

December 7, 2009

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 Direct Marketing Association (“DMA”) welcomes this opportunity to submit comments on the Federal Trade Commission’s (“Commission” or “FTC”) proposal to amend the Free Annual File Disclosures Rule (“Free Credit Report Rule”) to implement Section 205 of the Credit CARD Act of 2009.

The DMA (www.the-dma.org) is the leading global trade association of businesses and nonprofit organizations using and supporting multichannel direct marketing tools and techniques. DMA advocates industry standards for responsible marketing, promotes relevance as the key to reaching consumers with desirable offers, and provides cutting-edge research, education, and networking opportunities to improve results throughout the end-to-end direct marketing process. Founded in 1917, DMA today represents more than 3,600 companies from dozens of vertical industries in the United States and 50 other nations, including a majority of the Fortune 100 companies, as well as nonprofit organizations. Included are cataloguers, financial services, book and magazine publishers, retail stores, industrial manufacturers, Internet-based businesses, and a host of other segments, as well as the service industries that support them.

We are concerned that the proposed rule would establish precedent detrimental to the Internet ecosystem that relies upon Internet advertising. Consumers enjoy free content and services offered on the Internet. Small businesses, nonprofits, and startups also appreciate such online offerings because they serve to level the playing field with larger companies by enabling them to scale the cost barriers to market entry. Online advertising fuels ecommerce by paying for these free offerings. Without such advertising, the Internet ecosystem as we know it would be vastly different.

The proposed rule would change the online landscape by requiring a separate landing page to be displayed to consumers before they may complete transactions with commercial sites.¹ This page would prominently display an active hyperlink to a government site that differs from the commercial site, and effectively encourage consumers to visit the government site.²

¹ Federal Trade Commission, Free Annual File Disclosures Amendments to Rule to Prevent Deceptive Marketing of Credit Reports and to Ensure Access to Free Annual File Disclosures, Notice of Proposed Rulemaking; Request for Comment, 74 Fed. Reg. 52,915, 52,920 (Oct. 15, 2009).

² 74 Fed. Reg. at 52,920.

Such a disclosure would create a mandatory barrier between direct marketers and consumers that could discourage consumers from completing their intended online transactions. We are also concerned that this rulemaking could be used as a launching board to require intrusive disclosures for various forms of online advertising, many with more important disclosures. Such a requirement could negatively impact a vital sector of this country's economy. We, therefore, ask the Commission carefully to reconsider the unintended consequences that the proposed rule could have on the vitality of the Internet as a channel of direct marketing, and to instead require the notice on the landing page.

By virtue of the detailed disclosure requirements for online advertising included in the proposed rule, the Commission has also implied that Internet advertising as it presently functions harms consumers or that consumers are not savvy enough to understand online advertisements. The Commission's proposal details the size, timing, content, and placement of the disclosures necessary for the Internet advertisements under scrutiny in this proposed rulemaking.³ We believe that consumers do, in fact, understand advertising and understand prominent disclosures that occur on the landing pages of sites offering free credit reports. Contrary to the Commission's intention, requiring a separate landing page for Internet advertising disclosures could actually increase consumer confusion because consumers do not expect to see government-mandated disclosures inserted into the middle of an online transaction.

In conclusion, we caution the Commission against taking steps that could limit online marketing and online advertising. While the proposed rulemaking only addresses free credit report advertising, requiring such disclosures for online free credit report advertisements could set dangerous precedent for all Internet advertising. The Internet and online advertisers and marketers rely on one another. They are part of a symbiotic relationship and cannot function without each other. We, therefore, strongly encourage the Commission to avoid taking the action of requiring a separate disclosure page as proposed.

Thank you for your consideration.

Sincerely,

Linda A. Woolley, Esq.
Direct Marketing Association

³ 74 Fed. Reg. at 52,915, 52,917, and 52,920.