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July 16, 2001

Mr. Donald Clark  
Secretary of the Commission  
Federal Trade Commission  
600 Pennsylvania Ave. NW, Room #172  
Washington, D.C. 20580

**RE: Deceptive advertising complaint against AltaVista Co., AOL  
Time Warner Inc., Direct Hit Technologies, iWon Inc.,  
LookSmart Ltd., Microsoft Corp. and Terra Lycos S.A.**

Dear Mr. Clark:

This letter constitutes a formal complaint against AltaVista Co., AOL Time Warner Inc., Direct Hit Technologies, iWon Inc., LookSmart Ltd., Microsoft Corp. and Terra Lycos S.A., and a request that the Federal Trade Commission (FTC) investigate whether these companies are violating federal prohibitions against deceptive acts or practices<sup>1</sup> by inserting advertisements in search engine results without clear and conspicuous disclosure that the ads are ads. This concealment may mislead search engine users to believe that search results are based on relevancy alone, not marketing ploys.

When search engine companies first unveiled their engines, they did not put ads in the search results. Results were displayed based on objective criteria of relevancy tallied by algorithms.

During the last year, however, some search engines sacrificed editorial integrity for higher profits, and began placing ads prominently in the results, but without clear disclosure of this practice. Advertisers pay the search engine companies to have their products and services listed "high" in or near the search results. Thus the listings look like information from an objective database selected by an objective algorithm. But really they are paid ads in disguise.

**A: Some Search Engine Practices May Constitute Deceptive Advertising**

For years, search engine companies have incorporated advertising into their websites in ways that do not affect search results, such as banner ads. But some search engines have

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<sup>1</sup> 15 U.S.C. § 45(a)(1).

recently adopted three advertising practices which may affect search results: paid placement, inclusion and submission. Paid placement is advertising that is outside of the editorial content of the search results, sometimes above or below the editorial content, or in a sidebar. Paid inclusion is advertising within the editorial content of the search results, though it does not necessarily guarantee a certain position within the results. Paid submission is the practice of requiring payment to speed up the processing of a listing, though it rarely guarantees that a site will in fact be listed by the search engine. This complaint concerns the practices of paid placement and paid inclusion without clear and conspicuous disclosure that the ads are, in fact, ads.

In some search engines, disclosure of paid placement or inclusion in some search engines is either non-existent or obfuscatory.<sup>1</sup>

<b>Search Engine</b>	<b>Paid Placement</b>	<b>Paid Inclusion</b>
iWon.com	"Featured Listings"	No paid inclusion
Lycos	"Featured Listings"	No paid inclusion
MSN.com	"Featured Sites"	"Web Directory Sites"
Netscape	"Partner Search Results"	No paid inclusion
Altavista	"Featured Sites"	"Results"
Direct Hit	"Partner Search Results"	No paid inclusion
HotBot	"Products & Services" and "Featured Listings"	-----
LookSmart	"Featured Listings"	"Reviewed Web Sites"

News accounts suggest this deception is growing worse following the so-called "dot com crash" and the reduction in banner ad sales. For example, Verne Kopytoff of the *San Francisco Chronicle* reported that:

Once relatively objective, search engines are increasingly becoming commercial. In an effort to survive the online industry's financial struggles, they are providing links based not just on relevancy, but on who pays for top billing.

Over the past several months, most of the Internet's biggest portals have added these so-called pay-for-placement search engines to their repertoire. Yet in some cases, users are not explicitly told that the top links provided to them are really advertisements in disguise.<sup>2</sup>

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<sup>1</sup> Sources for chart: Danny Sullivan, "Buying Your Way in to Search Engines," Searchenginewatch.com, May 2, 2001, <<http://www.searchenginewatch.com/webmasters/paid.html>>. Saul Hansell, "Clicks for Sale; Paid Placement Is Catching On in Web Searches." *The New York Times*, June 4, 2001. <<http://www.iwon.com/>>, <<http://www.lycos.com/>>, <<http://www.msn.com/>>, <<http://www.netscape.com/>>, <<http://www.altavista.com/>>, <<http://www.directhit.com/>>, <<http://hotbot.lycos.com/>>, <<http://www.looksmart.com/>>.

