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Legal Forum Editors

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Recommended Citation

Editors, Legal Forum () "Table of Contents," *University of Chicago Legal Forum*: Vol. 2013: Iss. 1, Article 1.

Available at: <http://chicagounbound.uchicago.edu/uclf/vol2013/iss1/1>

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The University of Chicago
LEGAL FORUM
Volume 2013

The Frontiers of Consumer Protection

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The Frontiers of Consumer Protection

In November 2012, the *University of Chicago Legal Forum* hosted a Symposium, *The Frontiers of Consumer Protection*, to discuss emerging issues in consumer protection. This dialogue occurs in the aftermath of the 2008 recession following the collapse of the housing and financial markets. With the country reeling from the worst economic downturn in recent memory, lawmakers enacted extensive new regulation to address the high-risk financial products that catalyzed the market collapse and to protect consumers from further danger in the desperate times that followed. This expansion of the regulatory landscape created an important moment to take stock of the successes and failures of consumer protection. Volume 2013 provides a broad look at the lessons of consumer protection law in the changed economy. Our contributors address such varied concepts as regulation of emerging technology, enforcement approaches to consumer protection, and adjustments of the product recall system. Volume 2013 should prove useful to academics, policymakers, and the community seeking to better understand the many ways that the law protects consumers and how that protection may be improved.

Richard Cordray, the first Director of the United States Consumer Financial Protection Bureau delivered the keynote address at the Symposium. Drawing upon his experience as Ohio Treasurer and Attorney General and at the Consumer Bureau, Director Cordray explained the importance of government watchdogs to hold financial institutions accountable for the complex and often perilous products and services available to consumers. With broad and multi-faceted authority, the Consumer Bureau represents a new model of consumer protection, holistically addressing market vulnerabilities in its various supervisory, enforcement, regulatory, and consumer engagement capacities. This theme of innovation in consumer protection law to match product innovation flowed throughout the Symposium and undergirds many of the Articles that follow.

This volume's first group of Articles examines frontiers of consumer protection law in the realm of network privacy. First, William McGeeveran explores levels of friction in personal

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information sharing, the benefits and drawbacks of frictionless sharing, and the regulation of information sharing. Felix T. Wu explores the constitutionality of various attempts to address consumer privacy concerns in the wake of increasing consumer data collection. Katherine J. Strandburg considers how online behavioral advertising distorts the market's ability to process consumer preferences and how, without legislative action, this disconnect may harm consumers. Finally, Bruce E. Boyden discusses developments in the regulation of privacy and the obstacles to accurate assessment of privacy threats as social norms shift.

In the second group of Articles, contributors consider how various models of enforcement may be best deployed to achieve the goals of consumer protection. M. Todd Henderson discusses the possibility for self-regulation of the mortgage industry, analogizing to the success of the Financial Industry Regulatory Authority as a model for private, nongovernmental regulation. Sarah Rudolph Cole analyzes how federal preemption of state arbitration laws prevents states from regulating the arbitration process to improve fairness to consumers and explores potential reforms. Finally, Catherine M. Sharkey discusses strategies for resolving questions of jurisdictional overlap between agencies charged with enforcement of various consumer protection statutes. She describes and assesses the relative merits of a balkanization approach, by which agencies silo authority, and an approach relying on courts as agency coordinators.

The final set of Articles focuses on product recalls. First, Anita Bernstein argues that increasing the voluntariness of the product recall system enhances their efficacy and value for both manufacturers and consumers. Daniel Schwarcz analogizes from the present system of consumer product recalls and analyzes the possibility of imposing similar post-sale obligations on sellers of financial products to ensure suitability. Katharine Van Tassel explores product safety as related to innovative technologies like nanotechnology. Van Tassel analyzes how regulation based on novelty, rather than hazard, would overcome information lag times and increase the efficacy of the consumer product safety net while supporting innovative products.

The student contributions to Volume 2013 cover a wide range of issues in state and federal consumer protection law. First, Alexander Cross explores the ambiguity defining "unfair business practices" in consumer actions under California's

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Unfair Competition Law. Next, two Comments address questions of federal civil procedure in consumer protection lawsuits. Johnathan Lott argues that the rule that a class cannot be maintained when the named plaintiff's case becomes moot before certification best protects class action plaintiffs. Luke Burton examines the circuit split regarding whether the detariffed Federal Communications Act preempts state law challenges to consumer contracts.

Other student Comments examine ambiguities and open questions in various industry-specific statutes. Sarah Losh explores the tension between the FDA's regulatory authority over health claims on food products and dietary supplements and manufacturers' commercial free speech rights to make such claims. Laura Bernescu analyzes the uncertainty of applying the Computer Fraud and Abuse Act in the Internet services context. Samantha Daniels considers whether the Fair Debt Collection Practices Act imposes restrictions on communications between debt collectors and nonconsumer third parties, including judges. Daniels argues that the FDCPA does cover nonparty communication and concludes that the standard for judging those communications should be from the viewpoint of the reasonable recipient with an eye to materiality. Finally, Saif Alaqili considers whether the right of rescission under the Truth in Lending Act requires mere notice of rescission or filing of a lawsuit.

The wide range of the Articles and Comments in this Volume sheds light on the capaciousness of the laws protecting consumers. As the products available to consumers—from technology and online services to inventive financial products—change with time, the approach to consumer protection must adapt. Volume 2013 offers insights into the possibilities and pitfalls of consumer protection law and provides innovative ideas for how the law may be further refined in the future.

