

FEDERAL TRADE COMMISSION

16 CFR Part 461

Trade Regulation Rule on Impersonation of Government and Businesses

AGENCY: Federal Trade Commission

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (“Commission”) proposes to commence a rulemaking proceeding to address certain deceptive or unfair acts or practices of impersonation. The Commission is soliciting written comment, data, and arguments concerning the need for such a rulemaking to prevent persons, entities, and organizations from impersonating government agencies or staff and businesses or their agents.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the SUPPLEMENTARY INFORMATION section below. Write “Impersonation ANPR; FTC File No. R207000” on your comment and file your comment online at <https://www.regulations.gov>. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Christopher E. Brown, cbrown3@ftc.gov.

SUPPLEMENTARY INFORMATION:

I. General Background Information

The Commission is publishing this document pursuant to Section 18 of the Federal Trade Commission (“FTC”) Act, 15 U.S.C. 57a; the provisions of Part 1, Subpart B, of the Commission’s Rules of Practice, 16 CFR 1.7 through 1.20; and 5 U.S.C. 553. This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

II. Objectives the Commission Seeks to Achieve and Possible Regulatory Alternatives

A. Background

Impersonation scams are a leading source of consumer fraud reported to the Commission, with the highest total financial loss for consumers. Impersonation scams can take many forms, but they generally involve scammers pretending to be a trusted source who convinces their targets to send money or to disclose personal information.¹ In the first three quarters of 2021, more than 788,000 impersonation scams were reported to the Commission, with a total reported monetary loss of about \$1.6 billion dollars.² These scams often specifically target older

¹ *Imposter Scams*, Fed. Trade Comm’n, <https://www.consumer.ftc.gov/features/feature-0037-imposter-scams> (last visited Nov. 4, 2021).

² Fed. Trade Comm’n, *Fraud Reports: Subcategories over time: Imposter Scams*, TABLEAU PUBLIC (Nov. 23, 2021), <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/SubcategoriesOverTime>. While some of the increase observed in 2021 is attributable to new data contributors, including the Social Security Administration, impersonation is a massive and persistent fraud and has been the top fraud category reported to the FTC every year since 2017. See Fed. Trade Comm’n, *Fraud Reports: Top Reports*, TABLEAU PUBLIC (Nov. 23, 2021), <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/TopReports>. For a list of Sentinel data contributors, see <https://www.ftc.gov/enforcement/consumer-sentinel-network/data-contributors>.

consumers and communities of color³ as well as small businesses.⁴ Two prevalent categories of impersonation scams most frequently reported by consumers are government impersonators and business impersonators.⁵

Government and business impersonators are fishing for information they can use to commit identity theft or seek monetary payment, often requesting funds via wire transfer, gift cards, or (increasingly) cryptocurrency.⁶ The impersonator can take many forms, posing as, for

³ See, e.g., AARP, CONSUMER FRAUD IN AMERICA: THE BLACK EXPERIENCE (Aug. 2021), https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2021/consumer-fraud-black-experience.doi.10.26419-2Fres.00456.001.pdf; AARP, CONSUMER FRAUD IN AMERICA: THE LATINO EXPERIENCE (Aug. 2021), https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2021/consumer-fraud-latino-experience-report.doi.10.26419-2Fres.00455.001.pdf; Fed. Trade Comm'n, *Serving Communities of Color: A Staff Report on the Federal Trade Commission's Efforts to Address Fraud and Consumer Issues Affecting Communities of Color* (October 2021) at 12-15, 23, 43-44, available at https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf.

