

Advertising and Marketing Issues in Online Lending

Navigating Compliance in a Changing
Regulatory Landscape

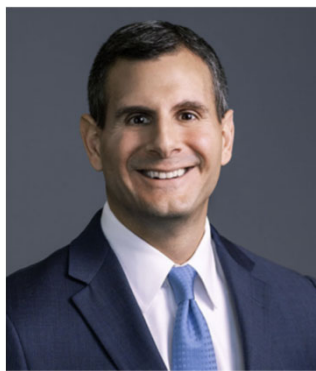


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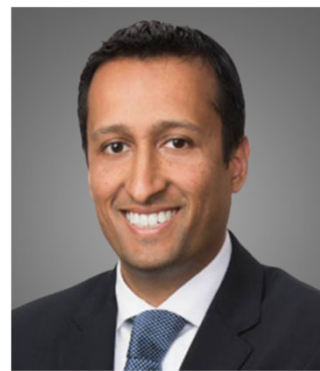
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Agenda

- Disclaimer
- FCC One-to-One Consent Rule
- FTC Guidance on Dark Patterns
- CFPB Circular on Digital Comparison Shopping
- Hot Topics in the Advertising and Marketing Space
- Compliance Considerations



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Disclaimer – The Road Ahead is Still Unclear....

- There is a sea-change of regulatory and enforcement priorities under Trump 2.0.
 - Overall emphasis on de-regulation and innovation. More business friendly.
- But hard to figure out what that means on a day-to-day basis. And what rules will stay and which ones will still exist, but in a watered-down form.
- Much of the action in the regulatory space depends on who is appointed to key positions at the CFPB, FCC, and FTC.
- Remember: enforcement and supervisory actions are often retrospective and can look back over many years.

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FCC One-to-One Consent Rule

- FCC one-to-one consent rule was scheduled to take effect on Jan. 27.
 - The FCC rule was intended to close what the agency described as a “lead generation loophole and required companies to obtain individual consent for each marketing partner before sharing customer data.
- *Insurance Marketing Coalition v. FCC*, No. 24-10277 (11th Cir. 2025)
 - Eleventh Circuit, relying on *Loper Bright*, found that the FCC rule conflicted with the “ordinary statutory meaning” of “prior express consent.”
 - FCC rule also limited the ability of consumers to “clearly and conspicuously” express consent to calls. The court vacated the rule and remanded the matter to the FCC for further consideration.

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FCC One-to-One Consent Rule

- Given the change in leadership at the FCC, it is unlikely the agency will seek to implement similar restrictions any time soon.
- Moreover, the court’s view of the meaning of “prior express consent” limits the FCC’s options significantly. The court’s opinion likely means that reexamining the issue is not high on its priority list.
- Will we see other challenges using *Loper Bright* in other types of rulemaking?

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What are Dark Patterns?

- Online design features used to manipulate consumers into taking unintended actions that may not be in their interest
 - Surrender personal data
 - Make it impossible to get out of subscription plans – “roach motel”
 - Hide material contract terms
 - Add unwanted products to online cart
- Use of tricks and traps
 - Visual misdirection
 - Confusing language
 - Checkbox with double negative language
 - Time pressure designed to dupe users into clicking, subscribing, consenting, or buying

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FTC's 2022 Report – Bringing Dark Patterns to Light

The Federal Trade Commission's (FTC) **2022 report**, [Bringing Dark Patterns to Light](#), analyzed deceptive digital practices that manipulate consumers into actions they may not have otherwise taken. The report identified key tactics:

- **Design Elements that Induce False Beliefs:** Companies blur the lines between advertisements and organic content, making it difficult for consumers to distinguish between sponsored and non-sponsored material.
- **Difficult Cancellation Processes:** Subscriptions and services often feature frustrating, multi-step cancellation processes designed to deter consumers from opting out.
- **Buried Terms & “Junk Fees”:** Hidden fees and unclear terms deceive consumers about the true cost of a product or service, often surfacing only at checkout.

These “**dark patterns**” can mislead consumers, violate consumer protection laws, and expose companies to regulatory scrutiny. The FTC has increasingly **pursued enforcement actions** against businesses using these tactics.

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Deceptive Design Elements

Compare the Best Student Loan Refinance Rates
Instantly view loan options from \$5,000 to \$500,000 using our student loan refinance comparison tool.
Easily select your loan type, educational level, and loan amount to compare loan companies that meet your selected criteria.

