Highlights

How the FTC Can Help Local Prosecutors with Cases of Criminal Fraud

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IMAGINE THAT A CRIMINAL GANG in your hometown has defrauded people around the country out of hundreds of thousands, perhaps millions, of dollars. You know exactly who these criminals are and where they live. They have spent most of the money to support lavish lifestyles, or hidden it in offshore accounts, so returning money to the victims is impossible. Imagine further that there is overwhelming evidence tying the criminals to the theft, and that witnesses—including victims and co-conspirators—have been located and interviewed and are willing to testify. Finally, imagine that a federal judge has granted a preliminary injunction shutting down the operation and freezing its assets and those of the participants but has left the criminals free and uncharged. Is this a case you would consider prosecuting? If so, you should contact the Federal Trade Commission's Criminal Liaison Unit, which has details about dozens of consumer fraud cases that fit this description.

American consumers lose tens of billions of dollars to fraud every year. According to a recent consumer survey, more than 30 million U.S. consumers were victims of fraud in 2005, with a median loss of approximately $60. Much of this fraudulent activity is criminal, but it often does not result in criminal prosecution after detection. Instead, these fraudulent enterprises and the criminals that run them, when discovered, are typically subject to civil law enforcement actions brought by the Federal Trade Commission or consumer protection units within the offices of state attorneys general. Seldom do the criminals face criminal sanctions. As a result, they become better at hiding their involvement in new and improved scams and much better at laundering and hiding their assets.

The Federal Trade Commission, the only federal agency with general jurisdiction over consumer fraud, is a civil law enforcement agency. The FTC brings civil actions in federal district court alleging unfair and deceptive acts. In cases involving hard-core fraud, the FTC files lawsuits in federal district court seeking a temporary restraining order, often without notice to the defendants, an asset freeze, appointment of a receiver, temporary injunctive relief, and immediate access to the business premises. Once the FTC has shut down the fraudulent operation, secured the business premises, and frozen all known and discoverable assets, it seeks permanent injunctive relief and the return of money to injured consumers. The injunctive relief typically prohibits defendants from repeating their illegal activities, like the example of an injunction against making false and misleading claims about how much consumers can earn if they participate in a business opportunity. In some egregious instances, defendants are banned from participating in an otherwise legal line of business, such as the sale of business opportunities. The FTC also aggressively pursues defendants' assets to provide redress to consumers. However, with no criminal authority, the FTC by itself can do little to deter the most hardened recidivist con men.

In an effort to remedy its lack of authority, the FTC created its Criminal Liaison Unit (CLU) in 2003 to spur an increase in consumer fraud prosecutions by means of more systematic coordination between the FTC and criminal law enforcement authorities. The FTC's CLU reviews current investigations and recent FTC litigation to find cases that involve clearly criminal behavior, helps get that information to criminal investigators and prosecutors, and coordinates joint investigations and prosecutions. To prevail and get money back for consumers, the FTC must prove that the defendants knowingly defrauded consumers. Therefore, in its investigations, the FTC develops the kind of evidence that prosecutors would need to obtain a criminal fraud conviction. This includes recorded undercover purchases, consumer testimony, insider testimony, certified business records, phone records, and bank records. Prosecutors who have brought parallel criminal prosecutions based on FTC investigations report that the case records from the FTC's civil actions are, with minimal additional investigation, sufficient to obtain an indictment, and often sufficient to procure a guilty plea.

Since the CLU's inception, prosecutors have indicted 281 FTC defendants, their associates, or others investigated by the FTC for consumer fraud. So far, 191 defendants have plead guilty or been convicted. There have been only two acquittals: one defendant was subsequently convicted on a second indictment for his role in a related scam, and the other acquitted defendant was a minor player in a prosecution that resulted in six convictions and a 25-year sentence for the ringleader. Of the 150 defendants who have been sentenced, 38 have received sentences of more than seven years. In just the last year, six FTC defendants have received sentences of more than 20 years. The number of indictments, numbers of convictions and pleas, and the length of sentences for these career criminal fraud artists have all steadily grown over the last four years.

