

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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Via electronic filing: <http://public.commentworks.com/ftc/FreeCreditReportNPRM>

Hon. Donald S. Clark
Federal Trade Commission
Office of the Secretary, Room H-135 (Annex T)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Free Annual File Disclosures, Rule No. R411005

Dear Secretary Clark:

The U.S. Chamber of Commerce (“Chamber”) respectfully submits these comments on the Federal Trade Commission’s (“FTC” or “Commission”) Notice of Proposed Rulemaking regarding the prevention of deceptive marketing of free credit reports. While we share the Commission’s goal of protecting consumers from misleading marketing in general, we have grave concerns about the untenable precedent that the proposal would establish for the Internet. The proposed rule would divert persons from commercial sites and products, thereby drastically changing the nature of ecommerce from how it has existed since the inception of the Internet. We believe that the Commission could better protect consumers from deception without causing harm to ecommerce by following effective disclosure standards that already exist. We therefore strongly oppose the proposed rule.

The Chamber is the world’s largest federation of business companies and associations. With substantial membership in all 50 states, the Chamber represents an underlying membership of more than 3 million businesses and organizations of every size, sector, and region. An important function of the Chamber is to represent the interests of its members in important matters before the courts, the United States Congress, the Executive Branch, and independent regulatory agencies of the federal government.

The Commission has proposed an entirely new disclaimer regime that would require commercial sites to first display a separate landing page to consumers before they may obtain a product from a commercial website.¹ Such a page would take up the entire screen and appear each time a consumer visits a site, regardless of whether the individual is a first time or frequent visitor, or even a registered user of a site. The commentary to the proposed rule explains that the

¹ Free Annual File Disclosures Amendments to Rule to Prevent Deceptive Marketing of Credit Reports and to Ensure Access to Free Annual File Disclosures, 74 Fed. Reg. 52,915, 52,920 (Oct. 15, 2009).

page could not be easily bypassed and must not contain distracting text.² The page would direct consumers to a government site that offers some of the same products as those offered on the commercial site.³

This proposal would be devastating to the flow of commerce over the Internet because it would divert persons from obtaining commercial products. Moreover, the proposal would not further the Commission's policy goal of reducing consumer confusion, particularly because the separate landing page disclosure would apply indiscriminately, regardless of whether consumers purposefully and knowingly visit a site.⁴ We therefore urge the Commission to refrain from adopting the proposal to require a disclosure on a separate landing page.

I. The Proposed Rule Would Divert Consumers from Products on Commercial Sites

In an effort to prevent consumers from being misled about the source of a commercial product, the Commission has proposed a rule that would first technologically divert all persons to a separate landing page with a prescribed disclosure before the consumers could be presented with the option to click through to the commercial site.⁵ The proposed rule specifies that this option to continue through to the commercial site would be required to be far less prominent than the option to continue on to the government site.⁶

With the focus shifted away from the site that offers the commercial products, the proposed rule would greatly discourage consumers from obtaining products on commercial sites. Businesses offer consumers a variety of useful products, many of which have been vetted by regulatory agencies. By setting up roadblocks to the sites that offer the commercial products, however, many consumers will be deterred from taking the extra steps necessary to obtain such products. The Commission should not prescribe disclosure requirements on a separate landing page that will redirect consumers away from commercial sites that offer products of value.

II. Effective Guidelines for Marketing to Consumers Already Exist

The Commission has laid out general standards for disclosures in the past. Such standards may be found in a number of documents set forth by the Commission, including but not limited to the: (1) FTC Policy Statement on Deception; (2) Dot Com Disclosures: Information About Online Advertising; (3) Guides Concerning the Use of Endorsements and Testimonials in Advertising; (4) Telemarketing Sales Rule; (5) Negative Options: A Report by the Staff of the FTC's Division of Enforcement; (6) Guides for the Advertising of Warrantees and Guarantees; (7) Advertising and Marketing on the Internet: Rules of the Road; and (8) Dietary Supplements: An Advertising Guide for Industry.

None of the above standards are as prescriptive as those now proposed by the Commission. A record has not been established justifying a departure from these disclosure

² 74 Fed. Reg. at 52,917.

³ 74 Fed. Reg. at 52,920.

⁴ See 74 Fed. Reg. at 52,915.

⁵ 74 Fed. Reg. at 52,920.

⁶ *Id.*

standards, and particularly in the ecommerce context. We therefore oppose the Commission's efforts to impose the radical new requirement of a separate landing page for sites that offer products of value to consumers.

III. The Proposal Could Unintentionally Mislead Consumers

The Commission has justified the proposed rule by asserting that it would further the goal of reducing consumer confusion.⁷ From our perspective, however, requiring a separate landing page could unintentionally increase consumer confusion. Consumers do not expect to be taken to a separate landing page that is neither an advertisement nor the site where a commercial product is offered. When presented with such a landing page that covers the entire screen, consumers could think that they have run into a scam or could be concerned that such a page is malware. Rather than clicking through to either the government site or the commercial site, consumers might click back to the screen they had previously visited. Worse yet, consumers might close down their browsers completely.

The Commission should not impose requirements on commercial sites that will unnecessarily burden ecommerce. We thus urge the Commission to reconsider its proposal to require consumers to be diverted to a separate landing page when they are merely seeking to participate in the free flow of commerce over the Internet.

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Please do not hesitate to contact Chris Merida, Director of Congressional and Public Affairs, at (202) 544-0060 ext. 223 with any questions.

Sincerely,

R. Bruce Josten

⁷ 74 Fed. Reg. at 52,915.