

BUCKLEY

Federal Trade Commission Practice

The Federal Trade Commission has for decades pursued cases involving allegations of deceptive, misleading, and illegal marketing, lending, servicing, and collection practices, relying on its independent investigative power and ability to bring enforcement actions and litigate cases. Following changes in leadership and priorities, the FTC has strengthened the scope and intensity of its enforcement activity targeting the offering and sale of consumer financial products and services. This has significant implications for financial services companies within its jurisdiction — and for banks, thrifts, and credit unions that have third-party relationships with these companies.

Our attorneys have extensive experience responding to civil investigative demands, defending clients in enforcement actions, and litigating against the FTC. We defend companies in FTC investigations involving allegations of unfair or deceptive acts or practices (UDAP), unfair debt collection practices, deceptive marketing practices, illegal lending and credit reporting practices, unfair servicing practices, violations of consumer privacy rights, and failure to maintain security for sensitive consumer information — all of which are FTC priorities.

The FTC has also made policing fintech companies a priority. Similar to our firm's substantive depth in financial services, our firm's extensive Fintech practice, highly ranked by *Chambers*, is cross-collaborative with our FTC practice. We are deeply involved in helping companies bring emerging business models and technologies and products to market, and our representations across the fintech spectrum augment our extensive enforcement and litigation capabilities.

The FTC often works closely and conducts parallel investigations with other government entities, including state attorneys general and the Consumer Financial Protection Bureau. We frequently represent companies in these matters and understand how to balance the competing demands of maximizing efficiency and minimizing costs while maintaining strategic goals.

Our representative enforcement and investigation matters before the FTC include:

- Numerous clients in response to CIDs involving advertising, mortgage lending, credit reporting, unsecured consumer lending, payment processing, privacy and security practices, auto financing programs, and consumer demand deposit accounts
- Multiple clients on compliance related to cryptocurrency issues and payment systems, and processing rules and regulations

- A marketplace lender in a settlement of alleged unfair and deceptive trade practices with respect to marketing and servicing, as well as violations of the Telemarketing Sales Rule and Electronic Fund Transfers Act
- Nonbank lenders in extensive litigation with the FTC and parallel class actions alleging deceptive lending practices, resulting in a \$240 million global settlement
- A payday loan/check-cashing management company in an enforcement action alleging violations of the Fair Credit Reporting Act Disposal Rule and the Gramm–Leach–Bliley Act Safeguards Rule
- The defendant in a settlement in which the FTC alleged unfair and deceptive trade practices, as well as violations of the Fair Debt Collection Practices Act, FCRA, and Truth in Lending Act in connection with the servicing of residential mortgages
- The defendant in a settlement in which the FTC alleged unfair and deceptive trade practices regarding mortgage loan servicing and collections
- A clean energy administrator involving regulatory due diligence for a potential transaction with a competitor
- A client in litigation concerning the sale of a U.S. subsidiary
- A client in a settlement alleging violations of its “Made in the USA” advertising standards

Our FTC enforcement acumen is enhanced by our extensive regulatory and compliance experience and federal and state enforcement practices. These allow us to provide practical, forward-thinking advice to companies seeking to develop internal controls that monitor compliance with laws, regulations, and guidance issued or enforced by the FTC. This advice covers a wide range of regulatory issues that fall under the FTC’s jurisdiction, including: the Consumer Leasing Act, Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM), Electronic Fund Transfer Act, debt collection, credit reporting, privacy and cybersecurity requirements, telemarketing, TILA, and U.S. origin claims and “Made in the USA” standards.

Some of our representative compliance matters include:

- Review, revision, and development of comprehensive privacy and information security programs for both U.S.-based and international companies

- Development of multiple complaint-management programs to detect, address, and prevent consumer complaints, which are often the starting point for FTC investigations

- Reviews and redesigns of multiple advertising campaigns, including through print, electronic, and social-media channels, and addressing the nuances of mobile-device disclosures

- Provided guidance concerning the engagement of influencers in brand marketing, a growing area of concern

- Compliance and disclosure protocols involving in-app game and mobile-phone purchases