Three Successful Fraud FTC Prosecutions

In April 2005, the FTC sued Charles Castro and Edward Bevilacqua for duping hundreds of consumers into buying "Internet kiosk" business opportunities with false promises of lucrative earnings. The FTC quickly settled with Bevilacqua, and won on summary judgment against Castro in September 2006. The FTC referred the matter to the San Diego District Attorney for possible criminal investigation in 2005. Pursuant to our rules of practice, the FTC was able to provide the DA with all of the evidence gathered in our investigation and subsequent litigation. Bevilacqua and Castro were indicted on 48 counts of securities fraud by a San Diego County Grand Jury in September 2006. Castro pleaded guilty to securities fraud in February 2008 and is serving a three-year prison term. Bevilacqua pleaded guilty and was sentenced to seven years in jail in February 2009. The FTC will be distributing redress to consumers from proceeds that it froze during its civil litigation and money seized by the criminal authorities.

In 2002, the FTC sued Russell G. MacArthur, Jr. for running a fraudulent business opportunity scam, and negotiated a settlement that banned him from selling business ventures. Two years later, MacArthur was actively participating in a new business opportunity fraud, writing deceptive telemarketing scripts, preparing written sales material, hiring sales representatives, and setting up fake references for American Entertainment Distributors, Inc. ("AED"). Approximately 441 consumers throughout the United States lost a total of $19.6 million in the scheme. The FTC sued AED and MacArthur, and filed a related civil contempt action against MacArthur in September 2004. Because of MacArthur's repeated hardcore fraud, the Criminal Liaison Unit referred the case to the Department of Justice's Office of Consumer Litigation ("OCL"). In October 2005 OCL and the U.S. attorney for the Southern District of Florida used evidence developed by the FTC and indicted MacArthur and his colleagues. MacArthur bragged that he could evade law enforcement by running a scam for a year, shutting it down, then starting all over again. The cooperative efforts of federal prosecutors, the U.S. Postal Inspection Service, and CLU proved him wrong. On May 26, 2008, he was sentenced to 23 years in prison for mail fraud, wire fraud, and contempt of the 2002 FTC Order. MacArthur is one of 14 defendants convicted of felonies for their roles in AED.

The FTC sued Kyle Kimoto in January 2003 for his role with Assail, Inc., a massive international, advance-fee credit card scam. Kimoto settled with the FTC in September 2003. However, Kimoto did not disclose $3 million in assets on his sworn financial forms. The FTC moved the court for relief under the "avalanche" clause, and in September 2004 the court entered a $106 million judgment against Kimoto. Given the magnitude and nature of Kimoto's fraud, the Criminal Liaison Unit worked to find a U.S. Attorney's Office with jurisdiction over his criminal acts and the resources to prosecute him, eventually coordinating with an assistant U.S. attorney in the Southern District of Illinois. In the summer of 2007, Kimoto was indicted for mail fraud, wire fraud, and conspiracy for his role in a related telemarketing scheme. On April 18, 2008, a federal jury found Kyle Kimoto guilty on all 14 counts of the indictment. Based on the significant amount of injury, the number of victims, Kimoto's targeting of vulnerable victims, his role as a ringleader, and his history of recidivism, Kimoto was sentenced to 29 years in jail on September 5, 2008.

The increased likelihood of prosecution combined with increasingly severe punishment should serve to deter consumer fraud. However, even with increasing federal prosecutions, only a small fraction of these crimes is prosecuted. Given the discretionary nature of federal prosecution and the broad range of federal crimes (from terrorism to drugs to child pornography) that are current priorities, there are limited federal prosecutorial resources to bring fraud cases. Therefore, the FTC's CLU is making a concerted effort to reach out to state and local prosecutors to identify the criminals lurking in their backyards and to give them the evidence they need to prosecute those criminals.

The FTC stands ready to help you prosecute and convict career criminals operating in your backyards. We have a large and growing inventory of potential targets who have collectively stolen hundreds of millions of dollars from consumers, but who are not currently facing prosecution. We can provide substantial evidence and information about these potential targets, their scams, and their victims. If you are interested in learning more, please contact us at 202.326.2156 or FGORMAN@ftc.gov.