



# U.S. Federal Trade Commission Conducting an Investigation

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# Selecting Cases

- Effective consumer protection focuses on a nation's consumers as a whole, rather than on individual consumers. Pick cases carefully to achieve the agency's goals.

# Selecting Cases

- Law enforcement cases can accomplish one or more of several goals:
  - To alert the business community that the particular practice violates the law
  - To stop a specific business from engaging in deceptive practices
  - To return money to consumers who were injured or deceived

# Selecting Cases

- The FTC Complaint Database lets us identify the kinds of deceptive or fraudulent practices about which consumers are complaining.
- Most of the FTC's advertising cases come from:
  - Informal ad review
  - News media
  - Referrals from businesses, and
  - Other agencies and branches of the government



# Selecting Cases

- Management decides what types of practices to investigate, based on current law enforcement needs.
  - EXAMPLE: Since October 2005, our cases have focused on the following areas:
    - deceptive credit practices
    - miscellaneous deception – employment scams, unordered merchandise, deceptive claims for products or services
    - deceptive health benefit claims for supplements or devices
    - deceptive telemarketing practices and Do Not Call Rule violations
    - business opportunity deception
    - insufficient data security or identity theft

# Selecting Cases

- In the area of advertising our priorities are:
  - National advertising
  - Significant consumer injury
  - Disease treatment, cure, and prevention claims
  - Advertising directed at children or for products to be used by children
  - Misrepresentations concerning safety

# Deciding Whom to Investigate

- Identifying targets for investigation:
  - Often, there are several entities engaged in a similar practice. When given a choice of targets, we try to focus on companies that likely caused the greatest amount of consumer injury from the practice.

# Investigational Tools

- The most complete information is obtained by contacting the company being investigated.
- Seek information in writing or at a hearing where answers are recorded.
- Two main ways for FTC to obtain written information from a company being investigated
  - Access letter: Informal letter sent to company requesting that an entity voluntarily turn over information we request
  - Civil Investigative Demand (called a “CID”): Like a subpoena, a CID is used to compel an entity to provide information.



# Investigational Tools

- Other sources of information include:
  - Former employees.
  - The company's bank and credit card records.
  - Consumers who submitted complaints to the FTC Complaint Database.
  - The Internet, including commercial Internet sites that contain corporate and other information about companies (in the U.S., these include Lexis/Nexis and Dun & Bradstreet).

# Expert Advice

- If the company made scientific or technical claims, conduct research to evaluate the quality of the proof.
- Obtain help from experts in the relevant area -- researchers, employees of other government agencies, and members of professional societies.
- If there is a question about whether statistical analysis was done right, consult a statistician.

# Evaluating the Evidence

- Once sufficient information is gathered, evaluate it to see whether law enforcement is needed.
  - We close many investigations without further action. This can occur for any number of reasons. Closing may be appropriate if consumer injury was minimal because sales were low or ads were not widely shown.
  - Closing may be appropriate if resources need to be directed to another area. In such a case, it may be appropriate to obtain a letter from the company saying that it will cease the practice at issue, and to respond with a letter stating that, as a result, the matter is closed.

# Evaluating the Evidence

- In most cases, if, after review of the evidence, it appears that that law enforcement is needed, we prepare a written complaint and proposed order.



# Legal Documentation

- The complaint summarizes the entity and/or individual which/who violated the law and how.
  - A complaint names the defendant(s), quotes examples of practices that are deceptive or misleading, and cites the law at issue.

# Legal Documentation

- The order outlines what the defendant can and cannot do in the future.
- As a general matter, an order states that the defendant must not repeat the conduct cited in the complaint **and** also must not engage in similar practices.

# Legal Documentation

- There are many other provisions that can go in an order, such as:
  - A requirement that the defendant refund money to consumers who purchased a product in the past
  - A requirement that the defendant send letters to consumers, warning that the product does not work
  - A requirement that the defendant tell the stores and other distributors that sell its products not to use the prohibited advertising anymore

# Negotiations- yes or no

- In some cases, the FTC goes into court *before* talking to the defendant.
- This approach is likely if the case involves serious fraud or we suspect the defendant will hide its assets if it learns of the case.

# Negotiations

- More often, we contact the defendant before going to court, and ask it to agree to the order without litigation.
  - This allows development of a more complete record. In some cases, the defendant will provide evidence that shows that a case is not appropriate or that the order we initially prepared should be modified.

# Responsibilities

- Lawyers decide what fact-finding should be conducted.
- Lawyers, economists, or college graduates with special training in investigations do the fact-finding.
- Lawyers analyze the evidence to see if it shows that a case is appropriate. These lawyers must be trained to fully understand the law *and* what kind of evidence is needed to show a violation.

# Responsibilities

- Management must approve a recommendation to bring a case, based on agency goals and policy considerations.
- Lawyers prepare the complaint and order and negotiate with the defendants.



# Strategic Planning for Consumer Protection

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# Purpose

- Avoids expenditure of resources that do not support the mission
- Avoids ad hoc decision making
- Provides a structure for input from both internal and external stakeholders
- Provides a measure for performance
- Promotes teamwork

# Priorities

- Market surveillance
  - Areas of mass lawlessness
  - Emerging product areas or media
    - Immune boosting claims
    - Infomercials or Internet
- Consumer complaints
- Consumer surveys
- Input from stakeholders
- Political considerations



# Strategic Plan

- No single way to do it
- FTC process:
  - Each Division must submit a proposed plan outlining priorities in each program area.
    - Example: In the health area, our strategic priorities over the last year have been cold and flu products and cancer remedies.
  - Before making this recommendation, Division Management solicits input from staff.
- Bureau management then approves or modifies the priorities and instructs the Divisions to commence operational planning.
- Input solicited formally and informally from outside stakeholders.



# Operational Planning

- The process for operational planning is similar.
- Managers in each program area have meetings with their staffs to formulate an operational plan.
- Operational plans must integrate the following elements to achieve the strategic goal:
  - Law enforcement
  - Consumer education
  - Business education
  - Business self-regulation
- Operational plans must also indicate the work years and money that would need to be spent.
- Not limited to one year

# Factors to consider

- Have we used all of the tools available?
- Do the tools really fit the problem?
- Are there better ways to address the problem?
- Are the resources available to execute the plan?

# Sample

## 1. Dietary Supplements - Other than Weight Loss (See \_\_\_\_ below).

### **FTE:**

### **Contracts:**

### **Travel:**

*Sales of dietary supplements exceeded \$19 billion in 2004. To combat fraud and deception in the advertising and sale of dietary supplements in \_\_\_\_, we will:*

- a. Maintain strong enforcement presence by:  
Completing pending litigation, including civil penalty cases.
- b. Coordinate with other state, federal, and international authorities by:  
Continuing to meet regularly with enforcement staff of FDA to identify deceptive supplement marketers, share information on existing investigations, and formulate coordinated enforcement plan including joint action of FTC 13b case and FDA seizure where appropriate.
- c. Engage in industry and consumer education by  
Maintaining communication channels with principal trade associations; participating in educational conferences for supplement industry; preparing written articles on FTC policies and enforcement actions for trade press.



# Integrated Plans

- Weight-Loss Products
  - Multi-year integrated program
- Diabetes Products
  - Cross-border cooperation