⁴ See, e.g., Compl. at 3-4, *FTC v. Ponte Invs., LLC*, No. 1:20-cv-00177-JJM-PAS (D.R.I. filed Apr. 17, 2020) (causing small businesses to believe callers were affiliated with the Small Business Administration); Compl. at 6-7, *FTC v. Point Break Media, LLC*, No. 0:18-cv-61017-CMA (S.D. Fla. filed May 7, 2018) (robocalls to small businesses claiming to be Google); Compl. at 2, *FTC v. DOTAuthority.com, Inc.*, No. 16-cv-62186 (S.D. Fla. filed Sept. 13, 2016) ("Many of the consumers harmed by Defendants' false representations are small businesses with only a few employees and fewer than five trucks."); Compl. at 3-4, *FTC v. D&S Mktg. Sols., LLC*, No. 8:16-cv-1435 (M.D. Fla. filed June 6, 2016) (deceiving small businesses into spending \$1.3 million on free government regulation posters); Compl. at 5, *FTC v. Epixtar Corp.*, No. 03-CV-8511-DAB (S.D.N.Y. filed Nov. 3, 2003) (defendants sold internet services to small businesses and falsely represented they were calling from Verizon or the yellow pages).

⁵ Fed. Trade Comm'n, *Fraud Reports: Subcategories over time*, TABLEAU PUBLIC (Nov. 23, 2021), <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/SubcategoriesOverTime>. See also Fed. Trade Comm'n, CONSUMER SENTINEL NETWORK DATA BOOK 2020, 4 (2021), https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn_annual_data_book_2020.pdf.

⁶ Fed. Trade Comm'n, *Explore Government Imposter Scams*, TABLEAU PUBLIC, <https://public.tableau.com/app/profile/federal.trade.commission/viz/GovernmentImposter/Infographic> (last visited Nov. 4, 2021). See also Emma Fletcher, *Cryptocurrency buzz drives record investor scam losses*, FTC DATA SPOTLIGHT (May 17, 2021), <https://www.ftc.gov/news-events/blogs/data-spotlight/2021/05/cryptocurrency-buzz-drives-record-investment-scam-losses>.

example, a lottery official, a government official or employee, or a representative from a well-known business or charity. Impersonators may also use implicit representations, such as misleading domain names and URLs and “spoofed” contact information, to create an overall net impression of legitimacy.⁷ Government impersonators typically assert an air of authority to stage their scam, and they use all methods of communication to reach their targets. These scammers sometimes threaten a target with severe consequences such as a discontinuation of benefits,⁸ enforcement of tax liability,⁹ and even arrest or prosecution.¹⁰ Another observed tactic of government impersonators is to deceive consumers into paying for services that would

⁷ See, e.g., Compl. at 8–12, *FTC v. Forms Direct, Inc.*, No. 3:18-cv-06294 (N.D. Cal. Filed Oct. 15, 2018) (government impersonator used domains including www.usimmigration.us and www.uscitizenship.info); Jay Peters, *Hackers are impersonating Zoom, Microsoft Teams, and Google Meet for phishing scams*, THE VERGE (May 12, 2020), <https://www.theverge.com/2020/5/12/21254921/hacker-domains-impersonating-zoom-microsoft-teams-google-meet-phishing-covid-19>. Cf. Compl. at 36, *FTC v. Associated Cmty. Servs., Inc.*, No. 2:21-cv-10174-DML-CI (E.D. Mich. filed Jan. 26, 2021) (fake charity scammers “spoofed” caller ID to show names like “Breast Cancer” or “Volunteer Fire” and local area codes).

⁸ See, e.g., Stipulated Order at 5–6, *FTC v. Sun Bright Ventures LLC*, No. 8:14-cv-02153 (M.D. Fla. July 22, 2015); AARP, *Medicare Card Scams*, AARP FRAUD RESOURCE CTR., <https://www.aarp.org/money/scams-fraud/info-2019/new-medicare-card.html> (last updated Feb. 4, 2021); Harriet Edelson, *Social Security Administration Warns of Increase in Telephone Scams*, AARP (Mar. 5, 2019), <https://www.aarp.org/money/scams-fraud/info-2019/social-security-scams-psa.html>.

⁹ See, e.g., Compl. at 4, *FTC v. PHLG Enters. LLC*, No. 8:17-cv-00220 (M.D. Fla. filed Jan. 27, 2017) (misrepresenting IRS affiliation); see also AARP, *IRS Imposter Scam*, AARP FRAUD RESOURCE CTR., <https://www.aarp.org/money/scams-fraud/info-2019/irs.html> (last updated Aug. 20, 2021) (Treasury Department reports 2.5 million IRS impersonator calls from 2013–2021).

