



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20850

Bureau of Consumer Protection

[search engine company  
address  
address]

Re: Commercial Alert Complaint Requesting Investigation of Various Internet Search Engine Companies for Paid Placement and Paid Inclusion Programs

Dear [search engine company]:

The Federal Trade Commission responded to a complaint filed by Commercial Alert requesting that the agency investigate whether certain search engines are violating Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a)(1),<sup>1</sup> by failing to disclose that advertisements are inserted into search engine results lists.

Commercial Alert's complaint alleges that when search engines include Web sites in search results lists, on the basis of "paid placement" and "paid inclusion," such search results are advertisements. It further contends that "without clear and conspicuous disclosure that the ads are ads," such "concealment may mislead search engine users to believe that search results are based on relevancy alone, not marketing ploys."

The FTC's Bureau of Consumer Protection staff reviewed the search engines listed in the Commercial Alert complaint and others. For the most part, the staff believes that while many search engine companies do attempt some disclosure of paid placement, their current disclosures may not be sufficiently clear. The staff also believes that, depending on the nature of the paid inclusion program, there should be clearer disclosure of the use of paid inclusion, including more conspicuous descriptions of paid inclusion itself.<sup>2</sup> As a general matter, clear and conspicuous

---

<sup>1</sup> Section 5 of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission will find deception if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment. See FTC Policy Statement on Deception, appended to Cliffdale Associates, Inc., 103 F.T.C. 110, 174 (1984).

<sup>2</sup> Examples of paid inclusion are programs under which companies can pay to have their Web sites or URLs reviewed more quickly, or for more frequent spidering of their Web sites or URLs, or for the review or inclusion of deeper levels of their Web sites than would

disclosures would put consumers in a position to better determine the importance of these practices in their choice of search engines to use.

Indeed, a recent Consumers Union national survey found that 60% of Internet users had no idea that certain search engines were paid fees to list some sites more prominently than others in their search results. After being told that some search engines take these fees, 80% said it is important (including 44% who said it is very important) for a search engine to disclose, in its search results or in an easy-to-find page on its site, that it is being paid to list certain sites more prominently.<sup>3</sup>

Accordingly, the staff recommends that if your search engine uses paid placement, you make any changes to the presentation of your paid-ranking search results that would be necessary to clearly delineate them as such, whether they are segregated from, or inserted into, non-paid listings. Factors to be considered in making such a disclosure clear and conspicuous are prominence, placement, presentation (*i.e.*, it uses terms and a format that are easy for consumers to understand, and that do not contradict other statements made), and proximity to a claim that it explains or qualifies.

Moreover, the staff recommends that if your search engine uses paid inclusion programs that may distort rankings or placement criteria, you clearly describe how sites are selected for inclusion in your indices.<sup>4</sup> Also, consumers should be able to easily locate your explanation of the paid inclusion program you use, and discern the impact of paid inclusion in search results lists.

Finally, the staff recommends that you review your Web sites to ensure that:

- any paid ranking search results are distinguished from non-paid results with clear and conspicuous disclosures;
- the use of paid inclusion is clearly and conspicuously explained and disclosed; and
- no affirmative statement is made that might mislead consumers as to the basis on which a search result is generated.

---

otherwise be the case.

<sup>3</sup> See “A Matter of Trust: What Users Want From Web Sites,” [www.consumerwebwatch.com/news/report1.pdf](http://www.consumerwebwatch.com/news/report1.pdf) (Apr. 16, 2002).

<sup>4</sup> Of course, if all Web sites included in a search guide or a search engine’s database have paid to be included, so that the search engine is essentially an advertising medium, that fact should be adequately disclosed.

To the extent that your company provides search results to third-party Web sites, including other search engines or guides, we recommend that you discuss with the third-party Web sites whether the above criteria are being met with respect to any search results provided that involve a payment of any kind for ranking, insertion of paid results into unpaid results, or any pay-for-inclusion requirements.

The staff recognizes that search engine companies' business models vary and that there is a need for flexibility in the manner in which paid placement and paid inclusion are clearly and conspicuously disclosed. We encourage you to review and implement the guidance provided in the Commission's business education piece, Dot Com Disclosures: Information About Online Advertising, which discusses how to make clear and conspicuous disclosures online.<sup>5</sup>

Finally, although the staff of the Bureau of Consumer Protection has determined not to recommend that the Commission take formal action with respect to the Commercial Alert complaint, that determination should not be construed as a determination by either the Bureau of Consumer Protection or the Commission as to whether or not the practices described in the complaint violate the FTC Act or any other statute enforced by the Commission.

Please contact Beverly Thomas or Dean Forbes at 202-326-2938 or 202-326-2831 with any questions you may have about the guidance provided in this letter.

Very truly yours,

Heather Hipsley  
Acting Associate Director  
Division of Advertising Practices

---

<sup>5</sup> Dot Com Disclosures: Information About Online Advertising is available on the FTC Web site at [www.ftc.gov/bcp/online/pubs/buspubs/dotcom/index.pdf](http://www.ftc.gov/bcp/online/pubs/buspubs/dotcom/index.pdf).