OBAMA-BIDEN TRANSITION PROJECT

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Consumers Union Priority Recommendations for FTC:

Bureau of Consumer Protection Matters

Online Behavioral Marketing

More must be done to protect consumer privacy. Consumers are being asked to pay a heavier and heavier price in order to take advantage of the full range of goods and services offered through the Internet, as marketers, researchers, data-mining companies and even service and content providers create profiles of personally identifiable information based on consumer behavior.

Recent *Consumer Reports* survey data indicates that consumers are increasingly concerned about how their personal information is being collected and used by Internet companies. Over two thirds of American consumers (seventy two percent) are concerned that their online behaviors are being tracked online. In the very worst cases consumers experience invasions of badware that flood their machines with unwanted pop-up ads, or renders their computers a tool for cyber criminals intent on stealing identities. Internet service providers, content providers and vendors must take greater responsibility in considering the collateral impact their behavioral tracking models have on consumers.

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***Recommended FTC Action*: Investigate the online marketplace in light of new developments in the field; expose marketing practices that compromise user privacy; issue the necessary injunctions to halt current practices that abuse consumers; and adopt policy principles outlining what can be considered technology neutral Fair Information Practices.**

Gift Cards

Consumers are unaware that their gift cards may be worth far less due to retailer bankruptcies. When a retailer files for bankruptcy, the retailer must make a request to the court to allow it to continue to accept its gift cards. The bankruptcy court must approve the retailer's request to continue to accept its gift cards. The consumer is left without the ability to use the card if the retailer does not make this request or if the court denies the retailers' request. Consumers continue to lose significant value on gift cards due to retailer bankruptcies. The TowerGroup estimates consumers can lose up to $75 million due to restaurant and retailer closures just this year.[1]

***Recommended FTC Action:* Declare the sale of gift cards without <u>both</u> segregating the funds and holding those funds in a trust to be an unlawful and deceptive practice. Prescribe new rules that require retailers to both segregate and hold in trust gift card funds, and to automatically honor a consumer's gift card from those segregated funds for goods or services until or unless a**

[1] *Will Circuit City gift cards fulfill wishes*, Marketplace Radio, November 10, 2008.

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bankruptcy court orders otherwise. In the interim, the FTC should intervene in bankruptcy proceedings to request the court to order that a bankrupt retailer accept its own gift cards at full value as long as the doors remain open.

Appliance Labeling

CU's *Consumer Reports* tests the operation, reliability, durability and safety of a vast number of consumer appliances each year.

***Recommended FTC Action*: CU recently has urged the FTC in the ongoing rulemaking on energy efficiency labeling (EnergyGuide and Energy Star) requirements to:**

- **update its comparability ranges for the efficiency of products more often than every five years;**
- **ensure that appliance categories and test procedures are broad enough to capture new and emerging appliance configurations (*e.g.*, French door refrigerators,) and features (*e.g.*, through the door ice makers, water dispensers, four door refrigerators);**
- **require on-line disclosure of model efficiency ratings for heating and cooling equipment.**

Food and Beverage Marketing to Children

CU has a longstanding interest in food and beverage marketing to children. We support the FTC's recent information collection requirements (April 18, 2007) to compel food and beverage companies and quick service

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restaurants to provide information about their marketing activities and expenditures targeted to children and adolescents.

***Recommended FTC Action*:**

- **hold firm on the proposed collection order to the food and beverage industry for marketing data and make it an ongoing periodic request, perhaps annually, so as to be able to track trends over time.**
- **support a strong International Code on Marketing of Foods to Children. An International Code can set standards for which the U.S. can aspire.**

Retail Rebates

Manufacturers' rebates may offer enticing discounts but they often go unclaimed. Four of 10 people who qualify for a manufacturer's rebate never collect, says *Consumer Reports* in the March '07 issue. Rebates are aggravating for most consumers because they frequently involve confusing and burdensome paperwork that must be submitted within a tight deadline in order to get the refund. After all this, it can take eight to 12 weeks to get the refund. *Consumer Reports* found some good news: some businesses are streamlining the rebate process but many others have not and there are no FTC rules in place requiring businesses to do so.

