

ILLINOIS ATTORNEY GENERAL'S OFFICE ORGANIZED RETAIL CRIME STATE AND FEDERAL ENFORCEMENT TOOLS

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QUESTION AND ANSWER

Q&A Round: State-Specific UDAP Law

- What is your primary consumer protection statute(s)?
- Civil and criminal?
- Who can enforce it?
- Are you able to conduct pre-suit investigations by statute?
- Can you request documents? Take statements? Send interrogatories?

Q&A Round: State-Specific UDAP Law

- Does your law allow a party to object or set aside a CID? If so, in what timeframe?
- How can you enforce compliance?
- Do you have a statute of limitations? If so, what is it?
- Do you have to provide pre-suit notice? If so, what timeframe?
- Do you receive consumer complaints? What do you do with them?
- Are consumer complaints attainable by a records request?

Q&A Round: State-Specific UDAP Law

- What types of settlements can you enter into?
- What is your civil penalty authority?
- Can you obtain restitution? Disgorgement?
- Are there times you don't get injunctive relief? Penalties/payment?
- How are IR terms enforced? What if they are in an AVC? What if terms of an AVC are violated?

Q&A Round: Other Laws

- Do you have specific laws and remedies for price gouging?
- Do you have specific laws and remedies for auto-renewals?
- Do you have a comprehensive state privacy law?
- Do you have a data breach notification law?
- Any bills affecting consumer protection currently being considered in the legislature or recently passed?

TOPICAL DISCUSSION

ORGANIZED RETAIL CRIME

- The problem has grown
 - Organized retail theft accounts for losses of billions of dollars annually
 - The average professional thief in CVS can steal \$2,000 of merchandise in two minutes

ORGANIZED RETAIL CRIME

- The problem grew during the pandemic and continues to grow
 - ◆ CVS reported an increase of 30% of thefts in 2020
 - ◆ Walgreens reported a 52% increase in thefts from 2019-2021
 - ◆ Study by National Retail Federation found ORC increased by 26.5% from 2021-2022

ORGANIZED RETAIL CRIME

- Organized retail crime rings are frequently connected to human, gun, and drug trafficking as well as other crimes
- These criminal enterprises target big box stores, pharmacies, hardware stores, auto dealerships, and other retailers
- Often employing mules, these rings coordinate the thefts of large amounts of goods that are then resold below market value on online marketplaces

ATTORNEY GENERAL'S ORGANIZED RETAIL CRIME TASKFORCE

- Created by the Attorney General in September, 2021
 - Public-private collaboration to foster cooperation among:
 - ◆ Retailers
 - ◆ Online marketplaces
 - ◆ Law enforcement agencies
 - ◆ State's attorneys

ATTORNEY GENERAL'S ORGANIZED RETAIL CRIME TASKFORCE

- Example cases:
 - Cargo theft – uncovered almost \$1 million worth of stolen merchandise in several storage units
 - Cargo theft – stolen container of over \$200,000 of Samsung TVs recovered from a warehouse
 - Mall/retail theft – various malls and retail outlets targeted for theft of particular items to be resold on various platforms; at least five malls targeted in the Chicago area

ORGANIZED RETAIL CRIME

- What can retailers do to assist with ORC investigations?
- Examples of platforms working collaboratively on combatting ORC

INFORM Consumers Act

- Why is the Act important?
 - Helps law enforcement have better insight into who is part of organized retail crime
 - The Illinois' Act provides law enforcement with enhanced criminal tools
 - Provides important information to consumers about who they are purchasing products from
 - Provides consumers a tool to report suspected suspicious activity

Illinois' Law

- Illinois' law signed by Governor Pritzker signed in May, 2022
 - Public Act 102-0757 included amendments to criminal code as well as creation of new INFORM Consumers Act
 - Collaboration of Illinois Attorney General and the Illinois Retail Merchants Association

Illinois' Law

- Illinois' law includes enhanced criminal penalties and enforcement provisions
 - ◆ Specifically defines organized retail crime in Illinois law (720 ILCS 5/16-25.1)
 - ◆ Provides statewide grand jury authority over organized retail crime (725 ILCS 215/2)

Illinois' Law

- Illinois' law created the INFORM Consumer Act, with obligations for online marketplaces similar to federal INFORM Consumers Act
 - 815 ILCS 356/1-1 et seq.

Federal Law

- Federal law signed December, 2022
 - Obligations for online marketplaces essentially the same as those in the Illinois law (but no criminal provisions in federal law)

INFORM Consumers Act

- Obligations of the Acts
 - Cover “high-volume” third party sellers only
 - ◆ For **collection** of information, this means 200 or more discrete sales plus \$5,000 or more in aggregate gross revenues in 12-month period
 - ◆ For **disclosure** of information, this means the above requirements plus \$20,000 or more in annual gross revenues

INFORM Consumers Act

- Collection requirements
 - Online marketplace must collect this information within 10 days of seller qualifying as high-volume:
 - ◆ Bank account number
 - ◆ Contact information
 - ◆ Tax ID
 - ◆ Working email and phone number
 - Online marketplace must then verify information

INFORM Consumers Act

- Disclosure requirements
 - Online marketplace must disclose identity information to consumers, including:
 - ◆ Full name of seller, seller's company or name by which seller or company operates on the marketplace
 - ◆ Physical address of seller
 - ◆ Contact information of seller, including phone number, email, or other means of direct electronic messaging

INFORM Consumers Act

- Disclosure requirements (cont'd)
 - Whether the seller used a different seller to supply the products to the consumers, and if so, contact information of such different seller upon request of consumer
 - Disclosure must be in “conspicuous” manner
 - ◆ In the order confirmation message*; and
 - ◆ Consumer’s account transaction history
- There are exceptions to full disclosure

*slight difference between Illinois and federal law

INFORM Consumers Act

- Required reporting mechanism
 - Marketplace must disclose in “clear and conspicuous manner” on the product listing a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the marketplace
- Suspension requirements
 - Marketplace must suspend future sales activity of high-volume seller if, after providing notice and an opportunity for compliance, the seller does not comply with these provisions until the seller complies

INFORM Consumers Act

- Attorney General Enforcement
 - Federal Act
 - ◆ May bring a civil action in the appropriate federal district court, where they have reason to believe that any online marketplace has violated or is violating the INFORM Act or a regulation promulgated thereunder
 - ◆ Attorney General can obtain injunctive relief, civil penalties (up to \$50,120 per violation), other remedies permitted under state law, and damages, restitution or other compensation on behalf of residents of the state

INFORM Consumers Act

- Attorney General Enforcement (cont'd)
 - Illinois Act
 - ◆ If the Attorney General has reason to believe that a person has violated the Act, may bring an action to enjoin the unlawful practice
 - ◆ Court has discretion to provide
 - Injunction
 - Revocation of authority to do business in the state
 - Restitution
 - ◆ AG can issue pre-suit subpoena

ATTORNEY GENERAL ENFORCEMENT

- Will states be active in enforcing the federal law? Especially states with their own state law?
- State AG working group
- Partnering with federal, state, and local law enforcement is critical

Illinois Consumer Fraud and Deceptive Business Practices Act

- There is an obligation on platforms to not turn a blind eye to criminal activity on their platforms
- Illinois Consumer Fraud Act makes unlawful any unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce (815 ILCS 505/2)
- Broad authority that covers both deceptive and unfair conduct
- Enforced by the Attorney General, States Attorneys, and private right of action

Illinois Consumer Fraud and Deceptive Business Practices Act

- Consumer safety of stolen products
 - Items like baby formula and medicine could have significant safety concerns
- Consumer deception re: purchasing stolen products

THANK YOU



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