

FACT Act Update: Disposing of Consumer Information

INTRODUCTION

The Federal Trade Commission (“FTC”) has published a proposed rule governing the disposal of consumer reports and other consumer information derived from consumer reports.

OVERVIEW

The Fair and Accurate Credit Transactions Act (“FACT ACT”) was signed into law on December 4, 2003. In general, the Act amends the Fair Credit Reporting Act to enhance the accuracy of consumer reports and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also establishes uniform national standards in key areas of regulation regarding consumer report information. Finally, the Act contains a number of provisions intended to combat consumer fraud and related crimes, including identity theft, and to assist its victims.

REGULATION OF CONSUMER INFORMATION

Section 216 of the FACT Act requires the FTC and six additional federal agencies to issue regulations requiring “any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose to properly dispose of any such information or compilation.” The purpose of this section is to prevent unauthorized disclosure of consumer information and to reduce

the risk of fraud or related crimes, including identity theft, by ensuring that records containing sensitive financial or personal information are appropriately scrubbed of consumer data or destroyed before being discarded.

PROPOSED RULE

The proposal would require that any person disposing of consumer information take “reasonable measures” to protect against unauthorized access or use of the information. The FTC gives a series of examples of such reasonable measures including:

- Following policies and procedures to burn, pulverize or shred consumer information;
- Following policies and procedures to erase electronic files containing consumer information; or
- Entering into, and monitoring, a contract with a third party specializing in the business of record destruction.

The proposed rule does not say that the examples are the only measures to protect against disclosure of consumer information, but the clear implication is that companies must take affirmative steps to make sure that consumer information cannot be gleaned from discarded consumer reports or similar documents and that written documentation and monitoring of the steps taken will be required.

CALL FOR COMMENTS

The FTC will accept comments on the proposed rule through June 15. The full text of the proposed rule can be accessed at:

<http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2004/04-8904.htm>

FOR MORE INFORMATION

Kelley Drye Collier Shannon's Advertising and Marketing practice group is on the forefront of developing marketing and advertising industry guidelines and regulations. For more information about this issue of Advertising Law Alert or to learn more about how Kelley Drye Collier Shannon can help you increase the effectiveness of your advertising and marketing, please contact one of our team members at (202) 342-8400 or via email:

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