<sup>2</sup> Verne Kopytoff, "Searching for Profits; Amid Tech Slump, More Portals Sell Search Engine

Not all search engine companies have adopted deceptive advertising practices. For example, Google clearly notes that its paid placements are “Sponsored Links,” and it will not put paid ads within its search results. “We have no plans for a paid inclusion program,” Google spokesperson Cindy McCaffrey told SearchEngineWatch.com. “[O]ur search results represent our editorial integrity, and we have no plans to alter our automated process, which works very well in gathering information and delivering highly relevant results,”<sup>3</sup> she said.

**B: The FTC Has Repeatedly Sought to Stop Companies From Concealing That Their Ads Are Ads**

By concealing the key fact that their ads are ads, search engines appear to be violating the federal prohibition against deceptive acts or practices. This omission falls within a line of deceptive advertising cases in which the FTC sought sanctions against companies that have hid that their ads were ads.

The FTC has brought many cases against producers of “infomercials,” charging that “the infomercials were deceptive in that they purported to be independent programming rather than paid ads.”<sup>4</sup> For example, the consent decree in Michael S. Levey forbids Mr. Levey from

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Results to the Highest Bidder.” *San Francisco Chronicle*, June 18, 2001. Attachment #1 also includes Saul Hansell, “Clicks for Sale; Paid Placement Is Catching On in Web Searches.” *The New York Times*, June 4, 2001. Mindy Charski, “The Virtuous Search Engine,” *Interactive Week*, June 4, 2001, <<http://www.zdnet.com/intweek/stories/news/0,4164,2767661,00.html>>. Deborah Lohse, “Searches Bringing Up More Pay-for-placement,” *San Jose Mercury News*, February 16, 2001. Elizabeth Weise, “Web Sites Pay to Propel Search Engines; Fees for Detailed Listings Raise Doubts About Where the Links Are Taking You.” *USA Today*, November 14, 2000. See generally Searchenginewatch.com’s web page on pay for placement at <<http://searchenginewatch.com/resources/paid-listings.html>>. Danny Sullivan, “Buying Your Way in to Search Engines,” Searchenginewatch.com, May 2, 2001, <<http://www.searchenginewatch.com/webmasters/paid.html>>.

<sup>3</sup> Danny Sullivan, “The Evolution of Paid Inclusion.” *SearchEngineWatch.com*, July 2, 2001, <<http://www.searchenginewatch.com/sereport/01/07-inclusion.html>>. See Attachment #2.

<sup>4</sup> Michael S. Levey, Docket No. C-3459, Federal Trade Commission, 116 F.T.C. 885, September 23, 1993. See e.g. Nutrivida, Inc., and Frank Huerta, Docket No. C-3826, Federal Trade Commission, September 10, 1998. Bogdana Corp. and Joseph L. Gruber and Bogda Gruber, Docket No. C-3820, Federal Trade Commission, July 28, 1998. Mega Systems International Inc., Docket No. C-3811, Federal Trade Commission, June 8, 1998. National Dietary Research Inc., The William H. Morris Co., and William H. Morris, Docket No. 9263, Federal Trade Commission, 1995 FTC LEXIS 324, November 7, 1995. Olsen Laboratories Inc. et. al., Docket No. C-3556, Federal Trade Commission, 119 F.T.C. 161, February 6, 1995. Wyatt Marketing Corp. Inc., and James R. Wyatt, Docket No. C-3511, Federal Trade Commission, 118 F.T.C. 117, July 27, 1994. Synchronal Corp., Docket No. 9251, Federal Trade Commission, 117 F.T.C. 724, May 13, 1994. Del Dotto Enterprises Inc., David P. Del Dotto, and Yolanda Del Dotto,

disseminating any “advertisement that misrepresents, directly or by implication, that it is not a paid advertisement.”<sup>5</sup>

