

**Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580**

In the Matter of)	Impersonation NPRM, R207000
)	
Trade Regulation Rule on Impersonation of Government and Businesses)	Docket No. FTC-2022-0064
)	

COMMENTS OF THE CONSUMER TECHNOLOGY ASSOCIATION

The Consumer Technology Association[®] (“CTA”) submits this response to the Federal Trade Commission’s (“FTC” or “Commission”) Notice of Proposed Rulemaking on Government and Business Impersonation Fraud (“NPRM”).¹ CTA supports the proposed rule targeting government and business imposters, and is encouraged by the NPRM’s inclusion of non-profit organizations in the proposed definition of “business.”² As CTA stated in its comments on the Advance Notice of Proposed Rulemaking on Government and Business Impersonation Fraud (“ANPRM”) earlier this year,³ “[a]n FTC rule that targets fraudulent impersonation activity would provide the agency with greater capabilities to directly address impersonation scams that have often been difficult to combat and deter.”⁴ Impersonation fraud harms consumers, governments, businesses, and non-profits alike.⁵

¹ *Trade Regulation Rule on Impersonation of Government and Businesses*, Notice of Proposed Rulemaking, 87 Fed. Reg. 62,741 (Oct. 17, 2022) (“NPRM”).

² NPRM at 62,751, Proposed 16 C.F.R. § 461.1.

³ *Trade Regulation Rule on Impersonation of Government and Businesses*, Advanced Notice of Proposed Rulemaking, 86 Fed. Reg. 72,901 (Dec. 23, 2021) (“ANPRM”).

⁴ Comments of the Consumer Technology Association, Docket No. FTC-2021-0077, at 2 (filed Feb. 17, 2022), <https://www.regulations.gov/comment/FTC-2021-0077-0091> (“CTA ANPRM Comments”).

⁵ CTA ANPRM Comments at 3.

Additionally, CTA supports cracking down on those who provide “means and instrumentalities” to perpetrate impersonation fraud, but encourages the Commission to add clarifying language to make clear in the text of the rule that it applies only to entities that provide services or products with “knowledge or conscious avoidance of knowledge” that the product or service will be or is being used to commit impersonation fraud.⁶

I. CTA SUPPORTS THE PROPOSED PROHIBITION OF THE IMPERSONATION OF BUSINESSES – INCLUDING NONPROFITS – AND GOVERNMENT, AND SUPPORTS THE COMMISSION’S WORK TO PROTECT CONSUMERS FROM IMPERSONATION FRAUD.

CTA supports the Commission’s proposed rule prohibiting government and business impersonation, which will benefit consumers and businesses by helping to combat damaging brand impersonation fraud committed through various communications channels. In CTA’s ANPRM Comments, CTA explained that its members, customers, and CTA itself have been victimized by impersonation fraud through email solicitation scams, website domain scams, and various other forms of impersonation fraud.⁷ CTA has a strong interest in stopping impersonation fraud, which has targeted CES[®], CTA’s flagship event, which CTA owns and produces. Consumers are often victimized by scammers impersonating trusted companies, and those companies, including CTA members, have their reputations injured by this kind of fraud.

CTA appreciates the FTC’s consideration and discussion in the NPRM of the evidence it previously provided and incorporates that evidence by reference in this submission.⁸ Evidence was also provided by other associations detailing instances of both event space or convention

⁶ NPRM at 62,751, Proposed 16 C.F.R. § 461.4; 16 C.F.R. § 310.3(b).

⁷ CTA ANPRM Comments at 3-7.

⁸ NPRM at 62,750, Questions 2, 7.

space fraud and brand impersonation fraud, as discussed in the NPRM.⁹ Impersonation fraud against companies and non-profits is prevalent and warrants a new FTC rule.

Convention/Event Space Fraud. The CTA ANPRM Comments explained that CES[®] has been a frequent target of impersonation scams, with fraudsters attempting to commit CES exhibitor event space fraud or sell CES attendee lists.¹⁰ The National Association of Broadcasters (“NAB”) “expressed its support for the initiation of a rulemaking to address impersonation because of its experience hosting an annual convention.”¹¹ Of the Trade Show Executive’s 2022 “Gold 100” honorees list, which “recognizes the top trade shows held in the U.S.,” more than half are non-profit organizations, showing the importance of protecting such entities in a final rule.¹² Trade shows and their participants can be victims of impersonation because such events are central to commerce and business. Indeed, entrepreneurs are eager to invest in these events to expand their businesses, which makes them a target for scammers.

