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Consumer Protection Enforcement – Trends and Expectations

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Introduction



GUS EYLER

Partner / Washington, D.C.

Consumer Protection (Co-Chair)
FDA & Health Care (Co-Chair)
White Collar Defense

An experienced litigator and a former Director of the U.S. Department of Justice's Consumer Protection Branch, Gus defends companies and individuals in government investigations and enforcement actions and counsels clients on the design and implementation of compliance programs.



SVETLANA GANS

Partner / Washington, D.C.

Consumer Protection
Antitrust & Competition
Privacy, Cybersecurity & Data Innovation
Public Policy

The former FTC Chief of Staff in the first Trump administration with unique experience working in both the FTC's Bureau of Consumer Protection and Bureau of Competition, Svetlana helps clients navigate complex regulatory, enforcement, and public policy matters.



ASHLEY ROGERS

Partner / Dallas

Consumer Protection (Co-Chair)
Technology Litigation
Privacy, Cybersecurity & Data Innovation

A nationally recognized technology-focused practitioner, Ashley serves as lead counsel for major global companies in dozens of high-priority FTC, CFPB, and State AG privacy and consumer protection investigations.



NATALIE HAUSKNECHT

Partner / Denver

Consumer Protection
Privacy, Cybersecurity & Data Innovation
Appellate and Constitutional Law
White Collar Defense

An accomplished trial and appellate lawyer, Natalie has successfully closed multiple FTC and State AG investigations into alleged earnings claims, marketing misrepresentations, ROSCA violations, junk fees, and algorithmic-based claims. She has litigated consumer protection enforcement actions in state and federal courts.

Key Executive Orders

01

Key Executive Orders

Ending The Weaponization of Federal Government (Jan. 20)

- Accuses the Biden Administration of targeting political opponents
- Orders agencies, including DOJ and FTC, to report “any instances where ... conduct appears to have been contrary to the purposes and policies of this order”

Regulatory Freeze Pending Review (Jan. 20)

- Freezes all pending regulatory reviews and temporarily pauses rulemaking
- Typical for new administrations

Unleashing Prosperity Through Deregulation (Jan. 31)

- Orders agencies to repeal 10 regulations for every 1 new one

Ensuring Accountability for All Agencies (Feb. 18)

- Criticizes independent agencies for regulating without presidential review
- Requires agencies to submit all regulatory actions to OIRA
- OMB will review regulatory actions “for consistency with the President’s policies”

Ensuring Lawful Governance (Feb. 19)

- Instructs agencies to work with OMB to ensure enforcement actions reflect presidential policy

Department of Justice

02

General Expectations

- Consumer protection will remain a DOJ enforcement priority, but specific enforcement initiatives will change
 - Consumer protection was a priority of the first Trump administration
 - Mission and authorities dovetail with MAGA and MAHA priorities
 - Expect changes in nature and pace of investigations
- DOJ Consumer Protection Branch (CPB)
 - DOJ's leading consumer protection enforcer
 - Primary litigator for FDA, FTC, DEA, CPSC, and DOT
 - Facing changing agency dynamics and resource constraints
- U.S. Attorney's Offices
 - Advance district-specific investigations and partner with CPB
 - Facing significant priority changes and resource constraints

Opioids

- Opioid-related enforcement will remain a top priority
- Prescription drug diversion
 - Existing cases and investigations are likely to continue
 - DEA focus on telemedicine and healthcare facility diversion
- Illicit drug manufacturing, distribution, and sale

*[G]iven the sharp rise in overdose deaths from counterfeit pills laced with fentanyl, the Branch has broadened its efforts to **pursue corporate bad actors facilitating the manufacture, distribution, or sale of counterfeit pills**. This includes investigating **e-commerce sites and social media** platforms that may be allowing traffickers to sell counterfeit pills to teens and young adults. Further, the Branch is investigating companies that may be allowing **precursor chemicals and equipment** to get into the hands of drug trafficking organizations. The Branch is using every tool at its disposal to hold accountable bad actors contributing to the opioid crisis.*

DOJ Consumer Protection Branch, *Recent Highlights Report (2024)*

Elder Fraud

- Combating fraud schemes affecting vulnerable Americans, especially the elderly, will increase in importance
 - Consistent with the priorities of the first Trump administration
 - Transnational fraud schemes will be a priority
- Corporate investigations will focus on fraud facilitation
 - Knowingly allowing (including through willful blindness) fraudsters to use offered goods or services to advance a criminal scheme
- Particular risk areas
 - Consumer data sales
 - Money transmission
 - Volume sales of easily resold, high-value goods
 - Communications services
 - Consumer complaint management services
 - AI-powered video or audio tools

