

United States Senate

WASHINGTON, DC 20510

November 3, 2009

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The Honorable Jon Leibowitz
Chairman, Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

FEDERAL TRADE COMMISSION
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CONG. CORRES. BRANCH

Dear Chairman Leibowitz,

I write today to ask your help in protecting American consumers from manipulative and deceptive advertising promoting access to credit reports as you consider new rules on this issue.

Any American who has watched TV over the last few years has probably seen the ubiquitous commercials from companies that offer consumers "free" access to their credit reports when they enroll in a paid subscription credit-monitoring service. The commercials can be very catchy, and I am glad that they serve as a reminder to consumers to be vigilant about monitoring their credit. However, I am concerned that these commercials, among many others that promote similar services, take advantage of Americans' real worries about identity theft in a misleading and deceptive way, by making them into pay for reports they are entitled to get for free.

As you know, in 2003 Congress passed the Fair and Accurate Credit Transactions Act, which required that all Americans be allowed to access one free credit report annually from each of the three credit reporting bureaus, including the company that produces the FreeCreditReport.com commercials. The FTC has done an admirable job getting the government's free credit report site – www.annualcreditreport.com – up and running, and promoting the service to consumers.

I am grateful for the extensive efforts the FTC has made and continues to make to ensure that consumers are not misled by advertisements promising access to a free credit report in exchange for enrollment in a paid subscription service. The FTC not only has promoted the actual free credit report site but it has also pursued businesses that have misled consumers, including reaching a settlement that totaled over \$1 million against the company ConsumerInfo.com for failing to disclose the fee that consumers would pay for enrolling in their credit monitoring service. In addition, the FTC has required that all companies who purport to offer a free credit report disclose that they are not affiliated with www.annualcreditreport.com, which allows consumers to access one free credit report annually from each of the three federal credit reporting bureaus and requires no subscription to any paid services whatsoever. Your work in this area has been commendable and has protected many consumers.

I believe, however, that we must go further. If consumers are still being led to believe that they must pay for a report they are entitled to receive for free, then the system is not working properly.

I propose, therefore, that the FTC make two specific changes as it promulgates new regulations for credit reporting.¹ First, the FTC should require that television advertisements include the disclosure that is already present on websites and print mailings to inform consumers that they are entitled to a free credit report annually from the government, and that any offer that comes with strings attached is entirely unrelated to the website www.annualcreditreport.com. Consumers who still wish to enroll in credit monitoring services may of course do so, but they won't be fooled into thinking that they need to pay a subscription service for access to their credit reports.

Second, the FTC should require that companies who continue to advertise "free" credit reports provide a consumer with a free report before ever taking any credit card information or enrolling the consumer in any paid services.²

If the FTC needs any additional legislatively-granted authority to enact these reforms, I pledge to work with you to provide you with all necessary tools.

These are important measures to protect American consumers, and I hope you will give them serious consideration. I look forward to hearing from you on this issue. If you have any questions, please contact Becca Kelly, on my staff, at 202-224-6542.

Sincerely,

Charles E. Schumer

¹ The FTC is in the process of formal rulemaking on these issues, pursuant to Section 205 of the Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. 111-24, 123 Stat. 1734 (May 22, 2009)

² I believe the FTC has the authority to issue such regulations pursuant to Section 205 of the Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. 111-24, 123 Stat. 1734 (May 22, 2009), as well as to the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), as amended by the Consumer Credit Reporting Reform Act of 1996 (Title II, Subtitle D, Chapter 1, of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997), Public Law 104-208, 110 Stat. 3009-426 (Sept. 30, 1996), and the Fair and Accurate Credit Transactions Act of 2003, Public Law 108-159, 117 Stat. 1952 (Dec. 4, 2003).