Brand Impersonation Fraud. CTA experiences multiple instances of website domain name scams each year, and non-profits such as the CTA Foundation are frequently the target of brand impersonation schemes.¹³ More, CTA’s diverse membership, which includes companies across the \$422 billion consumer technology industry, are a frequent target of brand impersonation scams.¹⁴ As another example in the ANPRM record, the American Apparel and

⁹ NPRM at 62,743-46.

¹⁰ CTA ANPRM Comments at 4.

¹¹ NPRM at 62,743.

¹² *Honorees*, Trade Show Executive’s Gold 100 Awards & Summit, <https://www.tsegold100.com/honorees/> (last visited Nov. 22, 2022).

¹³ CTA ANPRM Comments at 5-6.

¹⁴ CTA ANPRM Comments at 5.

Footwear Association (“AAFA”) states that the association, with “the roughly 1,000 brands that it represents,” are frequently targeted by imposters.¹⁵ AAFA also notes that “impersonation is a widespread issue in the non-profit trade association industry.”¹⁶

Leading up to CES 2023, CTA has received at least 10 reports in the last month of companies with false “leads”-related domains soliciting member and partner organizations to purchase a CES 2023 attendee list.¹⁷ These communications are often brought to CTA’s attention after a company has responded to the inquiry and then reached out to CTA to confirm its legitimacy. CTA also has identified multiple websites purporting to sell hotel rooms for CES using the official logo.¹⁸

Brand impersonation fraud also frequently takes the form of customer service and technical support scams. For example, scammers target consumers impersonating well-known consumer technology brands, to convince consumers there have been unauthorized purchases using their accounts. Consumers are instructed to call a fake phone number for assistance, and are connected with scammers who falsely claim to be representatives of the consumer technology company. Additionally, scammers create fraudulent websites that purport to offer technical support or services for well-known consumer technology brands, but actually direct consumers to fraudulent customer support numbers for assistance. Once connected with consumers, scammers offer fraudulent support or repair services as an excuse to gain remote

¹⁵ NPRM at 62,743-44.

¹⁶ *Id.*

¹⁷ *See, e.g.*, Exhibits 2-3.

¹⁸ *See, e.g.*, Exhibit 1.

access to computers or accounts, steal personal and banking information, install malware, and/or defraud the consumer into making purchases or payments for the scammer's benefit.

Accordingly, based on significant evidence in the record, the FTC should work with an array of stakeholders to combat impersonation fraud given its "widespread harmful impact."¹⁹ As CTA suggested in its ANPRM Comments, the FTC should expand its outreach and "build on its extensive experience developing resources for educating consumers. . . ."²⁰ The FTC should also expand its collaborative efforts with key industry associations to raise awareness of the evolving risks and warning signs in order to expand consumer protection. CTA also encourages the FTC to use information gained from its collaborative efforts to increase its enforcement efforts against bad actors.

¹⁹ CTA ANPRM Comments at 7; NPRM at 62,750, Question 1.

²⁰ CTA ANPRM Comments at 7-8.

II. THE COMMISSION SHOULD CLARIFY THAT “MEANS AND INSTRUMENTALITIES” LIABILITY ONLY APPLIES WHERE ENTITIES HAVE KNOWLEDGE OR CONSCIOUSLY AVOID KNOWING THAT THEIR SERVICES OR PRODUCTS ARE USED TO COMMIT IMPERSONATION FRAUD.

Many impersonation scams rely on multiple actions before a consumer is targeted. As drafted, proposed Section 461.4 would make it unlawful “to provide the means and instrumentalities” for a government or business impersonation scam.²¹ CTA supports making clear that a party can violate the FTC Act by providing the “means and instrumentalities” for such fraud – including actors that intentionally create misleading collateral such as fake credentials or that design imposter websites.²² That said, the FTC should clarify the limitations of “means and instrumentalities” liability in the text of the rule itself.

