

ARIZONA STATE UNIVERSITY  
CORPORATE AND BUSINESS LAW JOURNAL  
FORUM

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VOLUME 1

OCTOBER 2019

NUMBER 5

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**COMMENTARY**

**WE NEED TO TALK.**

ALEXA WEBER\*

The Federal Trade Commission (“FTC”) has sued Match Group, Inc. (“Match”) for allegedly tricking individuals to subscribe to Match.com, an online dating service, through fraudulent advertising, deceptive business practices, and unfair denial of access to subscriber accounts.<sup>1</sup> Match controls about one-quarter of the online dating market and owns approximately 45 separate online dating services, including Match.com, OKCupid, Tinder, and PlentyOfFish.<sup>2</sup>

Online dating services provide a near-perfect opportunity for “romance scammers” to take advantage of consumers. The total reported losses to these scammers are an estimated \$143 million, the number one spot on the FTC’s list of fraudulent activity.<sup>3</sup> Romance scammers take advantage of the interactive platform of Match.com by creating relationships with vulnerable customers and enticing those customers to “loan or give them money.”<sup>4</sup>

Match measures compatibility by factors such as “age, gender, sexual orientation, and location,” however, it seems that nonsubscribers (those using the free version of Match.com) are most “compatible” with fraudulent email advertisements.<sup>5</sup> These nonsubscribers cannot respond to messages or see who sent a message, and the FTC alleges that these advertisements encouraged nonsubscribers to pay for a Match.com subscription.<sup>6</sup>

In the instance that a nonsubscriber did subscribe to Match.com as a result of this communication, what happened next depended on Match’s “fraud review process”; if Match

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<sup>1</sup> Complaint for Permanent Injunction, Civil Penalties, and Other Relief at 1-2, *FTC v. Match Group, Inc.*, No. 3:19-cv-02281 (N.D. Tex. filed Sept. 25, 2019).

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *FTC Sues Owner of Online Dating Service Match.com for Using Fake Love Interest Ads to Trick Consumers into Paying for a Match.com Subscription*, FED. TRADE COMM’N, <https://www.ftc.gov/news-events/press-releases/2019/09/ftc-sues-owner-online-dating-service-matchcom-using-fake-love> (last visited Oct. 7, 2019).

<sup>4</sup> *Id.*

<sup>5</sup> Complaint, *supra* note 1, at 4, 10.

<sup>6</sup> *Id.* at 6.

completed this process after the customer subscribed, the account would show as “unavailable” and the customer was left with a paid subscription and one less potential soulmate.<sup>7</sup> Alternatively, if Match did not complete the process before the customer subscribed, the new customer was left at the mercy of the scammer.<sup>8</sup> In either situation, hundreds of thousands of customers lost money as a result of these romance scammers.<sup>9</sup> According to the FTC, more than half of the messages and favorites on Match.com between 2013 and 2016 were deemed fraudulent.<sup>10</sup>

At this point, the still-single subscriber had another option. If the subscriber had purchased a six-month subscription, but hadn’t met “someone special,” Match “guaranteed” the subscriber six months free.<sup>11</sup> The FTC alleges that reasonable subscribers were not aware of the many eligibility requirements for this guarantee program, located deep within paragraphs of form language following a “learn more” hyperlink.<sup>12</sup> Between 2013 and 2016, 2.5 million subscriptions were subject to this guarantee but only 32,438 were ultimately successful.<sup>13</sup>

The subscriber could then turned to dispute the charges through a financial institution.<sup>14</sup> The FTC alleges that Match banned the subscribers from accessing the services they paid for once the charge had been disputed and the customer had paid for the subscription.<sup>15</sup> As a last resort, the subscriber may have decided to click through the six-plus pages of questions, surveys, and password entries to cancel the subscription online.<sup>16</sup> Employees of Match recognized the difficulty of such a process. The head of customer service stated in 2016, “[I]t’s been the same complaint for the past decade that I’ve been with Match . . . It takes up to 7 or 8 clicks to complete the flow to turn off [subscriptions] if you can even figure out how to do it.”<sup>17</sup>

In late 2010, the Restore Online Shoppers’ Confidence Act (“ROSCA”) went into effect, intending to “provide consumers with clear, accurate information [on the internet] and give sellers an opportunity to fairly compete with one another for consumers’ business.”<sup>18</sup> The FTC relies on Section 4 of ROSCA in its Complaint, which prohibits sellers from charging customers for Internet services unless the seller clearly discloses all material terms of the transaction to the customer with the consumer’s express consent, and the seller has provided the customer with a “simple mechanism to stop recurring charges.”<sup>19</sup> The FTC alleges that Match.com has done anything but comply with this legislation.

Nearly a decade after ROSCA, smart phone and internet usage have risen exponentially. Meeting people online has never been easier, and so has the fraudulent use of these online dating sites. Compliance with privacy regulations and corporate policies are of high importance as the rise of online dating sites continues.

Indeed, trust is the hallmark of any successful relationship.

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<sup>7</sup> *Id.* at 8.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 9.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Id.* at 11.

<sup>12</sup> *Id.* at 11-12.

<sup>13</sup> *Id.* at 17.

<sup>14</sup> *Id.* at 19.

<sup>15</sup> *Id.* at 22; FED. TRADE COMM’N, *supra* note 2.

<sup>16</sup> Complaint, *supra* note 1, at 18.

<sup>17</sup> *Id.* at 19.

<sup>18</sup> *Id.* at 23 (quoting Restore Online Shoppers’ Confidence Act § 2, 15 U.S.C. § 8401(2) (2010)).

<sup>19</sup> *Id.* at 23 (citing 15 U.S.C. § 8403(1)-(3)).