

United States Senate

WASHINGTON, DC 20510

November 17, 2017

The Honorable Maureen Ohlhausen
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: In the Matter of Victory Media, Inc., File No. 1623210

Dear Chairwoman Ohlhausen,

We write to provide comment to the proposed administrative consent agreement between the Federal Trade Commission (FTC) and Victory Media, Inc. on October 19, which attempted to resolve allegations that Victory Media violated Section 5 of the FTC Act (15 U.S.C. §45). We thank you for this preliminary action, but urge you to strengthen the settlement by obtaining compensation from Victory Media for veterans who were harmed by Victory Media's deceptions.

As the Commission found, Victory Media deceived consumers by operating an online college search tool, School Matchmaker, at "GIJobs.com" that purported to be "military friendly," when, in fact, the tool searches only for schools that pay to be included; and by misrepresenting, in articles, targeted emails, and social media posts, that its endorsements were independent and not paid advertising, and failed to adequately disclose that the company recommended schools that paid specifically to be promoted therein.

We agree with the Commission's findings. We have reviewed with great interest the report by Veterans Education Success entitled, *Understanding Misleading Websites and Lead Generators: A Case Study of Victory Media's "Military Friendly Schools,"* and write to underscore our alarm and concern that the websites and publications produced by this company perpetuate deceptive and fraudulent marketing practices that unfairly target veterans and servicemembers by enticing them with post-secondary education opportunities.

As you know, lead generator sites can be problematic for consumers. In fact, many visitors to lead generation websites are often unaware that their personal information may be collected and sold to third parties. According to a white paper published by your agency on the subject in September 2016, lead generators can be outright aggressive and deceptive; in some cases, website publishers associated with post-secondary education marketing deceptively claim that they can connect consumers with jobs, educational or vocational opportunities, or government assistance to entice them into submitting their personal information. In July 2016, twenty-eight of our colleagues signed a letter to the VA on the matter of lead generators, writing

that “it is important to protect veterans who might fall victim to deceptive and misleading recruiting efforts. Third-party ‘lead generators’ continue to be widely used by some colleges seeking to enroll veterans with deceptive tactics.”

This seems to be the case for Victory Media, which – as the Commission found – has used its websites like “Militaryfriendly.com” and its publications like *GI Jobs* magazine to target and prey on military servicemembers and veterans looking to utilize their hard-earned and well-deserved GI benefits to advance their education and careers after the military. Instead, Victory Media captures the personal information of veterans and servicemembers visiting their sites and sells the data to colleges willing to pay – unbeknownst to the consumer. Worse yet, Student Veterans of America found that many schools that have paid for the “Military Friendly” designation are currently under accreditor scrutiny, on Heightened Cash Monitoring by the Department of Education, with documented poor student outcomes and reports of consumer fraud. Perhaps most alarming, more than 257 schools highlighted by Victory Media as “Military Friendly” are in fact not even approved by the DoD to participate in Tuition Assistance (TA).

According to Victory Media’s own reports, seventy-five thousand copies of its “Military Friendly Schools” edition of *GI Jobs* magazine are also distributed to military posts around the country – including Department of Defense (DoD) Transition Assistance Program (TAPS) classes for servicemembers leaving the military and transitioning to civilian life. The ubiquity of these publications on military posts gives service members and veterans the false sense that *GI Jobs* and its “Military Friendly” list is a reputable publication that evaluates post-secondary education programs based on merit – whether by each program’s treatment of student veterans, compliance with federal regulators or accreditors, or by the institution’s debt to earnings ratio for its students. Unfortunately, this is far from the truth.

In actuality, as the Commission carefully documented, Victory Media runs a multi-tiered “pay to play” scheme in which it promotes the colleges and employers that pay Victory Media the most. Schools can pay up to \$59,000 for membership access that allows them to be highlighted as “military friendly” and to receive “preferred search results,” as well as pay for access to service members and veterans’ personal information paving the way for bad actors to exploit an existing loophole in the 90-10 rule in the Higher Education Act.

As you know, Section 5 of the FTC Act (15 U.S.C. §45) gives the FTC jurisdiction to bring enforcement actions against deceptive or unfair marketing practices. We appreciate the Commission’s efforts to take swift legal action against this unscrupulous behavior, but believe FTC must take stronger steps to adequately deter future offenses by Victory Media and other bad actors. Therefore, we ask that FTC consider the following recommendations:

- 1.) We ask that the FTC strengthen the existing settlement by obtaining compensation from Victory Media for veterans and servicemembers who were harmed by Victory Media’s transgressions.
- 2.) We would also urge that any final settlement between FTC and Victory Media require the company to relinquish their trademark for “Military Friendly Schools”, and instead have

the website Militaryfriendly.com/schools redirect visitors to VA's GI Bill Comparison Tool or DoD's Tuition Assistance Decide website. The federal government has taken similar steps in the past to protect veterans against deceptive marketing practices at the hand of opportunistic companies that are solely interested in accessing Post-9/11 GI Bill funds.¹

- 3.) Finally, we ask that FTC use its broad statutory authority to investigate deceptive and unfair marketing practices of military-branded websites and publications that target veterans, servicemembers, and military family members.

As always, we ask that FTC remain vigilant in ensuring that federal laws and rules regarding deceptive recruiting tactics are enforced to protect veterans, servicemembers, and their families from the predatory actions of unscrupulous for-profit institutions. We appreciate your attention to this important matter and look forward to your response.

Sincerely,

RICHARD BLUMENTHAL
United States Senator

SHERROD BROWN
United States Senator

ELIZABETH WARREN
United States Senator

THOMAS R. CARPER
United States Senator

KIRSTEN GILLIBRAND
United States Senator

MARGARET WOOD HASSAN
United States Senator

BENJAMIN L. CARDIN
United States Senator

TAMMY BALDWIN
United States Senator

¹ <https://www.blogs.va.gov/VAntage/7356/after-court-settlement-va-takes-over-gibill-com-and-other-sites/>

RICHARD J. DURBIN
United States Senator