¹⁰ See, e.g., Compl. at 7, *FTC v. Premier Debt Acquisitions LLC*, No. 1:15-cv-00421 (W.D.N.Y. filed May 11, 2015) (threatening lawsuits and wage garnishment and posing as state law enforcement); Compl. at 2, *FTC v. Centro Natural Corp.*, No. 14-23879-CIV (S.D. Fla. filed Oct. 20, 2014) (threatening arrest or referral to law enforcement and posing as agents of court officials, government officials, or lawyers); see also Better Bus. Bureau, 2019 BBB SCAM TRACKER RISK REPORT 26–27 (2020); Emma Fletcher, *Government imposter scams top the list of reported frauds*, FTC DATA SPOTLIGHT (July 1, 2019), <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/07/government-imposter-scams-top-list-reported-frauds>.

otherwise be free,¹¹ or to lure them with promises of government grants, prizes, or loan forgiveness.¹² Business impersonators typically get consumers' attention with emails, telephone calls, or text messages about suspicious activity on consumers' accounts or computers or supposed good news about a refund or prize in hopes of gaining trust and receiving personal information.¹³

Data reported to the FTC and the Commission's law enforcement experience indicate strongly that government impersonation scams are highly prevalent and increasingly harmful. From January 1, 2017 through September 30, 2021, consumers reported 1,362,996 instances of government impersonation and associated total losses of roughly \$922,739,109.¹⁴ The most common such schemes involved Social Security Administration (SSA) impersonators, with more than 308,000 complaints alleging SSA impersonation, followed by the IRS (124,000) and Health and Human Services/Medicare programs (125,000).¹⁵ There were also several thousand reports of scammers impersonating government grant-makers (19,000); FBI, police, or sheriff personnel (11,500); the FTC (9,500); the Treasury Department (14,000); and the U.S. Postal Service

¹¹ See, e.g., Compl. at 26–28, *FTC v. On Point Global LLC*, No. 19-cv-25046 (S.D. Fla. filed Dec. 9, 2019); Am. Compl. at 5–8, *FTC v. Starwood Consulting, LLC*, No. 4:18-cv-02368 (S.D. Tex. filed Mar. 27, 2019); Compl. at 1, *Forms Direct, Inc.*, No. 3:18-cv-06294; Compl. at 3–4, *D&S Mktg. Sols.*, No. 8:16-cv-1435.

¹² See, e.g., Compl. at 15, *FTC v. Am. Fin. Support Servs., Inc.*, No. 8:19-cv-02109 (C.D. Cal. filed Nov. 4, 2019); Stipulated Order at 3, *FTC v. Nat'l Awards Serv. Advisory, LLC*, No. 4:10-cv-5418-PJH (N.D. Cal. Apr. 19, 2012).

¹³ Fed. Trade Comm'n, *Imposter Scams*, FED. TRADE COMM'N CONSUMER INFO., <https://www.consumer.ftc.gov/features/feature-0037-imposter-scams> (last visited Nov. 4, 2021); *BBB Scam Alert: Receive a text with a surprise offer? Don't click that link!*, BETTER BUS. BUREAU (Sept. 17, 2021), <https://www.bbb.org/article/scams/25888-bbb-scam-alert-receive-a-text-with-a-surprise-offer-dont-click-that-link>.

¹⁴ *Government Imposter Scams*, TABLEAU PUBLIC, *supra* note 6. Some figures are rounded to the nearest thousand for ease of reading.

¹⁵ *Id.*

(6,500).¹⁶

Scammers have been quick to capitalize on the COVID-19 pandemic by exploiting consumers' concerns about their health and safety, public misinformation and confusion surrounding the crisis, and the government's response, which has fueled various COVID-related impersonation scams.¹⁷

Business impersonation scams cause a similarly enormous amount of financial harm to the public. From January 1, 2017 through September 30, 2021, consumers reported being defrauded of roughly \$852 million in 753,555 business impersonation incidents.¹⁸ For business impersonation frauds reported in the FTC's Consumer Sentinel Network, consumers most frequently identified impersonators of Amazon and Apple. Other common impersonations include Publisher's Clearing House, tech companies such as Microsoft and Facebook, retail banks (Bank of America, Wells Fargo, Citigroup, and JPMorgan), utilities (Comcast, Verizon, and AT&T), and consumer goods brands such as Costco and Walmart.¹⁹