FDA- Regulated Products

- Recalled products
 - DOJ will continue to investigate high-profile product recalls associated with significant consumer harm, especially processed foods and medical devices
- Chinese manufactured products
 - Vaping products, dietary supplements, cosmetics
 - Liability theories: FDCA, Customs, “Made in America”
- MAHA-related actions
 - Expect investigations parallel to consumer class actions
- AI-enabled medical devices
 - Focus on marketing claims, misuse or loss of consumer data, and consumer harm
- Regulator deception and order enforcement



Other Enforcement Areas

- FTC and CPSC referrals likely will decline
 - Expect more constrained assertions of civil penalty liability
 - Constitutional issues will complicate litigation
 - DOJ will still pursue criminal investigations of high-profile matters
- Continued DOT coordination and assertiveness is uncertain
 - Expect filed railroad actions to continue; new actions uncertain
 - NHTSA likely will be less aggressive
 - FAA will continue to investigate major air travel disruptions
- Expect increased overlap with state and foreign actions



Federal Trade Commission

03

Mission and Structure

- The FTC's mission is to protect consumers by preventing anticompetitive, deceptive, and unfair business practices.
- The FTC's Bureaus of Competition and Consumer Protection, working in tandem with the Bureau of Economics, enforce antitrust laws and consumer protection laws.
- The FTC enforces a wide variety of domestic laws & regulations.
- The FTC typically has 5 commissioners—though currently there are only four, with the fifth pending Senate confirmation.



Andrew N. Ferguson
(R) - Chair



Melissa Holyoak (R)



Rebecca K.
Slaughter (D)



Alvaro Bedoya (D)



Mark Meador (R) -
Nominee

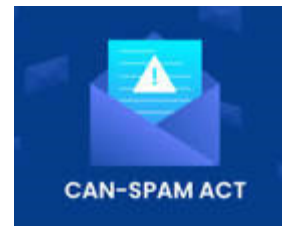
FTC Act Section 5

- The cornerstone of Federal Trade Commission authority is Section 5, promulgated in 1914.
- The Act declares unlawful “unfair methods of competition” and “unfair acts or practices” in or affecting commerce.
- The agency conducts investigations, through the issuance of subpoenas, and brings enforcement actions in federal and administrative courts when it has reason to believe the law has been or is being violated.
- The FTC also conducts market studies, convenes workshops, and promulgates rules.

- Competition** {
 - Acts or practices that violate the Sherman or Clayton Acts
 - Contravene the spirit of the antitrust laws
 - Grounded in consumer welfare standard
- Unfairness** {
 - Causes substantial injury to consumers
 - Consumers cannot reasonably avoid such injury
 - Injury is not offset by countervailing benefits
- Deception** {
 - A representation, omission or practice. . .
 - About a material fact. . .
 - Likely to mislead a consumer acting reasonably under the circumstances.

Statutory Authority

- Congress has granted the FTC authority under 70+ laws.
- Many of these laws are household names:
 - Children's Online Privacy Protection Act (COPPA) – restricts collection of children's data without verifiable parental consent
 - Do Not Call Registry Legislation – permits consumers to opt out of marketing calls
 - Fair Credit Reporting Act (FCRA) – regulatory regime related to credit agencies and credit reports
 - Equal Credit Opportunity Act (ECOA) – prohibits discrimination in context of credit applications
- Others set core marketplace standards:
 - Restore Online Shoppers' Confidence Act – disclosures related to recurring subscriptions
 - CAN-SPAM Act – opt out of email marketing



FTC Remedies

- **Injunctive Relief**
 - Federal Court Injunction
 - No longer includes equitable monetary relief – *AMG v. FTC*
 - Administrative Cease-and-Desist Order
 - Civil penalties for violations
 - Litigated orders can be enforced against others

- **Civil Penalties**
 - Specific rules or laws
 - Statutory: TSR, ROSCA, FCRA, COPPA, Made in U.S.A.
 - Trade Regulation Rules: Funeral Rule, Franchise Rule, Door-to-Door Sales, Credit Practices
 - Violations of an administrative order
 - Notice of penalty offense
 - Must be referred to DOJ and filed in federal court

Enforcement Priorities

- **Reverse Lina Khan's Anti-Business Agenda**
 - Stop war on mergers
 - End attempt to become AI regulator
 - No more novel consumer protection cases
 - Stop pursuing cases under disparate impact discrimination theories
- **Hold Big Tech Accountable and Stop Censorship**
 - Focus enforcement against Big Tech
 - Investigate DEI, ESG, advertiser boycotts
- **Focus on Labor**
 - Chairman Ferguson issued a directive creating an intra-agency working group to prioritize the investigation and prosecution of deceptive, unfair, or anticompetitive labor market conduct.
 - Targeted Practices: non-competes, labor contract termination penalties, labor market monopsonies, collusion on DEI metrics, deceptive advertising, business opportunities and franchises, occupational licensing.