The explanation and example of the “means and instrumentalities” provision in the NPRM appropriately suggest that the FTC intends to limit its applicability to those entities with knowledge that the representations they provide are used in impersonation fraud.²³ In its discussion of this part of the proposed rule, the NPRM points to entities that do not have direct contact with a consumer but that make representations that are passed on to the consumer as deceptive representations. For example, the NPRM discusses how a person fabricating “official-looking Internal Revenue Service (IRS) Special Agent identification badges for sale” could be liable.²⁴ This is similar to an entity that creates a fake list of vendors for an association trade show, with knowledge or conscious avoidance of knowledge that the fake list is being marketed to consumers by impersonating the organization. CTA agrees that such an entity properly can be held liable, even if the entity does not itself send the email with the deceptive representation to a consumer.

This explanation of the scope of the proposed “means and instrumentalities” rule, however, is not squarely reflected in the text of the proposed rule. The proposed rule does not explicitly include a knowledge requirement and could be misinterpreted to impose strict liability on a platform that unwittingly passes along another entity’s false claims to third parties that then deceive consumers. To be consistent with the discussion in the NPRM, the Commission should add a clarifying sentence to the “means and instrumentalities” language in proposed Section 461.4. CTA encourages the FTC to specifically make clear that the proposed rule only applies to entities that have knowledge or that consciously avoid knowing that they are making representations being used to commit impersonation fraud under Sections 461.2 or 461.3.

An explicit “knowledge or conscious avoidance” requirement would be consistent with other rules that the FTC enforces. For example, while the FTC has correctly declined to propose “assisting and facilitating” liability in this proposed Rule, in the Telemarketing Sales Rule’s (“TSR”) “assisting-and-facilitating” provision, the TSR includes a “knowledge or conscious

²¹ NPRM at 62,751, Proposed 16 C.F.R. § 461.4.

²² See NPRM at 62,747; CTA ANPRM Comments at 4-6.

²³ See NPRM at 62,747 (quoting *Shell Oil Co.*, 128 F.T.C. 749 (1999)) (“[T]he case law [under Sections 5 and 18 of the FTC Act] describes a form of direct liability for a party who . . . ‘passes on a false or misleading representation with knowledge or reason to expect that consumers may possibly be deceived as a result.’”).

²⁴ NPRM at 62,747.

avoidance” requirement.²⁵ Legitimate companies can rely on such standards and relevant FTC guidance to promote compliance.²⁶

Adding this knowledge requirement to the text of the rule will promote regulatory predictability and compliance. Companies will be able to refer to the rule text itself rather than examples in the rulemaking history that rely on decades-old cases.²⁷ Additionally, the Commission’s precedent alleging a “means and instrumentalities” theory is limited, and an explicit statement would provide clarity in how the rule will be applied.

²⁵ See 15 U.S.C. § 6102(a)(2); 16 C.F.R. § 310.3(b) (“It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates [the TSR].”).

²⁶ For example, the FTC’s TSR guidance also provides that “taking deliberate steps to ensure one’s own ignorance of a seller or telemarketer’s TSR violations” is evidence of “conscious avoidance” of knowledge. *Complying with the Telemarketing Sales Rule*, Federal Trade Commission (last updated Aug. 30, 2021), <https://www.ftc.gov/business-guidance/resources/complying-telemarketing-sales-rule>. See also Comments of USTelecom, Docket No. FTC-2021-0077, at 3 (filed Feb. 22, 2022), <https://www.regulations.gov/comment/FTC-2021-0077-0160> (arguing that liability could apply to a party providing the “means and instrumentalities” to facilitate government or business impersonation fraud if the party “has actual or constructive knowledge – or conscious avoidance of knowledge – of the illegal act”).

²⁷ This is particularly important here where the facts of such cases frequently include evidence of knowledge that is absent from the specific complaint counts. See, e.g., Complaint, at 22-23, *FTC v. Office Depot, Inc.*, No. 9:19-cv-80431 (S.D. Fla. Mar. 27, 2019), ECF No. 1 (vendor allegedly furnished “deceptive” software that it knew was “used . . . nationwide in its stores as a sales tool”); *Waltham Watch Co. v. FTC*, 318 F.2d 28, 32 (7th Cir. 1963) (holding that watch manufacturer knowingly provided deceptive claims to distributors).

III. CONCLUSION.

CTA supports the Commission’s proposed rule to prohibit government and business impersonation fraud, and encourages the agency to move forward with a final rule to prevent and mitigate harms to consumers, businesses, and non-profits. In developing a final rule for “means and instrumentalities” liability, the FTC should include an explicit knowledge standard in the text of the rule to promote regulatory compliance and predictability. As the record demonstrates, non-profit industry associations and their members are routinely victimized by impersonation fraud schemes, often with few redress options, and FTC action in this area is warranted.