***Recommended FTC Action*: CU has encouraged the FTC to promulgate rules to protect consumers in the retail rebate arena. The FTC rules would incorporate standards for advertising and handling product rebates.**

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At a minimum, these rules should include mandates that consider the following:

- **consumers should be able to get their rebates at the cash register**
- **the process should be simple and the paperwork must be clear**
- **consumers should have at least 30 days to claim their rebates**
- **companies should fulfill rebates within the same amount of time required of consumers to redeem**
- **companies should accept photocopies of original receipts**
- **companies should provide a toll free, 24/7 phone number for consumer inquiries regarding the status of their rebate redemptions**
- **companies should make checks clearly identifiable as rebates**
- **to address privacy concerns, eliminate the companies' ability to collect personal information from the consumer that is not relevant to the product rebate.**

Nanotechnology

There are currently a reported 800 consumer products or more on the market that claim to contain engineered nanoscale materials (ENM). Synthesized on the scale of a nanometer (which is about 100,000 times smaller than the width of a human hair), engineered nanomaterials often exhibit very different physical and chemical properties than larger scale versions of the same chemicals. These unique properties can make

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ENMs much more toxic and unstable. Though the scientific community is virtually unanimous that toxicity of these new substances cannot be predicted from their larger, more familiar counterparts, the government has yet to regulate their use or require specific testing to assess their safety. Few toxicity tests have been conducted, even though nanoparticles are turning up in products that can expose consumers to these new materials. We believe that many consumers would like to know if products -- especially those to be ingested or applied to the skin -- contain nanoparticles.

***Recommended FTC Action*: Because consumers would like to know and safety officials need to know if products, especially personal healthcare and food products contain nanoengineered materials, we think this information should be disclosed about consumer products in commerce. We strongly urge the FTC to closely monitor either comparative claims for a product touted to contain nanomaterials, or advertising for products -- especially cosmetics -- that fail to disclose the presence of nanoparticles.**

Student Loan Lender Marketing Practices

There have been many recent reports showing that student loan indebtedness is on the rise for graduates of four-year and proprietary schools. Consumers Union has undertaken a project to develop policy recommendations to help parents and students identify affordable loan choices and to understand the

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implications of repayment of student debt on their future life choices. During our market research, parents and students have universally described how they are bombarded with marketing materials from student loan lenders and consolidators.

***Recommended FTC Action*: CU urges the FTC to give a high priority to its investigation of the marketing practices of student loan lenders and consolidators. We urge the Commission to host a workshop and to issue orders to the extent they would assist in uncovering unfair and deceptive acts and practices.**

Bureau of Competition Matters

Broadband Competition

Most consumers are not well informed about their broadband offerings. Many have limited choice of providers, and those that have access to more than one broadband provider are unaware of (a) the true speed they can expect to experience on an average basis during peak Internet usage hours and (b) whether their particular provider will block or prioritize particular kinds of Internet applications of software that compete with their business model. Consumers should be able to choose providers based on truthful information detailing speed and quality of service.

Recommended FTC Action:
The FTC should require broadband access providers to disclose, in simple and non-technical terms, their broadband access and usage terms including (a) actual

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levels of bandwidth (throughput), (b) the amount of latency (delay) (c) any limitations on consumers ability to access services and content of their choice and (d) to what extent certain content and services get preferential delivery. The FTC should bring enforcement actions against those broadband providers who do not disclose, or who misrepresent the features of their service.

Generic Drugs Competition

CU has been a strong supporter of the FTC's enforcement actions to stop the use of reverse or exclusionary payments that have the effect of delaying generic drug entry. We have endorsed both Senator Kohl's bill and Representative Rush's bill that would prohibit this type of conduct. The special regulatory framework governing the approval of generic drugs makes patent settlements that include reverse payments especially harmful to consumers.

***Recommended FTC Action*: We urge the FTC to continue its efforts on behalf of consumers before the Congress and the Judiciary.**