, advertising shows up not just in television commercials and print ads, but on websites and through pop-up ads, on cell phone screens, in email and text messages, and through specially targeted ads that only reach a specific audience. In addition to all these new outlets, there are also new "types" of advertising and marketing – things like "buzz" and "viral" marketing, where the consumer is the one who passes on the commercial message to other consumers.

Another ongoing challenge will be the *increasing participation of children and "tweens"* in the marketplace. Kids today have an array of interactive electronic devices and access to technology with which their parents may be quite unfamiliar.

Of course, kids aren't the only vulnerable audience. *Consumers and businesses that are unfamiliar with new technologies* may need special attention. For example, there's a growing problem with unsophisticated sellers and business entities who fail to properly safeguard consumer information.

Finally, *globalization* of the marketplace continues to pose an ongoing challenge in the consumer protection arena. Using Internet and long-distance technology, unscrupulous businesses and spammers can strike quickly on a global scale, victimize thousands of consumers, and disappear without a trace. We'll continue to work to get the US Safe Web Act passed, in order to address the challenges posed by the globalization of fraudulent, deceptive and unfair practices.

To wrap up, although we have many tools at our disposal, we need to continue to keep abreast of new and emerging technologies, work with other government agencies as well as private sector entities, and develop and fine tune our responses to this constantly changing environment. Thank you for your input.