

## Getting Out of the Headlights

By Michael Thurman

If you run a small to medium sized business, you are a deer.

You may view yourself as a shark or a lone wolf, prowling the vast business world around you, looking for opportunities. But from a regulatory standpoint, you're a deer.

You have no compliance director or in-house counsel, paid to keep you out of trouble. You have no written compliance manual, documenting your compliance management systems. (If you ask, "What's a compliance management system?" you are definitely a deer!) Those are luxuries afforded by companies much larger than yours. Maybe someday, right?

Every day I read about latest civil enforcement actions brought by the Federal Trade Commission and other state and federal regulators. It's important to know these actions are almost always brought against small to medium sized companies and their owners. Oh, every once in a while you see an enforcement action against a Google or an Apple, but at least nine out of ten FTC enforcement actions are against businesses you have never hear of. Like yours.

In many cases, the owners of those businesses weren't even aware they were doing something that a regulator would say violated a law or regulation. Often, they weren't even aware of the existence of the rule or regulation.

They were deer, out on the highway, unwittingly waiting for the next car or truck to come along.

So if you're a small or medium sized company, how do you get out of the headlights, over to the side of the road? What can you do to reduce your chances of becoming regulatory roadkill?

One step that can pay real dividends is to find a good regulatory defense attorney and have them perform a "mini-review" of your operations. The idea is to identify, and correct, the "low-hanging fruit" that a regulator would immediately identify as a potential violation among your marketing practices.

A "mini review" is not a comprehensive compliance analysis, but rather a quick identification of any obvious problems along with suggestions about how to correct them. While a "mini review" might not get you out of the road completely, it can at least help you get over to the side. It is an inexpensive but effective way of finding out for yourself if there are obvious legal flaws in your business that could result in your being put out of business by a regulator.

No matter how small you are, if you are marketing to consumers in a regulated industry, you cannot afford not to address your company's compliance issues. Unless you are okay with ending up on a regulator's hood.

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