Example Enforcement Trends/ Priorities

- **Content Moderation**
 - Scrutiny of technology platforms' content moderation policies (including demonetization and “shadow banning”) is a key enforcement priority under the new administration.
 - RFI issued Feb. 20, 2025 asks the public to identify ways in which consumers may have been harmed by content moderation.
 - RFI suggests that content moderation practices could be “unfair or deceptive” conduct in violation of Section 5.
- **COPPA**
 - In January 2025, the FTC voted 5-0 to approve updates to COPPA, imposing significant new obligations regarding the collection, use, and disclosure of personal information from children under 13.
 - Bipartisan consensus signals likelihood of rigorous oversight and enforcement by the new administration.
- **Data Privacy**
 - Continued scrutiny of tech companies' data practices expected.
 - However, potential for less scrutiny than prior administration with respect to AI and targeted advertising.

Pending Rules & Regulatory Freeze

Regulation	Status	Published in Federal Register?	Change Post Regulatory Freeze of January 20, 2025	Prognosis
Negative Option Rule (“Click to Cancel”)	Final Rule: issued Oct. 16, 2024 Effective dates: Jan. 14, 2025 for some provisions; May 14, 2025 for most of the rule.	Yes: Nov. 15, 2024	The final rule has not fully taken effect.	Currently pending a challenge in 8th Circuit. Gibson Dunn represents challengers.
Non-Compete Rule	Final Rule: issued Apr. 23, 2024 Effective date: Sep. 4, 2024 (but rule vacated by district court; the rule is not currently in effect)	Yes: May 7, 2024	Since the final rule is published in the Federal Register and has been vacated, the regulatory freeze memorandum does not impact the rule.	A district court vacated the rule nationwide in August 2024. FTC’s appeal is pending in the Fifth Circuit, but they have asked the court to stay the case to allow the FTC to consider whether to continue defending the rule. The rule remains invalid at this time. Gibson Dunn represents one challenger.
Premerger Notification; Reporting and Waiting Period Requirements (Hart-Scott-Rodino (HSR) Rules)	Final Rule: issued Oct. 10, 2024 Effective date: Feb. 10, 2025	Yes: Nov. 12, 2024	The FTC and/or DOJ may postpone the effective date for 60 days to review.	The rule is currently being challenged in the United States District Court for the Eastern District of Texas.

Consumer Financial Protection Bureau

04

Shifts in CFPB Leadership & Direction

- **New Leadership:**
 - On February 1, 2025, President Trump removed Biden-era CFPB Director Rohit Chopra, appointing as Acting CFPB Directors Treasury Secretary Scott Bessent, followed by Office of Management and Budget Director Russell Vought
 - Jonathan McKernan's nomination for CFPB Director is pending Senate confirmation
- **Trump Administration's Stance:**
 - While President Trump and DOGE head Elon Musk have expressed a desire to eliminate the CFPB, the Trump Administration has taken the position in court that it only intends to make the agency more "streamlined and efficient"



Scott Bessent
(Former Acting
CFPB Director)



Russell Vought
(Acting Director)



Jonathan McKernan
(Nominee)

Recent Actions by New Leadership

- **Significant Operational Changes:** Major changes ordered by Acting CFPB Directors have halted virtually all agency activity:
 - Ordering employees to stop all enforcement and litigation activity
 - Halting rulemakings and suspending effective dates of pending rules
 - Closing CFPB's Washington D.C. headquarters for a week and canceling its lease
 - Cancelling CFPB's next pull of funding from the Federal Reserve
 - Cancelling over \$100 million in vendor contracts
 - Firing probationary-period staff
 - Dismissing various enforcement actions filed during the Biden Administration
- **Rolling Back Key Biden-era Initiatives**

The CFPB's Uncertain Future

- **Short-Term Outlook:** New leadership will likely continue rolling back Biden-era initiatives, rescinding rules, and dropping enforcement actions. Long-term direction remains uncertain.
- **Court Challenges:** Courts could limit an administrative shutdown and shape CFPB's future direction and operational capacity
 - **NTEU Lawsuit:** National Treasury Employees Union's action challenging Vought's stop-work directive
 - **Funding Battle:** City of Baltimore and Economic Action Maryland Fund's action to stop Vought's attempt to transfer CFPB's funds to the Federal Reserve
- **Other Regulators and the Private Sector:**
 - Other regulators may step up their enforcement activities, including the FTC, State Attorneys General, and state banking regulators
 - Possible increase in private litigation
- **Implications for Business**
 - Companies must stay agile, monitoring shifting federal priorities and preparing for increased state enforcement and private litigation
 - Adapting compliance strategies to evolving regulatory landscapes will be key to mitigating risk and maintaining compliance

