



“That’s Unfair!” Navigating CFPB Scrutiny and Consumer Protection Challenges in the Gaming Industry

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The gaming industry has seen exponential growth over the past twenty years, transforming from a niche hobby into a mainstream cultural and economic juggernaut. This evolution, however, has not gone unnoticed by regulatory bodies such as the Consumer Financial Protection Bureau (CFPB). This article, which is part of a series of articles ([overview of risk](#), [payment transmission issues](#)) focuses on the CFPB’s interest in gaming, explores some of the CFPB’s concerns, why it is important for gaming companies to pay attention, and offers best practices to help navigate this evolving regulatory landscape.

The CFPB’s Advertising Manipulation and Exploitation Concerns

On April 4, 2024, the CFPB issued a [report](#) identifying various risks to consumers in gaming marketplaces. One of the CFPB’s primary concerns is how gaming companies advertise their products and features. In an industry where microtransactions, downloadable content, and in-game purchases are common, the CFPB appears to believe that the line between fair marketing and deceptive practices can become blurred. Advertisements that promise certain benefits or features but fail to deliver them as expected can mislead players, leading to consumer dissatisfaction and potential regulatory and legal ramifications.

For instance, many games advertise certain features as “must-haves” or present limited-time offers that create a sense of urgency, which the CFPB says pressures players into making purchases. According to the CFPB, these tactics can mislead consumers about the actual value or necessity of the in-game items, especially if the game mechanics favor players who spend more money. This can create an uneven playing field where players who make frequent purchases have a significant advantage over those who do not, which can be seen as a form of exploitation and manipulation.

Additionally, the CFPB is concerned about the exploitation of younger players. Children and teenagers, who make up the most significant portion of the gaming population, are particularly vulnerable to misleading and manipulative advertising. They may not fully understand the implications of in-game purchases or the real-world cost associated with them. The CFPB suggests that this demographic is often targeted through advertisements that appeal to their interests and emotions, potentially leading to excessive spending and financial burden on their parents or guardians, even where parental consent is initially given.

The CFPB concludes its report by stating, “[t]he CFPB is monitoring non-traditional markets

where consumer financial products and services may be offered, including where such products and services are provided by or in connection with proprietary gaming platforms.” When similar reports on non-traditional markets have been issued in the past, [the CFPB eventually took steps to act on their concerns](#).

Potential Regulatory Risks From UDAAP

The CFPB makes clear that it views in-game transactions as now resembling conventional consumer financial products, where banking or payment systems are used to facilitate the exchange and storage of valuable digital assets. The CFPB’s characterization of this gaming activity puts a target on the industry. Because the CFPB has the authority to enforce consumer protection laws related to the use of banking and payment systems, the agency could potentially use the gaming industry’s evolution as a hook to assert regulatory oversight. Although gaming companies are already the target of [certain federal regulators](#), the CFPB’s added scrutiny could demand significant operational changes and increased compliance costs.

If the CFPB pursued regulatory enforcement, gaming companies could face allegations under federal laws concerning unfair, deceptive, and abusive acts or practices (UDAAP). These laws are designed to protect consumers from business practices that can cause significant financial harm or that mislead consumers about a product or service. UDAAP actions typically involve one or more of the following:

- **Unfair Practices**—These are actions that cause or are likely to cause substantial injury to consumers which is not reasonably avoidable by the consumers themselves and not outweighed by the benefits to consumers. An example the CFPB may point to is games advertised as “free,” but that heavily rely on in-game purchases for essential features or significant advantages, which were not clearly disclosed initially. The CFPB is wary of the “pay-to-win” model, and the report raises the question of fairness and equal access to content within the game environment.
- **Deceptive Practices**—Deception occurs when a company makes a representation, omission, or practice that is likely to mislead consumers acting reasonably under the circumstances, and that is material (i.e., likely to affect the consumer’s decision to buy or use the product). For instance, an ad highlighting a powerful gaming tool might not reveal its limitations or the existence of even stronger tools obtainable only through further spending. The CFPB may find this lack of transparency deceptive.
- **Abusive Practices**—Abusive practices are those that materially interfere with the ability of consumers to understand a term or condition of a product or service or that take “unreasonable advantage” of a consumer’s lack of understanding of the material risks, costs, or conditions of a product or service. This is particularly relevant for younger players who may not fully understand the financial implications of their in-game actions but are drawn by the flashy visuals and persuasive marketing tactics.

The CFPB has indicated that they have already received consumer complaints regarding the conduct of gaming companies, which likely means it has already received complaints about these kinds of practices. Regulatory action could not only result in substantial fines, lawsuits from consumers and state regulators may soon follow.

Best Practices to Reduce UDAAP Risks

In light of potential CFPB scrutiny, gaming companies should proactively adopt strategies to protect themselves. Here are key strategies to consider:

1. **Transparent Advertising**—Companies should ensure that their advertising is clear and truthful. This includes disclosing any costs associated with “free” games, the potential need for in-game purchases, and the tangible benefits of those purchases. Transparency helps build trust with consumers and can prevent allegations of deceptive practices.
2. **Balanced Gameplay**—Game design should not mislead users into believing skill is involved where the game actually disproportionately favors players who spend more money. Clearly disclosing the benefits of spending or offering meaningful rewards for both free and paying players can help create a more balanced experience and mitigate claims of unfair practices.
3. **Age-Appropriate Controls**—Implementing robust age-verification mechanisms and spending controls can protect younger players. Games should also provide clear information and parental controls to help parents manage their children’s in-game spending.
4. **Compliance Management Systems**—The CFPB expects organizations to implement “Compliance Management Systems” which are policies, procedures, training, and monitoring based on compliance with consumer protection laws. This includes documenting compliance policies and procedures and monitoring for compliance using various feedback channels, including consumer complaints. When issues are identified, rectify them and implement changes to ensure the issue does not repeatedly occur in the future. These monitoring activities should regularly review both marketing practices and in-game mechanics.

Conclusion

As the gaming industry continues to grow and evolve, it must navigate an increasingly complex regulatory landscape and CFPB’s report is a wake-up call for companies to pay attention. By adopting transparent practices, ensuring fair game design, taking proactive steps to protect younger players, and proactively monitoring compliance, gaming companies can not only survive CFPB scrutiny but continue to thrive while fostering a safe and enjoyable experience for all players.

The crystal ball is hazy.

It’s hard to predict what exactly will come out of the CFPB’s report. But suffice it to say that it foreshadows future CFPB activity and heightens the attention of regulators and plaintiffs’ lawyers to these issues. This page will be updated with links as the subsequent articles in this series are published.

- [“OVER THE LINE!” Where Banking and Gaming Intersect, the CFPB Has Something to Say](#)
- [Feeding the Loot Box Monster: The CFPB’s Concerns with Payment Transmission in Gaming](#)
- [Mo Data, Mo Problems: Data Protection and Privacy Concerns for the Gaming Industry](#)

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