Current Loan Type Highest Degree Obtained Loan Amount

All Loan Types All Degree Types All Loan Amounts

I want to compare:

Rates & Terms Loan Details Eligibility Requirements Application & Fees

Loan Type: Variable APR Loan Terms (Years): 5, 7, 10, 15 or 20

Company	Fixed APR	Variable APR	Loan Terms (Years)	Check Rate
SoFi	3.25% - 7.13%	2.89% - 7.38%	5, 7, 10, 15 or 20	Check Rate
earnest	3.25% - 6.32%	2.57% - 5.87%	5 - 20	Check Rate
LendKey	3.15% - 8.12%	2.56% - 7.94%	5, 7, 10, 15 or 20	Check Rate

Top 9 Companies for Student Loan Refinancing: In-Depth Reviews

1. SoFi

SoFi Reduce your payment and interest rate. Members save \$22,359 (in 10 minutes)! [Visit Site](#)

- ✓ Refinance and consolidate both federal and private student loans
- ✓ Rates as low as 2.89% for variable rates
- ✓ Rates as low as 3.25% for fixed rates
- ✓ 5, 7, 10, 15, 20 year repayment terms
- ✓ No application fees, origination fees, or pre-payment fees
- ✓ Unemployment protection is available
- ✓ Easy application process

2. Earnest

earnest You could save a boat load. Customers save \$20,180 on average! [Visit Site](#)

- ✓ Refinance and consolidate both federal and private student loans
- ✓ 5 - 20 year repayment terms
- ✓ Variable rates as low as 2.57%
- ✓ Fixed rates as low as 3.25%
- ✓ Data-driven customer evaluation helps you get qualified
- ✓ Zero application fees, origination fees, or pre-payment fees

3. LendKey

LendKey You deserve a better student loan. Average client saves \$16,537! [Visit Site](#)

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Difficult Cancellation Processes

Before You Go...

If you are having difficulty making monthly payments, you may be interested to know that we have a special upgrade offer that will save you 68% on your subscription price, which works out to be only \$2.50/month!

SAVE 68%

12 months

for \$29.95

[Learn More](#)

[Back Home](#) [No Thanks, I'll Wait](#) [Continue](#)

Did you know you can access the full curriculum anytime, anywhere, and FREE with your subscription?

Available on:

- Computers
- Tablets
- Smartphones

[No Thanks. Continue](#)

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Buried Terms and Fees

The screenshot shows the LendingClub website interface. At the top, the LendingClub logo is on the left, and navigation links 'How it Works', 'Privacy', 'Sign Out', and 'Help' are on the right. Below the header, a message reads 'Excellent! You Qualify for a Credit Card Refinance Loan'. A central box titled 'We have a great rate for you:' displays loan details: '\$10,000 Loan Amount', '\$308.73 (36 payments) Monthly Payment', '6.99% Interest Rate', and '9.41% APR'. A green 'Get Loan' button is below these details. A callout box on the right explains that APR stands for Annual Percentage Rate and is a measure of the total cost of credit, comprising the annual interest rate (6.99%) and a one-time origination fee of 3.5% (\$350.00). At the bottom, three icons represent 'Fixed interest rate', 'No prepayment penalties', and 'No hidden fees'.

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FTC Negative Option Marketing Rules

The FTC's **Negative Option Rule** regulates automatic renewals, free trials, and subscription-based billing to prevent deceptive practices. Key considerations include:

- **Clear & Conspicuous Disclosures** – Businesses must prominently disclose recurring charges, billing frequency, and cancellation policies.
- **Informed Consumer Consent** – Customers must actively agree to enroll before being charged—**pre-checked boxes are prohibited**.
- **Easy & Simple Cancellation** – The cancellation process must be as straightforward as signing up, with no hidden hurdles.
- **Post-Sale Renewal Notices** – Consumers must receive reminders before subscription renewals, especially for free-to-paid conversions.
- **Regulatory Enforcement** – The FTC is aggressively targeting businesses that engage in **deceptive subscription practices**, imposing fines and legal actions.

Companies should review their subscription model structures for compliance.

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Federal Restore Online Shoppers' Confidence Act ("ROSCA")

- Prohibits charging or attempting to charge consumers for goods or services sold on the Internet through any negative option feature.
 - Clear and conspicuous disclosures
 - Consumer's express informed consent
 - Simple mechanisms to stop recurring charges



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FTC Dark Pattern Enforcement Actions

•**LendEDU** – The company allegedly misled consumers by selling top rankings in loan comparisons while claiming objectivity. The case resulted in a settlement in **2020** for **\$350,000** and agreements to cease deceptive practices.

