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Regulators Target False Advertising for Post-Secondary Education

7th Edition: Trends in Marketing Communications Law

Federal Trade Commission (FTC) enforcement efforts tend to focus on certain areas where the perceived harms are high. Although the FTC has historically focused on blatantly fraudulent practices or practices likely to have a negative effect on public health, the FTC, joined by a number of state attorneys general, has recently turned its eye to the educational space.

According to the Federal Reserve Bank of New York, as many as 44.7 million Americans have student loan debt, totaling $1.47 trillion — more than credit card or auto loan debt. It is no surprise, then, that companies have gotten more aggressive in offering debt relief services. In one case, the FTC obtained a temporary restraining order against a marketer claiming to be affiliated with the Department of Education and able to reduce or eliminate monthly payments and principal balances. Instead, the FTC alleged, the advertiser charged up-front fees as high as $1,800, and failed to deliver on the sweeping benefits promised in its advertising.

Not all debt relief claims were blatantly fraudulent. The FTC settled with SoFi, a student loan refinancer, over allegations that SoFi inflated the average amount that it could save borrowers by refinancing. In particular, SoFi's advertisements claimed that borrowers could save an average of $22,359 a year or $292 per month by refinancing their student loans with SoFi, but the FTC found that this calculation was inflated because it excluded large categories of consumers.

The FTC also took issue with several for-profit universities that used deceptive tactics to increase enrollment. The University of Phoenix agreed to pay $50 million and cancel $141 million in student debt over allegations that its advertising gave the false impression that it partnered with and could provide specific job opportunities with companies like Twitter, Yahoo! and Adobe. In another case, Career Education Corporation agreed to pay $30 million over allegations that it used third-party lead generators to convince potential students that it was affiliated with or preferred by the United States military.

State attorneys general have been just as active as the FTC in policing these consumer protection issues. The attorneys general of 49 states and the District of Columbia also settled with Career Education Corp., which agreed to forego collecting roughly $493.7 million in student loans over allegations that it failed to disclose information to prospective students about total student loan costs, transferability of credits, course offerings and job placement rates. Attorneys general also frequently acted alone to redress consumer harms. California Attorney General Xavier Becerra settled with Student CU Connect CUSO LLEC for $168 million in relief over allegations that it assisted now-defunct ITT Technical Institute in providing predatory loans it knew students could not pay back. Similarly, the attorneys general of Massachusetts and Pennsylvania also settled with educational institutions over allegations that they reported false data in order to boost their rankings and improve enrollment.

Key Takeaways

- Advertisers in all industries are responsible for ensuring that their advertising is truthful and not deceptive.

- While some federal agencies — including the Department of Education — have followed a policy of deregulation, the FTC will not hesitate to step in where it believes that consumers are being misled.

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