

December 7, 2009

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Secretary Clark:

The undersigned companies appreciate the opportunity to submit comments on the Federal Trade Commission (“Commission”) Notice of Proposed Rulemaking to amend the Free Annual File Disclosures Rule, 16 C.F.R. Part 610 (the “Proposed Rule”). We are concerned that the Proposed Rule sets a precedent for unnecessarily restrictive regulation of online advertising. If extended to other types of advertising disclaimers, the requirements in the Proposed Rule would intrude significantly on consumers’ online experience and thereby undermine the current Internet economic model of advertising-supported free content. We urge the Commission to require disclosures to be placed on website homepages, rather than on a separate landing page which is likely to confuse and frustrate consumers. A prominent disclosure on a website’s homepage will meet the intent of the Credit Card Accountability, Responsibility and Disclosure Act (Credit CARD Act).

Section 205 of the Credit CARD Act, which became law on May 22, 2009, provides that any advertisement for a free credit report must “prominently” display a disclosure about the availability of the free credit report provided annually under federal law, and directs the Commission to issue a rule setting out certain requirements for such disclosures on Internet advertising and in other media.

The Proposed Rule would require the mandated disclosure to appear on a separate landing page that is served before any visitor can access the website containing the commercial offer. The proposal would also require the disclosure to be displayed in font at least twice the size of the hyperlink to the company’s website, and that the page may not contain any other graphics or information. The consumer would not be able to proceed beyond this landing page without choosing between the link to the commercial website and the link required by the government.

Although the Proposed Rule would apply only to a specific category of offers, we are concerned that it could set a precedent for imposing similar requirements in other areas where notices and disclosures are required. The Commission has long taken an approach to disclosures that focuses on the perceptions of a reasonable consumer. Within this framework, the Commission has consistently interpreted the term “prominently” to mean that a disclaimer must appear on the same page as, and in close proximity to, the relevant advertising claim. This system has been very effective for conveying important information to consumers.

The Proposed Rule is a marked departure from the traditional framework and could become a basis for similarly intrusive disclosures for other types of advertising, or a broader reinterpretation of what constitutes “prominent” display of disclosures. The

Commission's Notice of Proposed Rulemaking does not present concrete evidence to show either that the Commission's existing disclaimer approach is inadequate or that the proposed approach will be effective in reaching consumers, nor is there any basis why such a disruptive intermediate page is warranted here in contrast to other areas.

As companies with extensive experience communicating with consumers online, we believe that the disclosure model in the Proposed Rule will prove confusing and intrusive to consumers, an outcome that is contrary to the Commission's goals. Because the separate landing page requirement is unprecedented and unfamiliar, it will perplex consumers who visit an affected website for the first time. Existing customers, meanwhile, will encounter delay and frustration every time they return to a website. This model would significantly disrupt consumers' Internet experience. Such a regime would not only reduce consumers' enjoyment of online resources, but it would severely undermine the prevailing economic model that allows publishers to provide high-quality free content supported by advertising revenue.

The strict requirements of the Proposed Rule appear to be based on an assumption that consumers seeking to obtain credit reports from commercial websites are actually looking for the government-mandated website. The online disclosure requirements in the Proposed Rule seem designed to convey to consumers a message that the government website is to be preferred over the commercial websites, when in fact most consumers likely are trying to reach the commercial websites.

We also question the Proposed Rule's differential treatment of online advertising as compared to advertising in other media. From a consumer's perspective, a separate landing page, which presents a barrier between a consumer and his or her requested website, is more intrusive than a disclaimer that is announced on television or radio at the same time as the commercial message. Moreover, it is unclear what the rationale is for Internet advertisements to display the disclaimer in larger type than print advertisements, thereby unfairly discriminating against online advertising. This Proposed Rule could be used as a precedent for future decisions that impose a higher regulatory burden on online advertising than other types of advertising messages.

For the reasons stated above, we urge the Commission to eliminate the requirement for a separate disclosure landing page, and instead develop requirements for the prominent display of disclosures on website homepages. We appreciate the Commission's looking for the best way to inform consumers and share that commitment to finding the most effective approaches. Thank you in advance for your attention to our concerns.

Sincerely,

AOL
Microsoft
Yahoo!