Impersonation fraud in general—including business, government, friend and family, romance, and tech support impersonation—has increased during the pandemic, with reported

¹⁶ *Id.*

¹⁷ *See, e.g.*, Stipulated Final Order at 4, *Ponte Invs.*, No. 1:20-cv-00177-JJM-PAS; Admin. Compl., *Traffic Jam Events, LLC*, No. 202 3127 (F.T.C. filed Aug. 10, 2020). *See also* U.S. Cybersec. & Infrastructure Sec. Agency, AVOID SCAMS RELATED TO ECONOMIC PAYMENTS, COVID-19 (2020), https://www.cisa.gov/sites/default/files/publications/Avoid_Scams_Related_to_Economic_Payments_COVID-19.pdf; Off. of Inspector Gen., *Fraud Alert: COVID-19 Scams*, U.S. DEP'T OF HEALTH & HUMAN SERVS., <https://oig.hhs.gov/fraud/consumer-alerts/fraud-alert-covid-19-scams/> (last updated Aug. 16, 2021); *Coronavirus Scams – Consumer Resources*, FED. COMM'NS COMM'N, <https://www.fcc.gov/covid-scams> (last updated Aug. 26, 2021); Treasury Inspector Gen. for Tax Admin., *IRS-Related Coronavirus Scam*, U.S. DEP'T OF TREASURY, <https://www.treasury.gov/tigta/coronavirus.shtml> (last visited Nov. 4, 2021).

¹⁸ Consumer Sentinel Network (Nov. 22, 2021).

¹⁹ *Phishing Attacks*, CROWDSTRIKE (Mar. 25, 2021), <https://www.crowdstrike.com/cybersecurity-101/phishing/>.

total losses of \$2 billion between October 2020 and September 2021 (up 85% year over year).²⁰ Since the pandemic began, COVID-specific scam reports have included 12,491 complaints of government impersonation and 8,794 complaints of business impersonation.²¹ The incidence of business impersonation climbed higher during the pandemic as commerce shifted significantly online: There were 273,000 complaints about business impersonation during the period of July 2020 through June 2021, of which roughly one third—over 96,000—identify Amazon.²² Consumers reported losing more than \$27 million to Amazon impersonation alone.²³

Although the Commission has brought many cases involving impersonator scams under Section 5 of the FTC ACT, 15 U.S.C. 45, its current remedial authority is limited. The U.S. Supreme Court recently held that equitable monetary relief, including consumer redress, is not available under Section 13(b) of the FTC Act.²⁴ Additionally, consumer redress under Section 19(b), 15 U.S.C. 57b(a) through (b), is limited and challenging to obtain without a rule violation. The Commission believes a rule addressing certain types of unfair or deceptive acts or practices involving impersonation, including affiliation and endorsement, of government and businesses could help reduce the level of fraud in this area and serve as an additional deterrent for bad actors in the future because such a trade regulation rule would subject first-time violators to civil

²⁰ Fed. Trade Comm'n, *Fraud Reports: Trends Over Time*, TABLEAU PUBLIC (Nov. 22, 2021), <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/TrendsOverTime>.

²¹ Fed. Trade Comm'n, *FTC Covid-19 and Stimulus Reports*, TABLEAU PUBLIC, <https://public.tableau.com/app/profile/federal.trade.commission/viz/COVID-19andStimulusReports/Map> (last updated Oct. 18, 2021).

²² Emma Fletcher, *Consumer Protection Data Spotlight, Amazon Tops List of Impersonated Businesses*, FTC DATA SPOTLIGHT (Oct. 20, 2021), <https://www.ftc.gov/news-events/blogs/data-spotlight/2021/10/amazon-tops-list-impersonated-businesses>. *But see supra* n.2 (uptick in complaints maybe result of adding new data contributors to the Consumer Sentinel Network database).

²³ *See* Fletcher, *supra* note 22.

