

I find the requirement of §610.4 (4) overreaching. The section requires that “Any website” which offers a free credit report to first display FTC’s disclosure, as well as a link to redirect consumers to FTC’s sanctioned website. By forcing this disclosure on “all” such websites, FTC overlooks the potential for a company to offer free credit reports on the Internet, but at the same time refrain from being deceptive. That is, FTC presumes that all offers of Internet free credit reports will be necessarily deceptive. So inherently deceptive, in fact, as to not even require a consideration of whether a particular business practice manages to both offer free credit reports and not mislead consumers.

FTC points specifically to “FreeCreditReports.com” as an example of a presumably deceptive business. However, this shows that FTC duly weighed the relative deceptiveness of that particular business. The language of the proposed rule removes the incentive for FTC to consider the particular deceptiveness of any other similar businesses in the future. As a result, FTC precludes marketing innovation in this area, and deprives individual businesses of the opportunity to act in a non-deceptive way and avoid the FTC mandate. The scope of the FTC proposal thus, by definition, exceeds its target of deceptive businesses. Indeed, the scope includes all business in this field, regardless of their unique practice.

While it is unfair for a business to profit from deceiving uninformed consumers, it is unfair still to deprive honest businesses of the willing commerce of informed consumers. If businesses which seek to offer free credit reports in combination with their other products and services are deprived of an opportunity to earn customers by behaving in a non-deceptive way, the incentive to behave non-deceptively is itself removed.

In order to limit the scope of FTC's proposal to a size which both punishes deceptive practices, and encourages honest business, FTC should first determine whether a business is behaving deceptively, and only then require that business to hide their websites behind a nearly-impermeable wall of disclosure.

In order to properly weigh whether, in fact, a particular business is indeed deceptive FTC ought to develop a simple, easily applied test. Such a test, ideally, would determine whether companies, such as those contemplated, are deceptive in the ways that have caused FTC to issue the notice of proposed rulemaking at hand. "FreeCreditReports.com" could in fact, be the exemplar website which requires the FTC disclosure screen before a customer may access the website. True enough, the lower limit – a non-deceptive combination of providing the federally-required free credit report, while also and separately providing its own products – has yet to reveal itself. This, however, should not lead FTC to the conclusion that no such website could ever exist, and that "all" websites offering free credit reports ought to be subject to FTC's strict constraining of, not just language to be displayed, but on the actual functioning of a business's website.