

PUBLICATION

CFPB's Latest Action is Against the Co-Founders of a Lead Aggregator

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On April 21 the Consumer Financial Protection Bureau (CFPB) brought its latest enforcement action by filing a civil suit in the United States District Court for the Central District of California (CDCA) against [Dmitry Fomichev](#) and [Davit Gasparyan, a/k/a David Gasparyan](#), both co-founders of D and D Marketing, Inc., d/b/a T3Leads (T3), a lead aggregator that sells consumer-loan applications as "leads" to small-dollar lenders and other purchasers. T3 was the subject of [a very similar action brought by the CFPB](#) back in December of 2015. This action is notable as (1) it showcases the CFPB's willingness and ability to bring a claim against two employees of an entity that months prior was the subject of its own enforcement action, (2) highlights how technology companies acting as middlemen between the consumer and the lender are under the jurisdiction of the CFPB, and (3) is another example of the CFPB utilizing its authority under Dodd Frank's UDAAP provisions as a basis for enforcement.

The CFPB cites a violation of 12 U.S.C. §§ 5536(a)(1), which states "it shall be unlawful for any covered person or service provider to offer or provide to a consumer any financial product or service not in conformity with federal consumer financial law," and 12 U.S.C. § 5536(a)(3), which states "it shall be unlawful for any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the provisions of Section 5531 of this title (UDAAP), or any rule or order issued thereunder, and notwithstanding any provision of this title, the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided."

These violations arise due to the fact that Fomichev and Gasparyan had "significant responsibility for establishing T3's policies and practices and, throughout their employment, had substantial control over the company's operations." As such they "knowingly or recklessly provided substantial assistance" to T3 in T3's alleged UDAAP violations. The CFPB's December action against T3 centered around the company's business model of aggregating leads from "lead generators" who operate websites advertising loans and through which consumers submit loan applications. T3 would then match these leads to purchasers.

According to all three complaints, T3's purchasers "include online small-dollar lenders, as well as data managers, data brokers and remarketing companies. Data managers are intermediaries for lenders that outsource their lead purchasing activities, and data brokers are lead aggregators that have their own networks of purchasers to which they sell applications after they purchase them from T3. T3 does not know the end purchasers of the applications it sells to data managers or data brokers and remarketing companies buy consumer information to send marketing materials to consumers for products other than the loans for which consumers applied."

According to the complaint, T3 had no way to check their lead generator websites to monitor for misleading or inaccurate statements to consumers. Their lead generators would claim at times they are themselves lenders, that they would help consumers find the best rates or lowest fees or that they would review consumers' applications to match them with the most appropriate lenders. The CFPB alleges that none of these statements are true.

At the other end of T3's deal were the purchasers and, according to the complaints, they were often "entities organized by Indian tribes, known as tribal lenders, or organized under the laws of foreign jurisdictions, known

as offshore lenders. These lenders typically claim immunity from state regulation, do not comply with the laws of the states where the consumers to which they make loans are located, and do not concede that they are subject to jurisdiction in a forum convenient to the consumer". In 2013, T3 requested information regarding whether its purchasers complied with the laws of the states where they made loans. Many of its purchasers failed to respond to this request, but T3 continued to do business with them.

Since the lead generators had no way of contacting the purchasers to inquire what terms were being offered, and the purchasers had no way of contacting the lead generators to see what was being advertised to the consumers, combined with the fact that T3 had no controls in place to monitor either side, the entire process was set up with no concern as to whether the products being offered were unfair or deceptive to the consumer. The CFPB alleges this violates UDAAP.

The CFPB is asking the court for: (1) injunctive relief; (2) an award of damages or other monetary relief; (3) an order for the defendant to pay redress to harmed consumers; (4) an order of disgorgement of ill-gotten revenues from the defendant; (5) to impose civil money penalties against the defendant and (6) an order for the defendant to pay the plaintiff's costs and fees incurred in connection with prosecuting the action.

If you have any concerns in regards to your company's compliance with CFPB rules or any consumer regulation, or if you are in need of assistance with a CFPB exam, investigation or enforcement action, please reach out to a member of Baker Donelson's CFPB Team.