**C: Paid Placement and Inclusion is Likely to Deceive Many Users of Search Engines**

Without clear disclosure of the inclusion of ads within search engine results, even well-informed search engine users may not know whether a listing is an ad. “It’s getting very difficult to tell whether a site paid to be listed or not,” Danny Sullivan, editor of SearchEngineWatch, told *The New York Times*.<sup>6</sup> If experts like Mr. Sullivan cannot easily figure this out, it is unlikely that other search engine users can tell whether any particular search engine result was a paid ad or not.

The deception is, of course, intentional. “You don’t want users to come to your site thinking the information is being weighted by whoever pays the highest price tag,”<sup>7</sup> explained Christopher Todd, an analyst at Forrester Research.

The likelihood of deception is enhanced by the lack of sophistication of many of search engine users. Search engines are now a commonplace part of the quest for information and knowledge; almost every segment of society uses them. Many search engine users are children and teenagers who may have limited cognitive abilities and an incomplete understanding of the purpose of advertising. They especially are likely to be deceived by the failure to disclose that listings are paid ads.

The failure to disclose that an ad is an ad is material because it can ultimately affect consumers’ purchasing decisions, by diverting their attention to the advertisers. This is, of

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Docket No. 9257, Federal Trade Commission, 117 F.T.C. 446, April 21, 1994. National Media Corp. and Media Arts International Inc., Docket No. C-3441, Federal Trade Commission, 116 F.T.C. 549, June 24, 1993. C C Pollen Co. and Bruce R. Brown, Docket No. C-3419, Federal Trade Commission, 116 F.T.C. 206, March 16, 1993. Richard Crew, File No. 882 3199, Federal Trade Commission, 1990 FTC LEXIS 475, October 16, 1990. Robert Francis, File No. 882 3199, Federal Trade Commission, 1990 FTC LEXIS 496, September 27, 1990. Twin Star Productions Inc, Jerald H. Steer, Allan Singer, Judith Singer, Douglas Gravink, Peter Claypatch and Steven Singer, Docket No. 882 3199, Federal Trade Commission, 1990 FTC LEXIS 87, March 13, 1990.

<sup>5</sup> 58 Fed. Reg. 38768.

<sup>6</sup> Saul Hansell, “Clicks for Sale; Paid Placement Is Catching On in Web Searches.” *The New York Times*, June 4, 2001.

<sup>7</sup> Patricia Riedman, “Advertorial Seeps into Search Sites; Paid Listings on Results Pages Are Becoming the Norm.” *Advertising Age*, February 19, 2001. See Attachment #3.

course, the purpose of the ad, and there is no question that the search listing ads in fact do this.

Because of the earlier editorial integrity in search engine results, there is an implied representation to search engine users that listings are not skewed by marketing or commercialism. Consumers are accustomed to search engine protocols based on editorial integrity, and have not been told of the departure from these protocols. In effect, this is a high-tech case of “bait and switch.”

This deception is especially important because so many Americans use the Internet and search engines each day to find facts and information. About 167 million Americans have access to the Internet at home, according to Nielsen/NetRatings.<sup>8</sup> For many of these Internet users, search engines have become both filter and gateway to learning and knowledge. That is a crucial role in any society. The FTC should not allow such a privileged role to become a platform for deception.

We urge the FTC to fully investigate this matter and exercise any and all of its powers to enjoin the companies listed in this complaint from disseminating deceptive advertising, and to require them to disclose, in a clear and conspicuous manner, that ads placed in search engine results are, in fact, ads.

Sincerely,

Gary Ruskin  
Executive Director

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<sup>8</sup> “Hot Off the Net,” Nielsen/NetRatings, May, 2001, <[http://www.nielsen-netratings.com/hot\\_of\\_the\\_net.htm](http://www.nielsen-netratings.com/hot_of_the_net.htm)>. See Attachment #4.