



WORKING WITH CRIMINAL AUTHORITIES ON FRAUD ISSUES

African Dialogue
Livingstone Zambia



Charles Harwood
U.S. Federal Trade Commission

FTC Civil Enforcement Framework

- FTC consumer protection enforcement actions target deceptive and unfair practices
- FTC's Civil Authority
 - Full range of equitable remedies
 - Asset Freeze
 - Appointment of Receiver
 - Permanent Injunctions, Including Bans
- Burdens of proof are different in civil action, but same evidence may prove criminal liability

Civil Criminal Case Coordination

- Why a criminal case in addition to a civil case?
 - Experienced fraudsters may see civil enforcement as “cost of doing business”
 - Advanced fraud techniques and technology may permit rapid recidivism
- Timing and management of coordinated investigations
 - Referral of resolved cases for subsequent action
 - Criminal authorities monitor civil case and may file during the pendency of the civil case
 - FTC TRO served alongside criminal search warrant



Reaching out to Criminal Agencies

- Encourage prosecution of defendants -- and their associates -- from FTC civil cases
- Provide resources for other law enforcement fighting consumer fraud
- Train FTC staff on how to recognize criminal conduct in the course of their investigations

Cases Referred

- Types of cases we refer
 - Hard Core Fraud
 - FTC Recidivists
 - Substantial Consumer Injury
- Mail fraud and wire fraud are most common charges
 - Fraud against consumers
 - Fraud against intermediaries
 - Bank fraud
 - Money laundering
- No requirement that civil and criminal case have same venue

Guidelines for Coordination

- *US v. Stringer*, 535 F.3d 929 (9th Cir. 2008)
 - Government must not act in bad faith
 - Independent purposes
 - No “affirmative misrepresentations” by civil authorities
- FTC will use its authority only to build its case, and will not make any misrepresentations about possible criminal prosecution
- FTC need not disclose the existence of a criminal investigation to defendants

How FTC Conducts Fraud Investigations

- We develop evidence without notice to targets
- We issue civil investigative demands (CID's) to third parties
- We interview victims, often obtaining declarations
 - Preserve victim testimony and relevant documents
- We record sales pitches and web sites
 - Also gathering evidence re mobile marketing
- We interview former employees, often obtaining declarations
- Asset search – we locate assets through databases and by following the money trail
- Fraudulent solicitations – we obtain evidence from news outlets and internet searches

After FTC Files: Civil Discovery

- Immediate access to premises allows us to obtain and preserve paper and electronic records
- Depositions of principals, employees, and service providers provide admissions and details about the fraud
- Asset discovery helps us establish the scope of the enterprise and identify assets for consumer redress

Sharing Information: Civil to Criminal

- FTC can share investigative and discovery materials with other law enforcement agencies
 - Federal, State, Local
 - Other agency must certify nondisclosure and use only for law enforcement purposes
 - Other agency can request that source of information not be notified (maintain confidentiality of investigation)
- Receiver has broad authority to disclose information to law enforcement
 - *US v Setser*, 568 F.3d 482 (5th Cir 2009)

Sharing Information: Criminal to Civil

- Information obtained in criminal investigation may be shared with civil authorities, so long as grand jury secrecy is respected
 - Non-grand jury information
 - *US v Dynavac*, 6 F3d 1407 (9th Cir 1993)
 - Sharing of independently created records (e.g., business records) does not infringe grand jury secrecy
 - Ex parte application available
 - When simultaneous TRO and Search Warrant, time is of the essence

MOU Provisions

- Share information, including complaints
- Provide investigative assistance in appropriate cases, including obtaining evidence under Participants' respective legal authorities, on behalf of other Participant;
- Coordinate enforcement against cross-border Covered Violations
- Provide other appropriate assistance that would aid in the enforcement against Covered Violations
- Designate a primary contact for the purposes of requests for assistance

Case Study: Canadian Telemarketing Fraud

Los Angeles Times

Canada Scam Artists Have a Global Reach

Telemarketing: Phone fraud rings operating north of the border dupe thousands in the U.S. and other countries.



Project Emptor

- Cross-Border Fraud Law Enforcement Taskforce based in Vancouver, British Columbia, Canada
 - Utilizes both civil and criminal law enforcement authority
 - Joint target identification
 - Joint investigations and searches
 - Coordinated case filings
 - Coordinated asset recovery efforts
 - Sharing of post-filing discovery
 - Coordinated preliminary and permanent relief, arrests, and prosecutions
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Civil Investigation

- FTC investigation focusing on victims and third parties
 - British Columbia investigation focusing on perpetrators
 - Both statutes prohibit deceptive acts
 - FTC authority uses civil investigative demands
 - BC authority used in investigation includes
 - Investigation order
 - B.C. Supreme Court order
 - Freeze order
 - Temporary injunction
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Investigative Order

- Issued by B.C. Director of Trade Practices
 - Allows for examination and seizure of evidence from post office boxes, courier companies, bank accounts and businesses.
 - Compliance by all parties is mandatory.
 - Can be utilized by all Investigators on the Task Force.
 - Information obtained shared with other Project Emptor partners as per rules of evidence.
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B.C. Supreme Court Order

- Enables investigators to search: premises, bank accounts, mail drops, couriers and personal residences.
 - Identical to an investigation order except it is Court authorized and allows for the use of force and ability to enter and search personal residences.
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Criminal Investigation

- Task Force investigates matter using civil authority of BC (in Canada) and FTC (in USA)
- Criminal agency in another country uses MLAT process for search and seizure of evidence
- Indictments filed in U.S. Federal Court alleging felony charges of Fraud by Wire, Fraud by Mail, Fraud Against Elderly
- Seek Extradition of suspect to U.S. to stand trial



Evidence Used (and Shared)

- Extensive visual/video surveillance of suspected boilerrooms by Task Force
 - Mail drop information
 - Informant information
 - Information about targets
 - Victim statements by foreign police authorities and FTC and FBI
 - Banking records
 - Business records
 - Investigative statements
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Challenges

- Firewall separation of criminal and civil processes so as not to raise Canadian Charter issues or allegations of abuse of process
 - All civilly obtained materials are kept “arms length” from FBI scrutiny but can be shared with FTC
 - MLAT process used to transfer these materials
- Recovery of funds and evidence outside of U.S. and Canada
- Coordination and timing of activities
- Information sharing



Questions?