Regulatory considerations and warnings in digital marketing

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Auto finance companies, like all businesses, love the opportunity to partner with other companies to obtain new customers. A popular tool to do so is through lead generation websites and companies that offer to help find potential customers.

Lead generators and brokers can provide a tremendous value, and many do. Before partnering with a lead generator, let's keep in mind a recent **Federal Trade Commission** (FTC) settlement with a consumer credit lead generation company that reminds us of the importance of consumer disclosure.

The FTC alleged that a lead generator maintained a pay-to-play system that promoted or suppressed lending partners from interested customers. The reason why a lender wasn't shown? Because it didn't pay the lead generator enough money.

The lead generator also displayed lender rankings and ratings based on how much the lender paid the lead generator. The more the lender paid, the higher its ranking and positioning on the lead generator's website. This pay-to-play environment wasn't shared with consumers, so a reasonable customer would think she is seeing all available lending options. This wasn't true.

An FTC commissioner issued a letter to put the industry on notice that a lead generation company that fails to adequately disclose that financial service companies pay for website content, including rankings and ratings, "robs consumers of vital information … and violates the law."

Auto finance companies that partner with lead generation companies should carefully review the partner's website and learn how the company determines which credit offers are disclosed.

Digital marketing platforms are another tool that auto finance companies use, such as those provided by **Facebook** or **Google**. Both companies recently faced challenges to their digital advertising platforms because they allowed lenders to create pre-populated lists that could exclude certain protected classes of individuals from receiving a targeted ad.

This practice could have the net effect of discouraging on a prohibited basis certain people from making or pursuing a credit application, in violation of fair lending laws. Facebook has announced changes to its digital advertising platform for credit ads that will have limited targeting options.

Auto finance companies that use digital advertising platforms should take a close look at how the advertisements are targeted to ensure credit offers are not advertised in a manner that could discourage or exclude individuals from applying for credit based on a protected class.

Even if an auto finance company does not plan to partner with a lead generator or digital advertising platform, their homegrown digital finance or lease promotions are still subject to regulation.

Many readers are familiar with the concept of “triggering terms,” which are specific items that, when advertised, require the company to disclose additional terms to ensure the consumer has a complete understanding of the advertised offer. Examples include the amount of any payment and the number of payments.

The federal credit and leasing advertising rules are slightly dated and predate the use of modern digital advertising, but the corresponding commentary provides us with valuable guidance on how to meaningfully disclose credit and lease terms in an online environment, and use links to explain the additional terms.

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