



David A. Paterson
Governor

**STATE OF NEW YORK
EXECUTIVE DEPARTMENT
CONSUMER PROTECTION BOARD**

Mindy A. Bockstein
Chairperson and Executive Director

BY E-MAIL AND U.S. MAIL

April 9, 2010

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex T)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Free Annual Files Disclosure Rule (Also known as "The Free Credit Reports Rule")

Dear Commissioners:

The New York State Consumer Protection Board ("CPB") has long been troubled by deceptive advertisements for "free" credit reports that aren't truly free, but instead come with hidden strings attached - - such as automatic enrollment in a for-pay credit monitoring service.

Therefore, we were pleased when the Federal Trade Commission ("FTC") recently adopted the recommendations of the CPB and other advocates and enacted amendments to the Free Credit Reports Rule. The amendments require advertisements for "free" credit reports to contain prominent disclosure that free credit reports are available at the government-authorized AnnualCreditReport.com or 877-322-8228. We also applauded the FTC's determination to apply this disclosure requirement to online, print, television and radio ads.

Unfortunately, Experian, which owns freecreditreport.com, appears determined to subvert the new advertising rules. The company has begun charging \$1 for a credit report, so that the rules for free credit report advertisements presumably don't apply.¹ Indeed, the company's newly designed website makes no mention of the availability of

¹ Arguably, because the company's name, freecreditreport.com, includes the word "free," the new rules do apply. The rules are applicable to any company that "either expressly or impliedly" offers a free credit report to a consumer and ties it to enrollment in a paid service or product. 16 CFR 610.4(a).



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free credit reports through AnnualCreditReport.com - - disclosure that is mandated under the new FTC rules. Yet, consumers who order a \$1 credit report are automatically enrolled in a credit protection service that carries a monthly fee, just as they were when before the \$1 charge was enacted.

We give Experian an "A" for cleverness, but an "F" for doing the right thing by consumers. It is still failing to disclose that free credit reports are available through AnnualCreditReport.com. It is still luring consumers into enrollment in a for-pay credit protection service. These are precisely the practices that the new FTC rules are designed to prevent, and are no less misleading because Experian is donating the \$1 fee to charity. Indeed, by stating that the \$1 is donated to charity, and thereby creating the impression that the consumer isn't really paying for the credit report, Experian may be further diverting attention from the fact that ordering a credit report results in automatic enrollment in a for-pay service.

We also believe that the continued use of the word "free" in the company's name is inherently deceptive. How can something be "free" if you have to pay \$1 for the product - - and be automatically enrolled in a for-pay service?

We are calling on Experian to play it straight with consumers and comply with the FTC disclosure rules. However, if necessary, we also urge the FTC to strengthen the rules so that companies cannot avoid the disclosure requirements - - and continue to perpetuate confusion among consumers - - simply by charging a nominal fee or donating the fee to charity.

Consumer complaints about deceptive credit report marketing remain a serious concern. While the recent amendments to the Free Credit Report Rule represent a significant step forward in protecting consumers from deceptive advertisements, we believe that, if necessary, the loophole that Experian is exploiting by charging a nominal fee should be closed.

Thank you for your consideration of our comments.

Sincerely,

Mindy A. Bockstein
Chairperson and Executive Director

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