Technology Officer of PayDay Loan Marketer Settles FTC Charges That PayDay Loan Websites Were Unfair and Deceptive

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FOR RELEASE

The technology officer of a payday loan marketer has agreed to pay $850,000 to settle FTC charges for his role in an allegedly deceptive and unfair scheme that allegedly debited the bank accounts of hundreds of thousands of cash-strapped consumers in violation of federal law.

The FTC has been closely monitoring payday lending and other types of financial services as part of a broad campaign to protect consumers made vulnerable by the financial downturn.

According to the FTC complaint, Swish Marketing Inc., and its three officers, Mark Benning, Matthew Patterson, and Jason Strober, operated websites advertising short-term, or "payday," loan matching services. The websites included an online loan application form that tricked consumers into unknowingly ordering a debit card when they applied for a loan online. . On numerous sites, clicking the button for submitting loan applications led to four product offers unrelated to the loan, each with tiny "Yes" and "No" buttons. "No" was pre-clicked for three of them; "Yes" was pre-clicked for a debit card, with fine-print disclosures asserting the consumer's consent to have their bank account debited. Consumers who simply clicked a prominent "Finish matching me with a payday loan provider!" button were charged for the debit card. Other websites touted the card as a "bonus" and disclosed the fee only in fine print below the submit button. As a result, consumers allegedly were improperly charged up to $54.95 each.

In August 2009, the FTC charged these marketers and VirtualWorks LLC, the debit card company that helped them design the online offers, with deceptive business practices. The debit card company paid Swish Marketing up to $15 for each transaction. The debit card company defendants have settled the charges against them. (See http://www.ftc.gov/opa/2009/08/everprivate.shtm)

In April 2010, the FTC filed an amended complaint against the payday loan marketers, adding an allegation that the defendants sold consumers' bank account information to the debit card company without the consumers' consent. The amended complaint further alleges that Benning, Patterson, and Strober were made aware of consumer complaints about the unauthorized debits, as indicated in their e-mail and instant messages. For example, Patterson explained that consumers were going "ballistic" about the debit because the offer was defaulted to yes . . . and customers don't see it." More than six months after first learning of the complaints, Benning allegedly described the practice of defaulting to "Yes" as "fraud and identity theft."

The settlement order announced today with Jason Strober, the Vice President of Product Development and/or Engineering of Swish Marketing, bars him from misrepresenting material facts about a product or service, such as the cost or the method for charging consumers. He also is permanently prohibited from misrepresenting that a product or service is free or a "bonus" without disclosing all material terms and conditions, and from charging consumers without first disclosing what billing information will be used, the amount to be paid, how and on whose account the payment will be assessed, and all material terms and conditions. The order further requires that transactions be affirmatively authorized by consumers, and that Strober, in marketing financial products or services, monitor his affiliates to ensure compliance with the order. He also is required to provide specific cooperation to the FTC in its ongoing litigation. In addition, the order requires him to pay $850,000.

The Commission vote to file the amended complaint and the stipulated final order as to Strober was 5-0. The order was filed and entered in the U.S. District Court for the Northern District of California, San Jose Division. Litigation will continue against the remaining defendants.

NOTE: Stipulated final orders are for settlement purposes only and do not constitute an admission by the defendants of a law violation. Stipulated orders have the full force of law when signed by the judge. The Commission issues a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online Complaint Assistant or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 1,800 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's Web site provides free information on a variety of consumer topics.

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