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ALERT

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November 20, 2020

FTC FILES COMPLAINT INVOLVING HIGH INTEREST SAVINGS ACCOUNTS

The Federal Trade Commission ("FTC") has filed a lawsuit against a mobile banking application provider that offers consumers access to high-interest savings accounts at federally insured banks. The complaint alleged that the provider made two deceptive claims regarding features of high interest savings accounts. *Federal Trade Commission v. Beam Financial Inc.,* No. 20-08119 (N.D. Cal. Nov. 18, 2020).

First, on its website and in mobile application stores ("apps stores"), the provider represented that consumers (i) will have "24/7 access to their money," (ii) will have access to their money with "no lockup" and (iii) may "earn and withdraw at anytime." The provider also said that (iv) withdrawn funds will be delivered to the consumer in 3-5 business days. The FTC alleged that consumers have had to wait for weeks or months to receive funds from their high interest savings accounts and that some consumers are still waiting on their funds. The FTC cited language from consumer complaints that appear in the apps stores.

In addition, on its website and in apps stores, the provider represented that its savings accounts (v) earn "the industry's best possible rate" or the "best paying high interest" and (vi) have a base rate of 0.2% or 1%. The FTC alleged that the base rate on savings account currently available through the provider is 0.04%. According to the FTC, the provider has refused to substantiate its high interest claims. The provider also allegedly stopped paying interest on deposited funds when the consumer made a withdraw request even if the provider was delayed in returning the consumer's funds.

The FTC alleged that the provider's funds availability representations and substantial interest rate claims were deceptive. The FTC filed its complaint following the provider's failure to respond to the FTC's civil investigative demand. The mobile banking application provider relies on third-party financial institutions and payment intermediaries to provide the high interest savings accounts. These partners hold deposited funds and transfer funds to and from consumers. According to news reports, those third party relationships have been terminated and strained in recent months.

This lawsuit is not the first enforcement action that the FTC has initiated regarding funds availability claims on mobile applications. In 2018, the FTC settled an enforcement action involving, among other things, allegedly deceptive claims made by Venmo regarding a user's ability to transfer funds in the Venmo system to external bank accounts within a specified time period. Fund transfers to external bank accounts were delayed or frozen because, at the time, Venmo vetted fund exchanges in the Venmo system when a consumer requested funds to be transferred to external bank accounts as opposed to at the time funds were exchanged between users in the Venmo system.

In comments accompanying the most recent complaint, the FTC said that the provider's actions caused real financial harm particularly for consumers who have lost income due to the COVID-19 pandemic and need access to their funds. How the ongoing pandemic and resulting consumer financial harm will affect the FTC's enforcement priorities is a development to watch.❑

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