State Attorneys General

05

State AGs Filling Anticipated Federal “Gaps”

- **Federal Deregulation & State Response**
 - State AGs expanding enforcement amid reduced federal oversight
 - Increased regulatory fragmentation across states
- **Bipartisan & Multistate Collaboration**
 - Multistate actions likely to continue, but states increasingly diverge when strategic differences arise
 - Democratic AGs are particularly likely to leverage same-party coalitions for injunctive relief against federal policies
- **Diverging Priorities by State**
 - Companies face conflicting regulatory approaches across jurisdictions
- **Litigation & Use of Outside Counsel**
 - AGs are increasingly litigating and relying on outside firms for complex cases

Shared Enforcement Priorities (Bipartisan)

- **Children’s Online Privacy & Safety**
 - AGs targeting social media platforms over youth mental health risks
 - CA, NY, and TX leading state legislative efforts
- **Data Privacy**
 - Growing state-level privacy laws (19 bills in 10 states in early 2025 alone)
 - Landmark multistate \$391.5M Google settlement as enforcement model
- **AI & Emerging Tech Fraud**
 - Multiple AGs scrutinizing AI use in fraud, identity theft, and deepfakes
 - Legal advisories issued by multiple states on AI compliance
- **Consumer Financial Protections**
 - Crackdown on deceptive credit practices and fintech fraud
 - Heightened oversight of crypto and digital payments post-FTX
- **Hidden Fees & Auto-Renewals**
 - Focus on deceptive subscription practices and “junk fees”
- **Robocalls & AI Voice Scams**
 - Landmark multistate case dismantling major robocall operation
 - States enhancing prosecution tools for AI-generated fraud

Democratic AGs' Likely Priorities (23 States)

Challenging the Trump Administration

- Lawsuits expected to counter federal deregulation (mirroring 150+ cases in Trump's first term)
- States like CA & MD allocating funds for federal legal battles

Financial Services & Predatory Lending

- Increased scrutiny of payday lenders, debt collectors, and fintech practices in light of CFPB roll-back

Defending ESG & DEI Initiatives

- Multiple AGs have reaffirmed corporate ESG & DEI commitments

Data Privacy & Cybersecurity

- Continued aggressive enforcement of state laws like CCPA

Republican AGs' Likely Priorities (28 States)

Defending the Trump Administration

- Lawsuits, amicus briefs, and media campaigns supporting administration policies

Big Tech & Content Moderation

- Continued challenges against perceived censorship

Challenging Federal Regulation & ESG

- Lawsuits targeting Biden-era consumer protection rules
- SEC climate-related disclosures already being challenged

Energy & Utility Consumer Protection

- Support for oil & gas expansion, but selective enforcement in energy pricing
- Investigations into deceptive renewable energy marketing

Compliance & Risk Strategy

Managing the Regulatory Patchwork

- Expect an aggressive enforcement landscape in 2025
- Track evolving state-level enforcement trends
- Proactive compliance planning will be critical to risk mitigation

Proactively Engage with AGs

- Establish relationships in key states, especially where AGs have recently taken office
- Six new AGs (NC, OR, WA, WV, UT, PA) bring new priorities and opportunities

Monitoring Congressional Oversight

- AGs working with House Judiciary Committee on many issues

Managing Consumer Protection Investigations

06

Navigating Investigations

- Understand who is investigating you
- Determine what and why they are investigating
 - Industry sweep or business specific?
 - Complaint-based or data-driven?
- Preserve evidence
- Learn the key laws and facts
- Focus the investigators
 - Educate them on your business
 - Stage and narrow their requests
 - Consider early expert engagement
- Always be advocating and think ahead
- Use cooperation and other regulators to your benefit
- Avoid surprises – both of prosecutors and business/investors/media

Crisis Situations

Manage Communications

Coordinate Regulatory Engagement

Preserve and Review Evidence

Consider Consumer and Investor Actions

Have a plan!

A blurred office hallway with people walking, featuring a large 'GIBSON DUNN' logo in the center. The background shows a modern office interior with wood-paneled walls, a glass door with a decorative pattern, and a clock on the wall. The people are in motion, creating a sense of a busy work environment.

GIBSON DUNN

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