•**Doxo, Inc.** – Allegations include deploying **misleading search ads** and deceptive bill payment design, leading to deceptively hidden fees. FTC sued in **2024**. The case is **ongoing**.

•**FloatMe Corp.** – Falsely advertised "free" cash advances and made cancellation difficult. The case settled in **2024** for **\$3 million** in refunds.

•**Vonage** – FTC complaint alleged **dark patterns to obstruct cancellations**, leading to continued charges. The case settled in **2022** for **\$100 million**, and requirements for simpler cancellation processes.

•**ABC Mouse** – FTC allegations included failure to disclose **automatic renewals** and made **cancellations difficult**. Case settled in **2020** for **\$10 million**, agreeing to improve transparency.

•**Match.com** – FTC alleged the company used **Fake love interest ads** tricked users into subscribing, while **cancellation was made difficult** FTC sued in **2019**. The case is **ongoing**.

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CFPB Circular on Digital Comparison Shopping Sites

- CFPB Circular 2024-01 – “Operators of digital comparison-shopping tools can violate the prohibition on *abusive* acts or practices if they distort the shopping experience by steering consumers to certain products or services based on the remuneration to the operator. Similarly, lead generators can violate the prohibition on *abusive* practices if they steer consumers to one participating financial services provider instead of another based on compensation received.”

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CFPB Circular on Digital Comparison Shopping Sites

- Key aspects of the Circular:
 - Operators explicitly or implicitly present information based on the interests of the consumer; it may be reasonable for consumers to rely on the tool to function accordingly.
 - Key phrases trigger reliance – “expertise,” “research-based,” best” or “right” offers, “put consumers first,” or “one stop shop.”
 - Evidence that consumers do not understand that rankings are paid can contribute to establishing reliance.
 - When consumers are steered to products based on fees/compensation to the website operators, those products usually do not serve the consumer interest.

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CFPB Circular on Digital Comparison Shopping Sites

- Bureau's suggested guidance
 - UDAAP concerns can be mitigated when a tool operator does not consider compensation in its decision regarding placement or which providers receive a lead.
 - More comparison options reduces the risk of a violation.
 - Tool operators should present advertising content that is visually separate from the presentation of product recommendations or results.
 - Any ads should itself not be presented as a recommendation.
 - **Circular is silent on efficacy of disclosures.**

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HOT Topics in the Advertising/Marketing Space

- The use of AI in marketing brings the risk of discriminatory or UDAAP/UDAPs in algo-driven advertising.
 - Regulatory focus – increasing scrutiny from agencies like the FTC on AI driven personalization and bias. See AI and the Risk of Consumer Harm, Jan. 3, 2025 FTC staff blogpost.
 - Compliance considerations when AI influences ad content or placement.
 - See *FTC v. Rite Aid*, No. 2:23-cv-05023 (E.D.Pa. 2023)
 - See also CFPB 2022 Interpretative Rule defining “Service Provider”

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HOT Topics in the Advertising/Marketing Space

- Behavioral advertising and privacy laws
 - Data collection transparency – clear disclosures on how consumer data is collected and used for ad targeting.
 - Implication of state privacy laws including the California Consumer Privacy Act and the California Privacy Rights Act.

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Compliance Considerations in a Changing Regulatory Environment

- Understand the regulatory landscape and stay informed of changes (especially those at the state level).
- Embed compliance in product and marketing design (regularly review marketing materials and use clear and conspicuous disclosures),
- Regulators are looking for a consumer-first approach
 - Advertisements that are clear, accurate, and not misleading.
 - Easy-opt out mechanisms.
 - Clear discussion of pricing to promote informed decision making.

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Compliance Considerations in a Changing Regulatory Environment

- Strong communication in your partnership arrangements
 - Strengthen compliance collaboration between your partners - lead gens and lenders.
 - Implement shared accountability measures to promote responsible marketing.
 - Use technology and audits to enhance compliance and prevent fraud and maintain ongoing monitoring and quality controls.
 - Document and monitor compliance efforts.

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Compliance Considerations in a Changing Regulatory Environment

- ***FTC.Com Disclosure Guide (March 2013)***
- Advertisers should (1) incorporate limitations and qualifiers into the underlying claim, and (2) consider placement of the ad and its proximity to the relevant claim.
- Clear and conspicuous:
 - Place the disclosure as close as possible to the triggering claim.
 - Take account of the various devices and platforms consumers may use to view it (mobile vs web).
 - When a space-constrained ad requires a disclosure, incorporate the disclosure into the ad whenever possible.
 - Design so scrolling not necessary and make them prominent.
 - Disclosures before purchase and repeat disclosures.

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Thank you!



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