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**Intergovernmental Group of Experts on Consumer Law and Policy  
(IGE Consumer)**

4th SESSION

8-9 July 2019

Room XVII, Palais des Nations, Geneva

**Cross Border Consumer Enforcement  
Toolkit for CONSUMER AUTHORITIES and Legislators**

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# CROSS BORDER CONSUMER ENFORCEMENT –TOOLKIT FOR CONSUMER AUTHORITIES AND LEGISLATORS



# Overview

- Background –FTC/CMA MOU
- US SAFE WEB Act
- Case Studies
  - Best Price Brands
  - Designer Brand Outlet



# BACKGROUND –FTC/CMA MOU

- ▶ Longstanding UK-US cross-border consumer co-operation
- ▶ MoU aimed to build on and develop this
- ▶ Concluded March 2019
- ▶ Some points we needed to discuss on the way...
  - ▶ How can we share confidential evidence?
  - ▶ Can the other party keep the evidence secure?
  - ▶ When do we have the power to investigate to assist each other?
  - ▶ When can we enforce the law to protect each others' consumers?
  - ▶ Are our laws sufficiently similar and/or complementary to make it worthwhile?





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# FTC Signs Memorandum of Understanding with United Kingdom's Competition and Markets Authority to Strengthen Consumer Protection Enforcement Cooperation



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FOR RELEASE

March 25, 2019

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The Federal Trade Commission has signed a memorandum of understanding with the United Kingdom's Competition and Markets Authority (CMA) to strengthen enforcement cooperation on consumer protection matters.

The MOU was signed by FTC Chairman Joe Simons and the CMA Chairman, the Rt. Hon. Lord Tyrie. It supersedes a previous agreement between the FTC and U.K. authorities, furthering a long history of collaboration on consumer protection investigations and cases, and promoting multilateral cooperation at ICPEN, the International Consumer Protection Enforcement Network.

"I'm pleased to sign this agreement with our partners at the CMA," said FTC Chairman Simons. "By strengthening our cooperation on consumer enforcement matters, we benefit consumers in both our countries."


The new agreement enhances cooperation between the two agencies, and the U.S. SAFE WEB Act provides the FTC with key powers to carry out this cooperation. The MOU streamlines sharing investigative information and

## Related Actions

[Memorandum Of Understanding Between the Federal Trade Commission of the United States of America and the Competition and Markets Authority of the United Kingdom](#)

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# UK and US authorities strengthen their collaboration on consumer protection enforcement

4 Apr 2019

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Simon Duncombe

On 26 March 2019, the UK Competition and Markets Authority (CMA) and the US Federal Trade Commission (FTC) announced that they had signed a Memorandum of Understanding to strengthen cooperation for the purposes of enforcing consumer protection laws on both sides of the Atlantic.

Co-author



Daniel Gold

The agreement sets out the arrangements for cooperation, assistance and exchange of information between the two agencies, who will:

1. share information relevant to investigations or enforcement proceedings regarding consumer protection laws;
2. provide investigative assistance to each other, including by locating relevant people or assets;
3. establish regular electronic exchanges of consumer complaint information with each other; other US and UK civil or criminal enforcement authorities; and other entities which have consumer protection-related functions (such as Citizens Advice); and
4. collaborate on sharing best practices and subject-matter expertise, such as through staff exchanges, webinars and the development of consumer and business education materials.

# **The US SAFE WEB Act:** **Protecting Consumers** **from Spam, Spyware, and Fraud**



The Federal Trade Commission



# US SAFE WEB Act Overview



- \* The U.S. SAFE WEB Act amended FTC Act in 2006 to provide new tools to address cross-border fraud.
- \* Two main areas:
  - \* **Information sharing**
  - \* **Investigative assistance**
- \* Other provisions, e.g.,
  - \* Extraterritorial jurisdiction; remedial authority
  - \* Criminal referrals
  - \* Voluntary disclosures
  - \* Reimbursement and detail with DOJ



# Confidentiality



- \* Confidentiality/Official Purpose Certification
  - \* The Act requires a prior agreement, MOU, or other written certification stating that the requestor will protect the confidentiality of the information and use it for official law enforcement purposes.
  - \* Forms incorporating these requirements are available from FTC OIA.





