Federal Trade Commission
Protecting America's Consumers

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FTC Action Bans Payment Processor from Using a Novel Payment Method to Debit Accounts

Allegedly Debited Millions of Dollars from Consumers' Bank Accounts Without Their Consent

A payment processor and two of its principals are now banned from using a new payment method to process electronic payments under a settlement with the Federal Trade Commission, which resolves charges that they debited consumers' bank accounts without their consent. The settlement furthers the FTC's ongoing efforts to protect financially-strapped consumers during the economic downturn by scrutinizing not only merchants, but all parties who participate in defrauding consumers.

Payment processors provide merchants with the ability to obtain customer payments for products and services via electronic banking. According to the FTC's complaint against Landmark Clearing, Inc., Larry Wubbena, and Eric Loehr, the defendants used a relatively new payment method called "remotely created payment orders" to give merchants access to consumer bank accounts. From the fall of 2008 until the spring of 2011, Landmark allegedly used remotely created payment orders to debit, or attempt to debit, millions of dollars from consumers' accounts without their consent. The FTC charged that in many instances Landmark debited consumers who had never heard of Landmark or its client merchants, had never gone to any of the merchants' websites, and had never knowingly agreed to purchase products or services from the merchants.

According to the FTC's complaint, Landmark's payment processing activities caused substantial injury to thousands of consumers, often those who could least afford to have funds unexpectedly taken from their accounts without authorization. The FTC alleged that as a result of the unauthorized debits, many consumers suffered significant costs from overdraft and bounced check fees, plus the time and expense of closing bank accounts, opening new ones, and ordering new checks. An example is John Chagoya, a consumer in California who was living on a fixed income when money was taken from his account. While checking his bank statement, he noticed a debit from Landmark payable to Direct Benefits Group (DBG), one of Landmark's client merchants. "They never contacted me at all, and I never authorized anyone to debit money from my account." As a result of the debit, Chagoya's account became overdrawn, and he had to pay bounced check fees.

The FTC's complaint alleged that Landmark's clients routinely failed to obtain consumers' authorization for the debits. By continuing to process these debits, Landmark played a critical role in its clients' unlawful business practices.

According to the FTC, remotely created payment orders are created by entering a consumer's name and bank account information into an electronic form and are processed like an ordinary paper check. When printed, remotely created payment orders look like regular bank checks, but instead of having the account holder's signature, they bear a statement such as "Authorized by Account Holder" or "Signature on File." Federal banking regulations require the creator of a remotely created payment order to have the express authorization of a consumer to process the debit. Unlike some payment mechanisms, such as credit cards, remotely created payment orders are not subject to significant oversight and monitoring, making them vulnerable to abuse. As a result, the FTC alleges, they have become a particularly attractive payment method for merchants and processors engaged in fraud and unauthorized debiting.

A red flag indicating unlawful debiting is a high rate of consumers and their banks rejecting and returning transactions submitted for debiting. According to the FTC's complaint, some of Landmark's clients generated astronomical return rates, sometimes higher than 80 percent, which gave Landmark compelling evidence that its client merchants had not obtained valid consumer authorizations for their debits.

"The return rates posted by Landmark's clients provided obvious signs that they were engaged in dubious practices," said David Vladeck, Director of the FTC's Bureau of Consumer Protection. "But the defendants looked the other way. Payment processors who reach into consumer accounts on behalf of clients engaged in fraud will be held accountable."

The FTC complaint alleges that Landmark actively promoted remotely created payment orders as a way to avoid the scrutiny associated with other payment mechanisms, advertising on its website that merchants "with a high percentage of overall returns" would benefit from using its remotely created payment order product.

According to the FTC, Landmark processed more than 110,000 remotely created payment orders with a value exceeding $5.3 million through the First Bank of Delaware on behalf of one client merchant, Direct Benefits Group (DBG), of which more than 70 percent were rejected and returned. In August 2011, the FTC charged DBG with debiting consumers' bank accounts without their consent, and a federal judge halted DBG's operation and froze its assets pending further litigation.

Similarly, Landmark allegedly processed more than $5.7 million in debits through the First Bank of Delaware on behalf of Platinum Online Group, of which more than 83 percent were rejected and returned. The FTC complaint alleges that Landmark accepted Platinum Online as a client even though Landmark had terminated EdebitPay, Platinum Online's parent company, because of its high return rates. Landmark also knew that in 2008, EdebitPay and its principals had agreed to pay $2.2 million in consumer redress to settle FTC charges for debiting consumers without their consent. The FTC later filed a contempt action against EdebitPay for violating the settlement order.

The settlement order bans the Landmark defendants from processing payments through remotely created payment orders and a similar payment mechanism called "remotely created checks." The order permits the defendants to provide other forms of payment processing, subject to stringent conditions. The settlement order:

- Permanently prohibits the defendants from processing payments for any client they know, or should know, is violating the FTC Act or the Telemarketing Sales Rule (TSR);
- Requires them to screen and monitor prospective and existing clients to determine whether their business practices violate the FTC Act or the TSR;
- Requires them to monitor clients' total return rates, reasons for returned transactions, and unusual transaction patterns, values, and volume;
- Prohibits them from failing to investigate a total return rate exceeding 2.5 percent, and requires them to stop payment processing for a client unless the investigation shows its business practices did not violate the FTC Act; and
- Bars them from referring any past remote payment clients to third parties for a fee, and from selling or otherwise benefitting from consumers' personal information.

As part of the settlement, Landmark, Wubbena and Loehr have agreed to a $1.5 million judgment that will be suspended upon payment of $126,000 and the surrender of a parcel of land. The full judgment will become due immediately if the defendants are found to have misrepresented their financial condition or fail to meet the terms of the order.

The Commission vote to authorize staff to file the settlement was 4-0. The complaint and consent order were filed in the U.S. District Court for the Eastern District of Texas, Sherman Division, on December 15, 2011. The order was entered by the court on December 29, 2011.

NOTE: The Commission authorizes the filing of a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The complaint is not a finding or ruling that the defendant has actually violated the law. The consent order is for settlement purposes only and does not constitute an admission by the defendants of a law violation. Consent orders have the force of law when signed by the District Court judge.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online Complaint Assistant or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 2,000 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's website provides free information on a variety of consumer topics. Like the FTC on Facebook and follow us on Twitter.

MEDIA CONTACT:

Frank Dorman,
Office of Public Affairs
202-326-2674

(Landmark Clearing)
(FTC File No. 1123117)

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Related Items:

Federal Trade Commission, Plaintiff, v. Landmark Clearing, Inc., Larry Wubbena, and Eric Loehr, Defendants
(United States District Court for the Eastern District of Texas, Sherman Division)
Case No. 4:11-cv-00826
FTC File No. 1123117