²⁴ *See AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1352 (2021).

penalties.²⁵ It would also enable the Commission to obtain redress for consumers who lost money to impersonation scams.

B. Objectives and Regulatory Alternatives

The Commission requests input on whether and how it should use its authority under Section 18 of the FTC Act, 15 U.S.C. 57a, to address deceptive or unfair acts or practices involving impersonation. Specifically, the Commission proposes addressing the following practices, which have been the subject of numerous Commission investigations and law enforcement actions: (a) impersonation of a government official or agency by a person or organization without authority to act on behalf of that government²⁶; (b) impersonation of a

²⁵ See 15 U.S.C. 45(m)(1)(A); see also COVID-19 Consumer Protection Act of the 2021 Consolidated Appropriations Act § 1401, Pub. L. No. 116-260, 134 Stat. 1182 (permitting the Commission to seek civil penalties for violations of Section 5 of the FTC Act associated with “the treatment, cure, prevention, mitigation, or diagnosis of COVID-19” or “a government benefit related to COVID-19”).

²⁶ E.g., Compl. at 14, *FTC v. Alcazar Networks, Inc.*, No. 6:20-cv-2200 (M.D. Fla. filed Dec. 3, 2020); Stipulated Final Order at 4, *Ponte Invs., LLC*, No. 1:20-cv-00177-JJM-PAS; Compl. at 9–11, *FTC v. Critical Res. Mediation, LLC*, No. 1:20-cv-03932 (N.D. Ga. filed Sept. 22, 2020); Admin. Compl., *Traffic Jam Events*, No. 202 3127; Stipulated Order at 2, *Starwood Consulting*, No. 4:18-cv-2368 (Dec. 10, 2019); Compl. at 27–28, *On Point Global LLC*, No. 19-cv-25046; Compl. at 15, *Am. Fin. Support Servs., Inc.*, No. 8:19-cv-02109; Stipulated Order at 3–5, *Forms Direct, Inc.*, No. 3:18-cv-06294 (Dec. 7, 2018); Stipulated Order at 6–7, *FTC v. Vantage Point Servs., LLC*, No. 1:15-cv-0006 (W.D.N.Y. Sept. 17, 2018); Compl. at 7, *United States v. Sunkey Publ’g, Inc.*, No. 3:18-cv-01444 (N.D. Ala. filed Sept. 6, 2018); Final J. at 5–6, *DOTAuthority.com*, No. 16-62186-civ (Apr. 13, 2018); Compl. at 10, *FTC v. 4 Star Resol. LLC*, No. 1:15-cv-112S (W.D.N.Y. filed Mar. 20, 2018); Stipulated Order at 3, *D&S Marketing Sols.*, No. 8:16-cv-1435 (July 10, 2017); Compl. at 4, *PHLG Enters.*, No. 8:17-cv-00220; J. at 5–6, *FTC v. Fed. Check Processing, Inc.*, No. 1:14-cv-00122 (W.D.N.Y. Oct. 13, 2016); Permanent Inj. & Order at 8, *FTC v. CD Capital Invs., LLC*, No. 8:14-cv-01033 (C.D. Cal. Aug. 22, 2016); Order at 5, *United States v. Commercial Recovery Sys., Inc.*, No. 4:15-cv-36 (E.D. Tex. filed Apr. 18, 2016); Am. Final J. at 8, *FTC v. Lake*, No. 8:15-cv-00585-CJC (C.D. Cal. Mar. 22, 2016); Compl. at 3–5, *FTC v. Mun. Recovery Servs. Corp.*, No. 3:15-cv-04064 (N.D. Tex. filed Dec. 24, 2015); Stipulated Final Order at 6–7, *Premier Debt Acquisitions*, No. 1:15-cv-00421 (Jan. 7, 2016); Compl. at 4, 6, *FTC v. Nat’l Payment Processing LLC*, No. 1:15-cv-3811 (N.D. Ga. filed Oct. 30, 2015); Stipulated Order at 3, *FTC v. Broadway Global Master, Inc.*, No. 2:12-cv-0855 (E.D. Cal. filed Sept. 10, 2015); Final Order at 4, *FTC v. First Time Credit Sol., Corp.*, No. 2:15-cv-01921 (C.D. Cal. July 30, 2015); Final Order at 6, *Sun Bright Ventures LLC*, No.

