

April 11, 2008

Secretary

Federal Trade Commission

Room H-135 (Annex N)

600 Pennsylvania Avenue, NW

Washington, DC 20580

BehavioralMarketingPrinciples@ftc.gov.

RE: Consumer Comment on the Proposed Online Behavioral Advertising Privacy Principles

To Whom It May Concern:

It is my understanding that today, Friday, April 11, 2008, is the last day for submitting comments to the FTC regarding the Proposed Principles ("PP") for online behavioral advertising. As both a consumer and a former advertising executive who utilized online advertising in its infancy, please consider the following.

First, the FTC should be commended for putting together such a thorough and succinct code of conduct to govern this growing niche industry. At first blush, there seemed to be a number of unanswered issues not addressed by the principles. After further review, I found that many of my concerns were resolved by the footnotes and the incorporated hyperlinked documents. Thus, in its totality; I am hard pressed to find many gripes with the PP beyond wishing it would have been created many years earlier.

Notwithstanding my aforementioned comment, the PP has one major flaw repeated in Proposed Principle Nos. three and four. Both of these principles urge companies to get affirmative express consent from consumers for changes to a company's privacy policy or when using sensitive consumer data. So there is no misunderstanding, I am not arguing that consumer consent is bad; instead, my contention is that the proposed execution of these principles is fatally flawed.

- a. The PP make no assurance that when companies solicit consent from a consumer that the consumer is competent enough, is the owner of the computer or is even of legal age to agree to the terms.
- b. The PP is advocating adhesion contracts which are disfavored and are generally not written in the consumer's best interest. The consumer has no opportunity to negotiate the terms of their consent; instead, they can only choose "to take it or leave it."
- c. Consumers on the Internet are desensitized by the plethora of pop-up ads and interstitials web pages. As a result, any requests for "affirmative express consent" will likely be given little attention by the consumer similar to how licensing agreement for software programs are often ignored.

d. The PP provides no safeguards for whether consumers will truly understand the significance of a request for "affirmative express consent." If these principles are going to protect all consumers, further caution is needed to assure that all consumers understand what they are consenting to, regardless of their level of sophistication and education.

By way of example, Missouri attorneys can not advertise for something as simple as a speeding ticket without including language to the effect that "the choice of a lawyer is an important decision and should not be based solely upon advertisements." Consenting to have your online behavior tracked by unknown entities and used for advertising purposes is a much graver decision in comparison to selecting an attorney to help reduce a speeding ticket fine.

I recognize that these issues can not be resolved exclusively through placing further guidelines on advertisers. Instead, I proffer that the FTC and the private sector supplement the PP with a consumer education initiative. Americans are bringing the Internet into their homes with only minimal understanding that their online habits are being tracked and used. In practice, the PP can be a useful tool for consumer and advertisers, but the parties need to be on a more level playing field. Only through a legitimate consumer education program will the average American be able to evaluate whether to consent to having their online behavior tracked.

Sincerely,

/s/ Greg Harding, Esq.

Washington, DC