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FTC AND IL-AG SETTLE CHARGES WITH RENT-TO-OWN COMPANIES AND SOFTWARE PROVIDER

The Federal Trade Commission and the Illinois Attorney General have agreed to settle computer spying charges that were brought against seven rent-to-own companies and a provider of computer tracking and recovery software. The FTC and the Illinois Attorney General alleged that the rent-to-own companies installed software on rented computers to secretly (i) capture screenshots of the user's activities, log computer keystrokes and take pictures of people within view of the computer's webcam, (ii) track the location of and disable computers if they were reported lost or stolen or if the renters failed to make timely payments or otherwise violated the rental contracts and (iii) cause fake software registration windows to pop-up and gather consumers' personal information. The software enabled the rent-to-own companies to obtain personal information such as usernames and passwords, medical records, private e-mails, Social Security numbers and bank and credit card statements. Advance disclosure was not provided and express consumer consent was not obtained.

The FTC claimed that the secret gathering of private and confidential information caused or was likely to cause substantial harm to consumers and thus constituted unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act. According to the FTC, the harm caused to consumers by the unauthorized gathering of confidential information was not outweighed by any countervailing benefits to consumers or competition, particularly because that the rent-to-own companies had alternate effective methods of collection in the form of using the software to remotely disable the computers. The Illinois Attorney General alleged that the conduct of one of the rent-to-own companies that was located in Illinois violated the Illinois Consumer Fraud Act.

The proposed settlement orders will ban the rent-to-own companies from using (i) monitoring software in connection with rent-to-own transactions, (ii) deception when gathering information from consumers, (iii) location-tracking software without obtaining consent from a computer's renter at the time a computer is rented and providing clear and prominent notice to computer users immediately prior to each time tracking technology is activated,

(iv) fake software registration screens to collect personal information and (v) information that was improperly gathered from consumers in connection with debt collection. The orders will ban the software provider from providing others with the means to commit such acts. Finally, the orders will require the rent-to-own companies and the software provider to maintain records that will enable the FTC to monitor compliance with the orders.

The settlements illustrate that collectors should not use advanced collection technologies if they violate consumers' privacy, are deceptive or otherwise violate established laws even if such technologies increase recovery rates or make collections more economical or efficient. In addition, collectors that use tracking devices should examine their programs to make sure that appropriate, clear and prominent disclosures are being given to consumers regarding their use and are otherwise in compliance with applicable laws (see below regarding a new law regulating the use of such devices by California buy-here-pay-here dealers). □

✦ *Michael Tomkies and Charles Gall*

CALIFORNIA REGULATES TRACKING AND STARTER INTERRUPT DEVICES OR BUY-HERE-PAY-HERE DEALERS

California has amended its Automobile Sales Finance Act (ASFA) to, among other things, prohibit buy-here-pay-here (BHPH) dealers from utilizing electronic tracking devices or recording the location of a vehicle unless the buyer is expressly made aware of the existence and use of the tracking technology, the buyer's written consent is obtained and the technology is used only for certain specified purposes such as repossessing the vehicle or servicing the loan or keeping the loan current. The amended ASFA also will prohibit a BHPH dealer from disabling a vehicle by using a starter interrupt technology unless the dealer (i) notifies the buyer in writing of the use of the technology in a manner provided for by the ASFA, (ii) warns the buyer no less than 48 hours before disabling the vehicle and (iii) provides the buyer with the ability to start a disabled vehicle no less than 24 hours after disablement in the event of an emergency.

The amendments to the ASFA will become effective January 1, 2013. □

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