

State Attorneys General Fight Imposters Among Us

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Last week, 49 State Attorneys General joined in a National Association of Attorneys General letter authored by Florida, Iowa, Mississippi, Pennsylvania, and Tennessee responding to the FTC's Request for Public Comment concerning impersonation scams. While a bipartisan coalition from the State AGs on consumer issues isn't particularly surprising, the call for additional federal oversight into areas the State AGs already have authority to enforce is certainly interesting.

The letter notes that, "Attorneys general are uniquely qualified and well-positioned to provide insights regarding impersonation scams." Not only do State AGs provide insights regarding these scams, but also they often enforce their laws prohibiting unfair and deceptive practices (UDAP) to stop them. The letter details several recent State AG actions in this area, including settlements with companies allegedly sending deceptive mail solicitations that appeared to come from government agencies, and companies making calls impersonating government agencies and other businesses. Having obtained these resolutions, it is interesting that the State AGs then write that "there is a pressing need for FTC rulemaking to address the scourge of impersonation scams" and that "a national rule that encompasses and outlaws such commonly experienced scams discussed herein would assist attorneys general and their partners in reducing consumer harm...."

The AGs also take aim at what they call facilitators of these scams, considering they should sometimes be held accountable and citing recent rulings in states such as California and Massachusetts holding lenders responsible for actions that contributed to fraud. They also note that third parties may sometimes be victim themselves. Indeed, most players in the marketplace are harmed from imposter scams, including consumers, legitimate businesses or government agencies being impersonated, and some third parties whose platforms are being used for illegitimate purposes without their knowledge or in abuse of their policies.

The AGs also note that the standard provided in such a rule should act as a floor and clearly state that it is not intended to preempt state laws. This seems like a risky proposition, since having such a rule would likely result in arguments of field preemption.

State deceptive trade practices acts are designed to protect against just that – deception. Imposter scams take advantage of the ultimate deception, leading consumers to believe they are speaking with trusted relatives, companies, or agencies. Government imposter scams are one of the most notorious forms, which could include a company making a false claim that they can provide government benefits or insinuating it is a government actor by failing to clearly and conspicuously disclose it is not. Some state UDAP laws even contain specific violations against government imposter scams, such as misrepresenting a government entity in solicitations.

So, given that, what can the AGs accomplish with an FTC rulemaking? Perhaps they are looking to

further their partnership with the FTC, as we have [previously discussed](#). In the letter's conclusion, the authors state "Attorneys general hope to continue working with the FTC and other partners to sound the alarm on impersonation scams." They also add that education and outreach efforts must act as a "complement to strong regulation." This may present great opportunity not only for the States and FTC to work together, but the legitimate business community which is also often the victim of imposter scams.

As our 30 years of combined experience as former government regulators has taught us, the difficulty in combatting imposter fraud isn't a lack of legal authority to bring actions against wrongdoers, or even a lack of consumer education, but often is the challenge of unraveling who the imposters really are and catching them before they disappear. Once they are found, taking action under the current enforcement regime is certainly possible as the lengthy history of enforcement actions described by the States demonstrate. As the States note, impersonators are increasingly able to use newer technology and platforms to their advantage such as new payment processors, social media, and cryptocurrency. They also note that there are minimal startup costs to become an imposter. Covid-19 has also made people especially vulnerable to falling victim, as people spent more time apart and expected more contact from government agencies. If nothing else, the rulemaking is highlighting this pervasive problem. Working together with the business community that is often victimized as well, States and the FTC have an opportunity to collaborate on the tools they need to combat this pervasive type of fraud.