Federal Trade Commission Sues Business Financing Company for Allegedly Misleading Consumers

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On November 4, 2024, the Federal Trade Commission sued Seek Capital, LLC, and Roy Ferman, Seek's founder and CEO, for allegedly violating several federal laws, including Section 5 of the Federal Trade Commission Act ("FTC Act"), the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Telemarketing Sales Rule ("TSR"), and the Consumer Review Fairness Act of 2016 ("CRFA"). The FTC alleges that Seek Capital engaged in a scheme to defraud small business owners by promising access to commercial financing and then charging fees to apply for personal credit cards on the owners' behalf.

The FTC's claims under the TSR and the CRFA are unusual in the context of business-to-business transactions and reflect recent changes in the law that expanded the FTC's authority. Earlier this year, BizFinLaw reported on the FTC's expansion of the TSR to apply certain provisions to all business-to-business telemarketing for the first time.

According to the FTC's complaint, Seek claimed in online advertisements that it could obtain business loans and business lines of credit for its customers. When a business owner applied online, Seek telemarketers allegedly called and promised the business owner that Seek could obtain a loan or line of credit that would give the business owner access to cash, checks, or wires. The FTC claims that the telemarketers pressured business owners to sign documents electronically during calls and without reviewing the documents. If a business owner did not sign the documents during the call, Seek telemarketers allegedly continued calling until the business owner signed. After the customer had signed, the complaint continues, Seek applied on the customer's behalf for personal credit cards that the customer could have obtained without help. Seek then allegedly charged fees equal to 10% of the credit limits on the approved credit cards, plus additional amounts. Customers who wished to cancel allegedly owed early termination fees of up to $995. The FTC claims that Seek's practices saddled customers with debt that they could not afford to pay, damaged customers' credit scores, and in some cases forced customers to abandon plans to start or expand businesses.

The FTC also alleges that Seek misled small business owners through deceptive reviews. Seek employees allegedly posted five-star reviews online, and Seek telemarketers allegedly pressured customers to post five-star reviews before Seek had performed any services for them. According to the complaint, the documents that customers signed forbade them from posting negative reviews of Seek for three years.

Complaints under Section 5 of the FTC Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce," are a common enforcement mechanism of the FTC. However, the amendments to the TSR that extended its application to business-to-business cases did not take effect until May 2024, meaning that the FTC has had limited opportunities to enforce the TSR in business-to-business cases. The FTC also sued Seek and Mr. Ferman under the CRFA, which the FTC does not use often in the business-to-business context. As a result, the court hearing this case, the U.S. District Court for the Central District of California, will likely hear novel arguments under the TSR and the CRFA from both sides.

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