

FEDERAL TRADE COMMISSION UPDATE



Megan Cox
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Federal Trade Commission

The views expressed are those of the speaker
and not necessarily those of the FTC

FTC Background

- Independent law enforcement agency
- Consumer protection and competition mandate
- Privacy is a consumer protection priority
 - Enforcement
 - Policy initiatives
 - Consumer education and business outreach

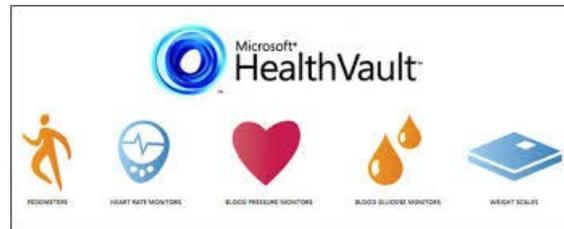
FTC Act Fundamentals

- Section 5 of the FTC Act broadly prohibits “unfair or deceptive acts or practices in or affecting commerce”
 - **Deception:** a material representation, omission, or practice that is likely to mislead consumers acting reasonably under the circumstances
 - **Unfairness:** practices that cause or are likely to cause substantial injury to consumers that are not outweighed by benefits to consumers or competition and are not reasonably avoidable by consumers

Area of FTC Focus

- Tremendous growth in consumer generated and controlled health data

WebMD™




patientslikeme®



FTC Act Enforcement

PaymentsMD Matter

- Medical billing company collected consumers' personal medical information without consent

GMR Transcription Services Matter

- Medical transcription company outsourced services to third party without adequately checking to make sure they could implement reasonable security measures

FTC Act Enforcement (cont'd.)

Practice Fusion Matter

- Electronic Health Records Provider, a system for outpatient providers
- Having been granted access by their health care provider, patients could view or download their health information and send and receive secure messages to their doctor
- Business Expansion Plan:
 - Public directory of doctors featuring patient reviews
 - Solicited patient reviews one year in advance in order to pre-populate the site
- Deceptive User Experience

FTC Act Enforcement (cont'd.)

Practice Fusion Matter (cont'd.)

- Patients misled to believe that they were communicating privately with their doctors
- Patients were required to check the Patient Authorization box, but were not required to actually *view* the Patient Authorization
- Through its solicitations, company represented patient's review would be communicated to doctor
- Company failed to disclose adequately that it would publish the reviews publicly
- Order: no misreps; affirmative express consent for prior to making covered info public, including health info

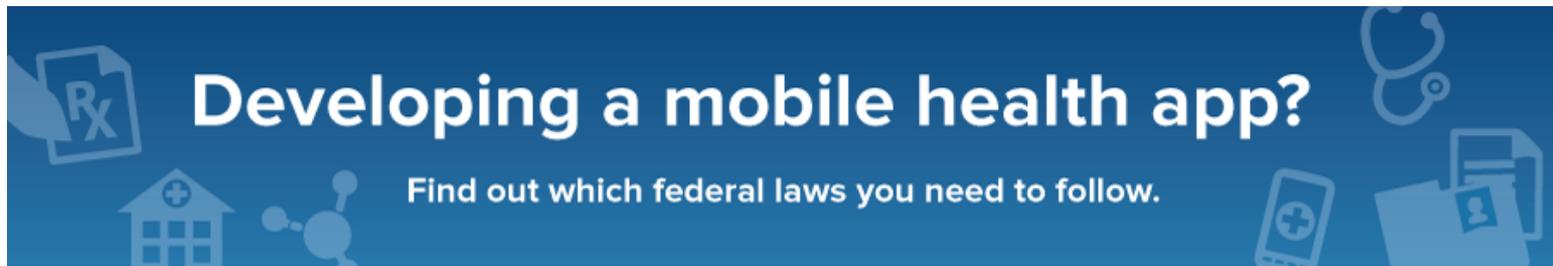
FTC Act Enforcement (cont'd.)

Henry Schein Matter

- Complaint alleged:
 - Marketed software to dental practices with deceptive claims that the software provided industry-standard encryption of sensitive patient information
 - Company was aware that the software used a less complex method of data masking to protect patient data than Advanced Encryption Standard (AES), which is recommended as industry standard
- Consent Order
 - Required to pay \$250,000 to the FTC
 - Prohibited from misleading customers about the extent to which its products use industry-standard encryption, help ensure regulatory compliance, or protect consumers' personal information

Guidance for Mobile Health App Developers

- Interactive tool to help health app developers figure out which federal laws might apply to their app
 - Produced in cooperation with ONC, OCR, and FDA



Produced in cooperation with the U.S. Department of Health & Human Services (HHS); the Office of the National Coordinator for Health Information Technology (ONC), the Office for Civil Rights (OCR), and the Food and Drug Administration (FDA)



The Office of the National Coordinator for
Health Information Technology

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS

FDA

Guidance for Developers

FTC Best Practices

- Minimize data
- Limit access and permissions
- Keep authentication in mind
- Consider the mobile ecosystem
- Implement security by design
- Don't reinvent the wheel
- Innovate how you communicate with users
- Don't forget about other applicable laws

Other FTC Resources

- www.ftc.gov
- www.business.ftc.gov
- Mobile Health App Developers
 - Interactive Tool and Best Practices
- Start with Security: A Guide for Business
- Careful Connections: Building Security in the Internet of Things
- Marketing Your Mobile App: Get It Right from the Start
- Cross-Device Tracking Report

Questions?