business or its agents by a person or organization without authority to act on behalf of that business²⁷; and (c) entities that may provide the means and instrumentalities for these

8:14-cv-02153; Final Order at 2, 5, *FTC v. Centro Natural Corp.*, No. 1:14-cv-23879 (S.D. Fla. July 15, 2015); Default J. & Final Order at 4–5, 11, *FTC v. Williams, Scott & Assocs.*, No. 1:14-cv-1599-HLM (N.D. Ga. Apr. 2, 2015); Final Order at 7, *FTC v. First Consumers, LLC*, No. 2:14-cv-01608 (E.D. Pa. Feb. 19, 2015); Stipulated Final Order at 9, *FTC v. FMC Counseling Servs., Inc.*, No. 0:14-cv-61545 (S.D. Fla. Dec. 15, 2014); Default J. & Order at 3, 7–9, *FTC v. AFD Advisors, LLC*, No. 1:13-cv-06420 (N.D. Ill. Aug. 26, 2014); Final Default J. & Order at 4, 10–11, *FTC v. Cuban Exch., Inc.*, No. 1:12-cv-05890-NGG-RML (E.D.N.Y. July 30, 2014); Stipulated Final J. & Order at 11–12, *FTC v. Am. Mortg. Consulting Grp.*, No. 8:12-cv-01561 (S.D. Cal. Sept. 18, 2013); Stipulated Order at 10, *FTC v. Freedom Cos. Mktg., Inc.*, No. 1:12-cv-05743 (N.D. Ill. Dec. 21, 2012); Stipulated Final J. & Order at 5–6, *FTC v. Am. Credit Crunchers, LLC*, No. 1:12-cv-01028 (N.D. Ill. Oct. 10, 2012); Compl. at 13–14, *FTC v. Springtech 77376, LLC*, No. 4:12-cv-04631-PJH (N.D. Cal. filed Sept. 5, 2012); Stipulated Final Order at 9–11, *FTC v. Mallett*, No. 1:11-cv-01664-CKK (D.D.C. June 14, 2012); Compl. at 11–13, 15, *Nat’l Awards Serv. Advisory*, No. 4:10-cv-5418-PJH (filed Apr. 19, 2012); Stipulated Final J. at 4, *FTC v. Immigr. Ctr.*, No. 3:11-cv-00055-LRH (D. Nev. Dec. 27, 2011); Stipulated Final Order at 11, 13, *FTC v. Residential Relief Found., Inc.*, No. 1:10-cv-3214 (D. Md. Sept. 28, 2011); Compl. at 6–7, *FTC v. Loma Int’l. Bus. Group, Inc.*, No. 1:11-cv-01483-MJG (D. Md. filed June 1, 2011). *See also* Alvaro Puig, *Warning: Email from FTC Chair Lina M. Khan about Coronavirus money is fake*, FTC CONSUMER INFO. (Aug. 19, 2021); Scott Graham, *Why the US PTO is Seeking to Register Its Own Trademarks*, NAT’L L. J. (Aug. 5, 2021), <https://www.law.com/nationallawjournal/2021/08/05/why-the-uspto-is-seeking-to-register-its-own-trademarks/?slreturn=20210816155611>; Better Bus. Bureau, GOVERNMENT IMPOSTER SCAMS (July 2020), <https://www.bbb.org/globalassets/local-bbbs/council-113/media/scam-studies/bbb-government-impostors-study.pdf>.

