



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

Office of the Secretary

March 14, 2011

Mr. Robert Gellman
Washington, D.C.

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

Dear Mr. Gellman:

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.¹

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.² 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.

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;

¹ 15 U.S.C. § 45(a).

² 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).

