

Banking and Finance Law Daily Wrap Up, ENFORCEMENT ACTIONS **—CFPB moved to compel production in lawsuit against credit repair company, (Aug. 26, 2020)**

Banking and Finance Law Daily Wrap Up

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By Nicole D. Prysby, J.D.

The Bureau moved to compel production from a business that live-transferred consumers to the defendant's telemarketing centers.

The Consumer Financial Protection Bureau filed a [motion to compel production](#), in the U.S. District Court for the District of Northern Florida, from OLP.com, Inc., a "Hotswap Partner" of Progrexion Marketing, Inc. The Bureau sued Progrexion alleging violations of the Telemarketing Sales Rule (TSR) and the Consumer Financial Protection Act (CFPA). OLP is a marketing partner of Progrexion that live-transferred consumers to Progrexion's telemarketing call centers; OLP failed to fully comply with the subpoenas issued by the Bureau.

As previously reported, the Bureau sued Progrexion, alleging that it violated the TSR and the CFPA during the course of marketing, selling, and providing credit repair products and services (see [Banking and Finance Law Daily](#), May 3, 2019). The complaint alleged that Progrexion participated in the deceptive and unlawful marketing activities of certain marketing partners (Hotswap Partners) that live-transferred consumers to Progrexion's telemarketing call centers. The Hotswap Partners market credit products and services to consumers, which were used as the entry point to Progrexion's credit repair marketing program. OLP is one of Progrexion's largest Hotswap Partners and in January 2020, the Bureau issued a subpoena to OLP requesting documents related to its business activities and marketing relationship with Progrexion. OLP failed to fully respond to the subpoena and the Bureau motioned to compel production.

The Bureau's memorandum in support of its motion to compel argued that the subpoena seeks documents that are not only relevant and proportional to the needs of this case, but critical to the Bureau's action. These include: OLP's unique records regarding the customers it referred and transferred to Progrexion; copies of its own advertisements and websites used to generate leads for credit repair transfers; and substantiation of the claims OLP made to the population of consumers to whom it pitched Progrexion's credit repair services. These categories of documents go to the heart of the Bureau's claims that, in order to generate sales of its credit repair services, Progrexion relied on OLP's deceptive bait advertising.

The Bureau argued that OLP's general objections to the subpoena are unsupported by any evidence and objections raised in July 2020 for the first time should be deemed waived as untimely. With respect to specific objections, OLP refused to respond due to the pendency of discovery disputes before the Utah District Court related to the Bureau's requests to Progrexion. But the Utah District Court resolved the only pending discovery motion in June and ruled that Progrexion's relationship and marketing activities with OLP are discoverable. OLP's relevance objection is baseless; the Utah district court's June 2020 order required Progrexion to produce agreed-to discovery related to the seven hotswaps. OLP is one of those seven hotswaps, and the "agreed-to discovery" included a request for documents and data related to credit repair customers obtained from OLP. OLP's objection that the documents may be available from Progrexion, is unavailing. The argument that documents are available from other sources is insufficient to resist a discovery request. With respect to some documents, OLP claimed undue burden, based on a finding of undue burden for a similar request to Progrexion. But courts do not approve general claims of undue burden asserted by different parties that are subject to similar discovery requests. Requests that OLP claimed were overly broad and not relevant relate directly to telemarketing scripts that OLP told Progrexion were used as part of its process of selecting consumers for

transfer to Progrexion's telemarketing operations during the relevant time period, or seek information regarding the business practices referenced in those same OLP telemarketing scripts.

The Bureau also argued that some of OLP's prior productions were insufficient, as they were produced neither in the requested format nor in the format in which they are ordinarily maintained. For example, OLP produced all of the responsive emails from an OLP principal as a single.pdf file that is 2,154 pages long and deprives the documents of most of their search functionalities.

Companies: OLP.com, Inc.; Progrexion Marketing, Inc.

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