



FTC Serves a Wake-Up Call to the Payment Processing Industry

By Mary Dees Griffith and David Goch

Last month the Federal Trade Commission announced a complaint against a payment processor. The case should serve as a wake-up call to all businesses involved in merchant processing.

According to the complaint, InterBill Ltd., a payment processor acting on behalf of Pharmacards.com, fraudulently debited or attempted to debit more than \$9.9 million from consumers' bank accounts. The FTC complaint alleges that InterBill and its principal officer, Thomas Wells, violated Section 5 of the FTC Act by unfairly processing debit transactions to consumer's bank accounts.

The FTC charged that InterBill, a processor for typically "high-risk" merchants/businesses such as online gaming and direct marketing, debited accounts using information provided by Pharmacards.com despite evidence that the operation was fraudulent. According to the FTC's complaint, "shortly after starting its work, InterBill received strong indications that the transactions were unauthorized—rates of returned transactions skyrocketed, and InterBill received complaints from consumers and banks." The agency said InterBill's transactions occurred without the consumer having any contact with either InterBill or Pharmacards.

The FTC also said InterBill failed to follow its own new-merchant guidelines before processing Pharmacards' business. Those guidelines include collecting information, checking references and verifying a physical address. Despite receiving insufficient answers to inquiries about the source of Pharmacards' database and proof that consumers received material for which they were billed, InterBill continued to process Pharmacards' payments.

The commission discovered that

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Pharmacards.com used a mail drop in London as its business address and conducted its business using prepaid cellular phones and free, anonymous e-mail and facsimile accounts. Pharmacards' Web site offered a fake address in British Columbia and a toll-free customer-service number that was answered at a call center in Montreal. Pharmacards operators used the identity of a Cyprus corporation and directed that their funds be wired to a Cyprus bank account.

The complaint said that more than 70 percent of the attempted transactions were returned or refused by consumers' banks and more than \$2.38 million was debited from consumers' accounts.

Section 5 of the FTC Act empowers the agency to prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce; seek monetary redress and other relief for conduct injurious to consumers; prescribe trade regulation rules defining with specificity acts or practices that are unfair or deceptive, and establishing requirements designed to prevent such acts or practices; conduct investigations relating to the organiza-

tion, business, practices and management of entities engaged in commerce; and make reports and legislative recommendations to Congress.

Although this isn't the first time FTC has taken action against a payment processor under the FTC Act, the payment processing industry should note that, in this case, the agency's action is not because of the payment processor's employees' or agents' alleged violation of Section 5 of the FTC Act, but because they facilitated a merchant customer's alleged violation of the act by processing the client's payment transactions.

The case shows that it isn't enough to monitor the actions of employees and third-party agents to avoid liability; payment processors also must monitor the actions of customers. Particularly, payment processing companies providing ACH services should ensure that they have written policies and guidelines for periodic analysis of their high-risk clients' transactions and be able to show their due diligence and adherence to the guidelines they've set. In the case of Interbill, the issue wasn't that the company didn't have policies; rather it couldn't demonstrate to the FTC that it followed them.

The Interbill case should remind all payment processors to review policies and procedures for merchant risk management. Along with the traditional review activities (e.g., spot monitoring merchant accounts, specific transaction review, etc.), it also can be helpful to adopt a process to obtain feedback from consumers about their satisfaction with their transactions. **TT**

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