



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

March 14, 2011

Ms. Susan Grant  
Director of Consumer Protection  
Consumer Federation of America  
1620 I Street, N.W. Suite 200  
Washington, DC 20006

*Re: In the Matter of US Search, Inc., File No. 1023131*

Dear Ms. Grant:

Thank you for your letter commenting on the Federal Trade Commission's proposed consent agreement in the above-referenced proceeding. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comments concern the fact that US Search charged a fee for consumers to opt out of its database of publicly available information. You assert that the Commission should challenge the practice of charging this fee as unfair, in violation of Section 5 of the FTC Act.<sup>1</sup>

The Commission agrees that opt outs should be easy for consumers to exercise and that companies should not engage in practices that undermine consumer choice.<sup>2</sup> As alleged in the Complaint, US Search deceived consumers – and circumvented their choices – by offering consumers an opt out and then failing to deliver what was promised. The Commission's Complaint and Decision and Order address this deceptive conduct.

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<sup>1</sup> 15 U.S.C. § 45(a).

<sup>2</sup> See “Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers,” Preliminary Staff Report (Preliminary Staff Report on Privacy) (Dec. 1, 2010), available at <http://www.ftc.gov/os/2010/12/101201privacyreport.pdf>; see also *Consumer Privacy: Hearing Before the S. Comm. on Commerce, Sci., and Transp.*, 111th Cong. (July 27, 2010), available at <http://www.ftc.gov/os/testimony/100727consumerprivacy.pdf> (prepared statement of the FTC).

However, you have urged the Commission to allege that US Search's practice of charging consumers a fee to opt out is unfair, that is, causes or is likely to cause injury that is (1) substantial; (2) not outweighed by countervailing benefits to consumers or to competition; and (3) not reasonably avoidable by consumers themselves.<sup>3</sup> Based on the evidence before it and the circumstances of this case, the Commission has not concluded that an unfairness allegation is warranted. We note that US Search has stopped charging for its opt-out service, and that the order requires US Search to refund all opt-out fees previously charged to consumers.

The practices of the data broker industry are of continuing interest to the Commission. In its recent report on consumer privacy, Commission staff raised a number of concerns about the practices of data brokers and asked for public comment on these issues.<sup>4</sup> We are in the process of reviewing comments on the report, which we hope will shed further light on the issues raised in your letter.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without the modifications you suggest. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your letter.

By direction of the Commission.

Donald S. Clark  
Secretary

cc: Jeff Chester (Center for Digital Democracy)  
Deborah C. Peel, MD (Patient Privacy Rights)  
Michelle De Mooy (Consumer Action)  
Linda Ackerman (Privacy Activism)  
Sharon Goott Nissim (Electronic Privacy Information Center)  
Beth Givens (Privacy Rights Clearinghouse)  
Robert Ellis Smith (Privacy Journal)  
Chip Pitts (Stanford Law School)

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<sup>3</sup> 15 U.S.C. 45(n).

<sup>4</sup> See Preliminary Staff Report on Privacy, Appx. A at A-4.