

Lessons Learned from Dun & Bradstreet

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In January 2022, The Federal Trade Commission ("FTC") reached a settlement with Dun & Bradstreet resolving alleged violations of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 41, *et seq.*, arising out of the company's commercial credit reporting business. According to the FTC, Dun & Bradstreet maintains information about, among other items, businesses' financial payment history with other businesses and uses this information along with proprietary analyses to produce a commercial credit report on businesses.

Whether you serve consumers or businesses, there are some important lessons that can be gleaned from the FTC's settlement with Dun & Bradstreet. Here are our top 4 lessons that apply to companies that are dealing with consumer or commercial financial information:

- ***Accuracy is Important.*** Consumer reporting agencies that are subject to the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.* ("FCRA") know that accuracy is a foundational concept. The FTC is well-versed in enforcement of the FCRA as it has had primary enforcement obligations under the FCRA, even though it now shares that enforcement authority with the Consumer Financial Protection Bureau. So it is not surprising to see the FTC taking an FCRA-like approach in the context of commercial credit reports.

In its complaint, the FTC alleged that Dun & Bradstreet did not offer a "reasonable means to dispute [...] information" which constituted an *unfair or deceptive act* in violation of Section 5(a) of the FTC Act. Specifically, the FTC alleged that Dun & Bradstreet (1) did not reveal the source of the payment information appearing on a business's commercial credit report; (2) did not provide the source of the information with any information provided by the business that was the subject of the commercial credit report; and (3) marketed its paid products to the business as a way of increasing the business's commercial credit report scores and improve the information.

As part of the settlement, the FTC is ordering Dun & Bradstreet to "conduct a reasonable investigation" in all instances where a business disputes the accuracy of information contained on its commercial credit report. The process outlined by the FTC mirrors portions of the dispute provisions of the FCRA (see 15 U.S.C. §

1681i). For example, the investigation must entail a review of all relevant information, and Dun & Bradstreet must "correct, modify, or delete that item of information" if it is found to be inaccurate or cannot be verified, and "maintain reasonable procedures to prevent the reappearance of the information." The timelines imposed by the FTC are shorter than those found under the FCRA, with the shortest timeframe (i.e., seven business days from date of receipt of dispute notice) required for the reinvestigation of identifying information such as .name and address.

- ***Marketing Materials Should be Reviewed Regularly and Violations of Policy Should be Remediated.*** The FTC's complaint alleges that Dun & Bradstreet deceptively marketed its paid products as allowing businesses to improve credit profiles and scores. In some cases, these paid products were offered only after a business complained about inaccurate information in its commercial credit report. According to the FTC, Dun & Bradstreet also sent mailers that indicated a business had a low score which could indicate that the business is a risk for defaulting on payment obligations. The mailer also suggests that this score might be improved through "[h]aving a complete and well-managed... credit profile." The paid product was marketed as a way for businesses to add trade accounts (e.g., vendor payments, public records) to the commercial credit report, which would increase positivity of the report.

The FTC alleges, however, that Dun & Bradstreet often rejected the business's request to add payment history and trade accounts without any explanation. This practice had the practical result of the product not providing the benefit to businesses that it was purported to have through the marketing materials and sales pitches. Importantly, the FTC notes that the sales pitches described in the complaint were the subject of certain complaints and that Dun & Bradstreet did not reprimand the telemarketers making the statements for a violation of company policy.

Thus, this case serves as an important reminder to review marketing materials regularly (e.g., material changes, new products, product enhancements). We suggest that all marketing materials, and any material changes to marketing materials, be reviewed by experienced legal and compliance professionals. Additionally, companies should consider having (and regularly reviewing and updating) marketing policies and unfair and deceptive acts or practices ("UDAP") prevention policies. Marketing policies and UDAP prevention policies should work in conjunction with human resources policies to ensure that the policies apply company-wide, including across third-party telemarketers or sales agents, and there are clear paths for action in the event of violations.

- ***Complaints Are Windows into Operational Opportunities.*** The FTC indicates that Dun & Bradstreet should have known it had a problem when it reviewed the complaints it received from various complaint channels. Instead, Dun & Bradstreet continued the same marketing pitches that were the source of the complaints. Businesses thought, based on marketing materials and sales pitches, that

purchasing the product would help improve their commercial credit reports when in fact submissions to add trade reference sources were often rejected without explanation. Businesses then submitted complaints indicating the product was a "waste of money" or "not an easy process" (in contradiction to representations by telemarketers that the product provided an easy way to build up a commercial credit report).

This case is just one example of how regulators examine complaints against companies to spot problem areas. Why not review your complaints through the eyes of a regulator and start making some changes if you find opportunities for improvement? Complaints can often provide insight into your customers' understanding of your products, product terminology, promises about results, feature functionality, etc. A little work on the front end can go a long way towards mitigating risk of preventable complaints. Experienced counsel should be consulted if you have questions about how to respond to complaints, whether they are from consumers or businesses, customers or concerned citizens. It is clear that the FTC is paying attention.

- ***Disclosures Should be Clear.*** The FTC alleges that Dun & Bradstreet failed to provide clear notices to customers about the subscription terms for the paid products. Specifically, Dun & Bradstreet renewed the paid product under a materially increased price or changed the product altogether without appropriate notice of those changes to some affected businesses. In turn, businesses complained about the payment practices employed by Dun & Bradstreet. The FTC's complaint alleges that the inadequate or nonexistent notices constituted a deceptive act or practice.

Subscription agreements and subscription renewals can be particularly confusing. The FTC's recent [enforcement policy statement](#) on "dark patterns" signals its focus on deceptive sign-up tactics, including unauthorized charges or ongoing billing that is impossible to cancel. Companies should thoroughly review of all disclosures related to any subscription-based product to proactively reduce the risk of confusion - and the risk of an enforcement action.

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