



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

October 30, 2023

The Honorable Elizabeth Warren
United States Senate
Washington, D.C. 20510

Dear Senator Warren:

Thank you for your July 11, 2023, letter requesting that the Federal Trade Commission (“FTC” or “Commission”) investigate the disclosure of taxpayers’ sensitive personal and financial information by tax preparation companies. I appreciate receiving the findings of your important investigation, and I am grateful for the work you and your staff have done on this issue.

In response to public reporting on this issue and bolstered by your investigation, the Commission recently used its Notice of Penalty Offense authority to warn five tax preparation companies that they could face potential civil penalties—up to \$50,120 per violation—if they use tax preparation information for advertising, including through the use of advertising technology (“ad tech”), such as pixels, cookies, APIs, or SDKs.¹ The Notice of Penalty Offences outlines conduct that the Commission believes to be in violation of Section 5 of the FTC Act, which includes using or disclosing consumers’ confidential tax information without first obtaining affirmative express consent for unrelated purposes that the consumer did not request, for example: (1) to obtain a financial benefit that is separate from the benefit generated from providing the product or service requested; or (2) to advertise, sell, or promote products or services.² The notice also reinforced that it is a violation of Section 5 to make false, misleading, or deceptive representations concerning the use or confidentiality of such information.

The Commission has previously taken action against tax preparation companies for, *inter alia*, failing to adequately protect consumers’ financial information or making allegedly unsubstantiated performance claims. For example, the Commission used its authority under the Gramm-Leach-Bliley Act to bring an action against TaxSlayer—an entity also named in your report—for failing to implement appropriate safeguards to protect consumers’ tax preparation information.³ The Commission alleged that this failure allowed hackers to gain full access to

¹ Ltr. from FTC Regarding Notice of Penalty Offenses Concerning Misuse of Information Collected in Confidential Contexts (Sept. 18, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/NPO-Misuse-Information-Collected-Confidential-Contexts-Cover-Letter_0.pdf.

² Fed. Trade. Comm’n, *Notice of Penalty Offenses Concerning Misuse of Information Collected in Confidential Contexts*, FTC Enforcement (Sept. 18, 2023), <https://www.ftc.gov/enforcement/notices-penalty-offenses/penalty-offenses-concerning-confidential-contexts>.

³ Complaint, *In re TaxSlayer, LLC*, FTC File No. 1623063 (Nov. 6, 2017), <https://www.ftc.gov/legal-library/browse/cases-proceedings/162-3063-taxslayer-matter>.

consumers' TaxSlayer accounts and use consumers' sensitive personal information to commit tax identity theft.⁴ The *TaxSlayer* matter illustrates how the Commission holds companies accountable for their treatment of consumers' financial information.⁵

More broadly, the Commission is looking closely at whether companies' use of ad tech deceives or otherwise harms consumers, in violation of Section 5 in other contexts, and whether companies are notifying consumers when the use of such technology results in the breach of consumers' identifiable health information, as required by the Commission's Health Breach Notification Rule, 16 C.F.R Part 318 ("HBNR"). The Commission has brought numerous cases alleging that the disclosure of sensitive health information to companies such as Meta and Google via ad tech violated Section 5 or the HBNR.⁶ In addition, the FTC, in partnership with the Department of Health and Human Services, recently cautioned hospital systems and telehealth providers about the privacy and security risks of online tracking technologies.⁷ FTC staff has also issued guidance to businesses about how to use pixels lawfully⁸ as well as guidance warning both the companies that send data via ad tech and companies that receive such data that they may face Section 5 liability for failure to safeguard consumers' sensitive information.⁹ We continue to look closely at this important area.

⁴ *Id.*

⁵ See also Complaint, *In re Ascension Data & Analytics, LLC*, FTC File No. 1923126 (Dec. 22, 2021); https://www.ftc.gov/system/files/documents/cases/1923126ascension_complaint.pdf; Complaint, *In re Lightyear Dealer Tech., LLC*, FTC File No. 172 3051 (Sept. 6, 2019), https://www.ftc.gov/system/files/documents/cases/172_3051_c-4687_dealerbuilt_final_complaint.pdf; Complaint, *In re PayPal, Inc.*, FTC File No. 162-3102 (May 24, 2018), https://www.ftc.gov/system/files/documents/cases/venmo_complaint.pdf.

⁶ See, e.g., Complaint, *In re BetterHelp, Inc.*, FTC File No. 2023169 (July 7, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023169betterhelpcomplaintfinal.pdf; Complaint, *United States v. Easy HealthCare Corp.* No. 1:23-cv-3107 (N.D. Ill. Filed May 17, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023186easyhealthcarecomplaint.pdf; Complaint, *United States v. GoodRx Holdings, Inc.*, No. 23-cv-460 (N.D. Cal. Filed Feb. 1, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/goodrx_complaint_for_permanent_injunction_civil_penalties_and_other_relief.pdf; Complaint, *In re Flo Health, Inc.*, FTC File No. 1923133 (June 17, 2021), https://www.ftc.gov/system/files/documents/cases/192_3133_flo_health_complaint.pdf.

⁷ Model Letter re Use of Online Tracking Technologies, FTC (July 20, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/FTC-OCR-Letter-Third-Party-Trackers-07-20-2023.pdf.

⁸ Fed. Trade Comm'n, *Lurking Beneath the Surface: Hidden Impacts of Pixel Tracking*, FTC Technology Blog (Mar. 16, 2023), <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2023/03/lurking-beneath-surface-hidden-impacts-pixel-tracking>.

⁹ Elisa Jillson, *Protecting the Privacy of Health Information: A Baker's Dozen Takeaways from FTC Cases*, FTC Business Blog (July 25, 2023), <https://www.ftc.gov/business-guidance/blog/2023/07/protecting-privacy-health-information-bakers-dozen-takeaways-ftc-cases>.

Thank you for raising this important consumer protection issue with us. If you or your staff have additional questions on this matter or wish to share additional information with us, please do not hesitate to contact Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan
Chair, Federal Trade Commission