²⁷ *E.g.*, Compl. at 6–9, *FTC v. Nat’l Web Design, LLC*, No. 2:20-cv-00846 (D. Utah filed Nov. 30, 2020) (Amazon Affiliates); Compl. at 8, *FTC v. One or More Unknown Parties Deceiving Consumers Into Making Purchases Through www.cleanyos.com*, No. 5:20-cv-02494 (N.D. Ohio filed Nov. 4, 2020) (Lysol and Clorox); Compl. at 8–11, 13, *FTC v. Disruption Theory LLC*, No. 3:20-cv-06919VC (N.D. Cal. filed Oct. 5, 2020) (Global Tel*Link/Securus); Compl. at 10, *FTC v. Click4Support, LLC*, No. 2:15-cv-05777 (E.D. Pa. filed Oct. 26, 2015) (Apple/Microsoft); Compl. at 8–9, *FTC v. Modern Tech. Inc.*, No. 13-cv-8257 (N.D. Ill. filed Nov. 18, 2013) (Yellow Pages). *See also* Brooke Crothers, *Amazon, Apple, Microsoft among top brands used by scammers*, FOX NEWS.COM (Apr. 17, 2021), <https://www.foxnews.com/tech/amazon-apple-microsoft-top-brands-scammers>; Alvaro Puig, *Fake calls from Apple and Amazon support: What you need to know*, FTC CONSUMER INFO. (Dec. 3, 2020), <https://www.consumer.ftc.gov/blog/2020/12/fake-calls-apple-and-amazon-support-what-you-need-know>; Microsoft Corp., *Protect yourself from tech support scams*, MICROSOFT SUPPORT, <https://support.microsoft.com/en-us/windows/protect-yourself-from-tech-support-scams-2ebf91bd-f94c-2a8a-e541-f5c800d18435> (last visited Nov. 4, 2021).

impersonators to operate.²⁸ Both the Mortgage Assistance Relief Services (MARS) Rule and the Telemarketing Sales Rule (TSR) already proscribe impersonation involving false government and business (including nonprofit) affiliation and endorsement claims.²⁹ The FTC has filed a number of law enforcement actions to protect consumers and small businesses from these types of impersonation claims outside of the purview of these rules.³⁰ An impersonator rule that builds on the existing sector- and method-specific rules could more comprehensively outlaw government and business impersonation. By focusing on practices that are the subject of its law enforcement experience and the subject of consumer fraud reports, the Commission anticipates streamlining this proposed rulemaking for the benefit of consumers.

The Commission seeks comment on, among other things, the prevalence of each of the above practices, the costs and benefits of a rule that would address them, and alternative or

²⁸ See, e.g., Order for Permanent Inj. & Monetary J., *FTC v. Moore*, No. 5:18-cv-01960, 2018 WL 4510707, at *1 (C.D. Cal. Sept. 17, 2018) (operator of fakepaystub.com “permanently restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, any statement or representation of material fact that misrepresents . . . any person’s identity”); Compl. at 3–5 & Ex. H, *FTC v. Moore*, No. 5:18-cv-01960 (C.D. Cal. filed Sept. 13, 2018).

²⁹ See Regulation O (Mortgage Assistance Relief Services), 12 CFR 1015.3(b)(3) (prohibiting misrepresentations that “a mortgage assistance relief service is affiliated with, endorsed or approved by, or otherwise associated with: (i) The United States government, (ii) Any governmental homeowner assistance plan, (iii) Any Federal, State, or local government agency, unit, or department, (iv) Any nonprofit housing counselor agency or program, (v) The maker, holder, or servicer of the consumer’s dwelling loan, or (vi) Any other individual, entity, or program”); Telemarketing Sales Rule, 16 CFR 310.3(a)(2)(vii) (prohibiting misrepresentations with respect to a “seller’s or telemarketer’s affiliation with, or endorsement or sponsorship by, any person or government entity”).

³⁰ See, e.g., Compl. at 2–3, *FTC v. First Time Credit Sol., Corp.*, No. 2:15-cv-01921-DDP-PJW (C.D. Cal. filed Mar. 16, 2015) (company used false affiliation with the FTC to market bogus credit repair services to Spanish-speaking consumers); Compl. at 8, *FTC v. Gerber Prods. Co.*, No. 2:14-cv-06771-SRC-CLW (D.N.J. filed Oct. 30, 2014) (company misrepresented its baby formula qualified for or received approval for a health claim from the U.S. Food and Drug Administration); Compl. at 3–4, *Ponte Invs., LLC*, No. 1:20-cv-00177-JJM-PAS (causing small businesses to believe callers were affiliated with the Small Business Administration).

additional action to such a rulemaking, such as the publication of additional consumer and business education materials and hosting of public workshops. In their replies, commenters should provide any available evidence and data that support their position, such as empirical data, consumer-perception studies, and consumer complaints.