# Case Study: Best Priced Brands, LLC

- The FTC's first case against a U.S. company doing business *exclusively* abroad since the US SAFE WEB Act took effect in 2006.
- Best Priced Brands is a California company that deceptively sold electronic products to consumers in the United Kingdom through its websites, [www.bestpricedbrands.co.uk](http://www.bestpricedbrands.co.uk) and [www.bitesizedeals.co.uk](http://www.bitesizedeals.co.uk).
- The company misled consumers into believing they were purchasing items from a UK-based company in part to various deceptive tactics:
  - Including use of the ".co.uk" top-level domain name
  - Stating prices in British Pounds (£)
  - Using the term "Royal Mail" to describe shipping methods.
- Upon receiving the items, consumers discovered they had been charged unexpected import duties, and that many of the items had invalid warranties; if they tried to return the items, they would be charged exorbitant refund and cancellation fees.

# Case Study: Best Priced Brands



- Through the econsumer.gov portal, many consumers in the UK registered complaints with the FTC.
- Assisted in its investigation by the CMA (FKA U.K. Office of Fair Trading), the FTC filed a complaint against Best Priced Brand parent company, Balls of Kryptonite, and its owner Jaivin Karnani.
- The FTC's complaint alleged the following counts:
  1. False and Misleading Representations that Defendants were located in the UK and thus items would come with British manufacturers' warranties.
  2. False and Misleading Representations that the price for goods sold was the total cost delivered.
  3. False and Misleading Representations that Defendants were located in the UK and thus give unconditional right to cancel orders and have no restocking fees for returned merchandise.
  4. Violations of the Joint US-EU Safe Harbor Framework.
  5. Violations of the Mail Order Rule.



# Case Study: Designer Brand Outlet

- \* Designer Brand Outlet (DBO) is an online business that sells and designer brand name clothes at prices significantly below retail costs. DBO represents itself as operating out of Sydney, Australia.
- Consumers' complaints alleged DBO engaged in the following deceptive practices:
  - Accepting payment and failing to deliver goods (including provision of allegedly false shipping details);
  - Goods returned with no refund given;
  - Consumers receiving goods that vary from those advertised, are defective or are non-authentic; and
  - Consumers unable to elicit response from the business



# Case Study: DBO Cross-Border Cooperation

1. FTC identifies series of complaints on [eConsumer.gov](https://www.consumer.ftc.gov) and provides them to the Australian Competition and Consumer Commission (ACCC) to initiate an investigation
2. ACCC makes inquiries with UK, Canada & NZ counterparts about any complaints regarding DBO
3. Based on info provided by FTC and others, ACCC obtains restraining order and brings case against DBO
4. FTC and UK Office of Fair Trading provide witness statements for proceedings
5. Outcome: Australian court bars DBO from engaging in similar conduct for five years and demands payment of ACCC's legal costs

- ▶ Are you equipped to deal with cross border consumer problems?
  - ▶ ICPEN members –different levels of powers
  - ▶ OECD recommendations 2003 & 2016 –not fully implemented yet
- ▶ Where could you start if you wanted to draft or revise consumer protection enforcement laws?

DO YOU HAVE THE POWERS NECESSARY  
TO SOLVE CROSS BORDER PROBLEMS?



# CROSS-BORDER ENFORCEMENT COOPERATION TOOLKIT FOR CONSUMER AUTHORITIES AND LEGISLATORS

## *Intelligence Sharing & co-ordination*

- Pipeline discussion & alerts
- Evidence Exchange
- Obligation to keep shared information confidential
- Co-ordination of investigations and outcomes

## *Investigation*

- Using your investigatory powers to assist overseas enforcer
- Application of investigatory powers to overseas traders
- Minimum investigatory powers

## *Securing outcomes*

- Enforcement of your law to protect overseas consumers
- Application of enforcement remedies to overseas traders
- Minimum enforcement outcomes



Jointly led by  
CMA and FTC

Based on  
OECD  
principles of  
2003 & 2016

UNCTAD,  
OECD, ICPEN  
input

Read and  
comment  
over the  
summer  
please!

Aiming to  
finalise  
investigative  
cooperation  
component  
of Toolkit by  
Oct 2020  
(OECD 100<sup>th</sup>  
Meeting)

## DEVELOPMENT OF THE TOOLKIT





THANK YOU!