Respectfully submitted,

By: /s/ J. David Grossman
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EXHIBIT 1



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Schedule

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Group Housing



CES

05th Jan - 08th Jan, 2023

CONSUMER TECHNOLOGY ASSOCIATION

CES 2023 IS THE GLOBAL STAGE FOR INNOVATION

Las Vegas Convention
Center, 3150 Paradise
Rd, Las Vegas, NV
89109,
USA

EXHIBIT 2

[REDACTED]

To: [REDACTED]
Subject: RE: Consumer Electronics Show

From: [REDACTED]
Sent: Monday, November 14, 2022 12:53 PM
To: [REDACTED]
Subject: FW: Consumer Electronics Show

Hey [REDACTED]

Hope you had a great weekend!

I received this email below – looks like it's from: <https://convantrix.com/>

Do they work with CTA on CES? Not sure how legit this is...

Best,

From: Emma Megan <emma.megan@preleadsinfo.com>
Sent: Wednesday, November 09, 2022 4:43 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Consumer Electronics Show

Hi [REDACTED],

Appreciate your response.

Your details has been forwarded by Anna Anderson from the marketing team and Myself Emma Megan from the sales department.

Total number of contacts: 30,000.

Gold Package (\$1,500) - Contact Name, First Name, Last Name, Company, Website, Title, Direct mail and Email address

Premium Package (\$1,600) - First Name, Last Name, Job Title, Company, Website Address, City, State, Zip, Country Code, Revenue, SIC Code, NAICS Code, Employee Size, Industry, Email, Phone number and Fax number.

Data Guarantee Terms:

- 85%+ Email Deliverability
- Hard bounces of more than 15% will be replaced with new contacts.
- Not a single duplicate contact.
- Each contact will come with permission-based GDPR and CAN-SPAM act,
- Contacts will be for your unlimited usage.

Please note- Any other data details required, I would be happy to assist you.

Let me know your thoughts as we can proceed further.

Regards,
Emma Megan – Sales Manager

From: [REDACTED]
Sent: 09 November 2022 15:15
To: Anna Anderson; [REDACTED]
Subject: Re: Consumer Electronics Show

Hey Anna-

+@ [REDACTED]

We don't have a booth @ CES – just 2x meeting suites at the Aria.

Would still love to get full conference attendee lists.

Best,
[REDACTED]

From: Anna Anderson <anna.anderson@attendesemail.com>
Date: Wednesday, November 9, 2022 at 2:42 AM
To: [REDACTED]
Subject: Consumer Electronics Show

Dear Exhibitor,

Consumer Electronics Show 2023 Attendees/Visitors list is available now.

Could you please let me know, would you like to receive the attendee list for your booth invites, marketing initiatives, appointment settings etc..?

Interested – Just reply as “Send counts & cost”

Regards,
Anna Anderson
Event and Trade Show Coordinator

EXHIBIT 3

[REDACTED]

From: [REDACTED]
Sent: Friday, November 4, 2022 9:55 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Consumer Electronics Show fake email

Hi [REDACTED] – please see below for a fake email regarding our lists, and they even used our logo... ([REDACTED] is a vendor of mine who passed this along)....

[REDACTED]

Consumer Technology Association (CTA), owner and producer of CES

From: [REDACTED]
Sent: Friday, November 4, 2022 9:05 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Fwd: Consumer Electronics Show fake email

Hi [REDACTED],

Hope you're well and things are good. Thought you might like to see this. I received below what looks like a fake email posing as CTA. I thought it might be useful to you.

Many thanks

[REDACTED]

[REDACTED]

[REDACTED]

Begin forwarded message:

From: Luna Wilson <luna.wilson@b2battendeleads.com>
Date: 4 November 2022 at 07:13:45 GMT
To: [REDACTED]
Subject: Consumer Electronics Show

Dear Exhibitor,

Consumer Electronics Show 2023 Attendees/Visitors list is available now.

Could you please let me know, would you like to receive the attendee list for your booth invites, marketing initiatives, appointment settings etc..?

Interested – Just reply as **“Send counts & cost”**

Regards,
Luna Wilson
Event and Trade Show Coordinator