C. The Rulemaking Process

The Commission seeks the broadest participation in the rulemaking. The Commission encourages all interested parties to submit written comments. The Commission also requests input in analyzing various options and in drafting a proposed rule. After reviewing comments submitted in response to this advance notice of proposed rulemaking, the Commission may proceed with further steps outlined in Section 18 of the FTC Act and Part 1, Subpart B, of the Commission's Rules of Practice.

III. Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed rulemaking. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) How widespread is the impersonation of government entities, such as agencies of the U.S., state, and local governments? To what extent are claims made expressly and to what extent are they made by implication, such as claims of endorsement or affiliation? What types of

communication and technology are used to facilitate the impersonation of government entities?

What data sources did you rely on in formulating your answer(s)?

(2) How widespread is the impersonation of businesses? To what extent are claims made expressly and to what extent are they made by implication, such as claims of endorsement or affiliation? What types of communication and technology are used to facilitate the impersonation of businesses? What data sources did you rely on in formulating your answer(s)?

(3) How widespread is the impersonation of individuals or entities other than governments and businesses in interstate commerce? To what extent are claims made expressly and to what extent are they made by implication, such as claims of endorsement or affiliation? What types of communication and technology are used to facilitate the impersonation of individuals or entities other than governments and businesses? What data sources did you rely on in formulating your answer(s)?

(4) How should a rule addressing the practices described in Questions 1 through 3, above, define the term “impersonation”? What claims, images, or symbols are likely to give rise to the net impression of government or business impersonation? What evidence supports your answer(s)?

(5) For the practices described in Questions 1 through 3, above, are there individuals or entities that provide the means and instrumentalities for impersonators to conduct such practices? If so, what types of goods or services do they provide that significantly enable impersonators to conduct such practices? What type of consumer injury does this cause? Under what circumstances should the provision of such goods or services be considered deceptive or unfair? What evidence supports your answer(s)?

(6) For any practices discussed in Questions 1 through 3, above, does the practice cause consumer injury? If so, what type of consumer injury does it cause? What evidence

demonstrates such practices cause consumer injury? Please provide the evidence.

(7) For each of the practices described in Questions 1 through 3, above, are there circumstances in which such practices would not be deceptive or unfair? If so, what are those circumstances and could and should the Commission exclude such circumstances from the scope of any rulemaking? Why or why not?

(8) What existing laws and regulations, other than the FTC Act, if any, address the practices described in Questions 1 through 3, above? How do those laws and regulations affect consumers? How do those laws and regulations affect businesses, particularly small businesses? What evidence supports your answer(s)?

(9) Is there a need for new regulations to prevent the practices described in Questions 1 through 3, above? If yes, why? If no, why not? What evidence supports your answer(s)?

(10) How should a rule addressing the practices described in Questions 1 through 3, above, be crafted to maximize the benefits to consumers while minimizing the costs to businesses? What evidence supports your answer(s)?

(11) Should the Commission consider publishing additional consumer and business education materials or hosting public workshops to reduce consumer harm associated with the practices described in Questions 1 through 3, above? If so, what should such education materials include, and how should the Commission communicate that information to consumers and businesses?

(12) What alternatives to regulations should the Commission consider to address the practices described in Questions 1 through 3, above? Would those alternatives obviate the need for regulation? If so, why? If not, why not? What evidence supports your answer(s)?

(13) Are there other commercial acts or practices involving impersonation that are deceptive or unfair that should be addressed in the proposed rulemaking? If so, describe the practices. How

widespread are the practices? Please answer Questions 4 through 11, above, with respect to these practices.

IV. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Impersonation ANPR; FTC File No. R207000” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the website <https://www.regulations.gov>.

Because of the public health emergency in response to the COVID-19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write “Impersonation ANPR; FTC File No. R207000” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In

particular, your comment should not contain sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential”—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov—as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws the Commission administers permit the collection of public comments to

consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/siteinformation/privacypolicy>.

By direction of the Commission.

April Tabor
Secretary of the Commission