

inclusion, including more conspicuous descriptions of how any such program operates and its impact on search results. As a general matter, clear and conspicuous disclosures would put consumers in a better position to determine the importance of these practices in their choice of search engines to use.

II. Paid Placement and Paid Inclusion

In conducting its review, the staff considered "paid placement" to be any program in which individual Web sites or URLs can pay for a higher ranking in a search results list, with the result that relevancy measures alone do not dictate their rank. The staff considered "paid inclusion" to be any program in which individual Web sites or URLs are included in a search engine's index, or pool, of sites available for display as search results, when that Web site or URL might not otherwise have been included, or might not have been included at a particular point in time, but for participation in the paid program.

A. Paid Placement

Paid placement programs can take many forms. Search engines may operate their own paid placement programs or obtain search results from third parties who in turn operate paid placement programs. The staff agrees that search engines should clearly and conspicuously disclose that certain Web sites or URLs have paid for higher placement in the display of search results. This information is likely to be important to consumers,⁽³⁾ who otherwise might believe that the sites placed higher up in the list were independently chosen and ranked as being more relevant to the consumer's search query than those search results placed further down in the list. The failure to disclose paid placement adequately within search results deviates from the established deception principle of clearly distinguishing editorial content from advertising content.⁽⁴⁾ The purpose of such a demarcation is to advise consumers as to when they are being solicited, as opposed to being impartially informed.

Because search engines historically displayed search results based on relevancy to the search query, as determined by algorithms or other objective criteria, the staff believes that consumers may reasonably expect that the search results displayed m(h)-4(e)-54]TJ -0.003 T10(ofus)-1(, -2(i)-2(on)20(i)-

distinguished from other types. Of the 12 search sites owned or operated by the 7 named search engine companies, 11 segregate paid ranking results by placing them above the non-paid results or prominently elsewhere. Many of these sites appear to be headed in the right direction, using terms such as "Sponsored Links" or "Sponsored Search Listings" to denote payment for rankings. In some cases, these sites display more than one set of paid placement listings, and these additional listings are labeled using terms such as "Recommended Sites," "Featured Listings," "Premier Listings," "Search Partners," "Provided by the [_____] Network," or "Start Here." Other sites use much more ambiguous terms such as "Products and Services," "News," "Resources," "Featured Listings," "Partner Search Results," or "Spotlight," or no labels at all.(5) To avoid deception, these sites should be labeled to better convey that paid placement is being used.

The staff is encouraging search engine companies to make changes to their paid-ranking search results 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.

B. Paid Inclusion

Paid inclusion can take many forms. Examples of paid inclusion include programs where the only sites listed are those that have paid; where paid sites are intermingled among non-paid sites; and where companies 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 is the case with non-paid sites. As with paid placement, search engines may operate their own paid inclusion programs or obtain search results from third parties who in turn operate paid inclusion programs.

To the extent that paid inclusion does not distort the ranking of a Web site or URL, many of these programs provide benefits to consumers, by incorporating more Web sites - or content - into an individual search engine's database than might otherwise be the case. This can give consumers a greater number of choices in search results lists.(6)

In other instances, the intermingling of non-paid Web sites with paid-inclusion Web sites in the search database may cause consumer confusion and mislead consumers as to the reasons for a Web site's or URL's inclusion in the search results. If the program distorts rankings, the program or its impact on rankings should be prominently disclosed. And certainly, if all Web sites

determine whether the practice of paid inclusion is important to them in their choice of the search engines they use. Currently, although certain of the named search engines do, in fact, use paid inclusion, in the staff's view none of them adequately discloses its usage or offers clear and conspicuous explanations of its impact on search results. In the staff's view, labels such as "Web Directory Sites," "Results," "Matching Sites," and "Reviewed Web Sites" may not clearly convey

Endnotes:

1. 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).
2. Your complaint has become public by virtue of its placement on your Web site, www.commercialalert.org.
3. Currently, there are very few studies on this subject. A Consumers Union national survey found that 60% of U.S. Internet users had not heard or read 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. If clearly told in the search results that some sites are displayed prominently because they paid, 30% said they would be less likely to use that search engine, 10% said more likely, and 4% said don't know/refused. Consumers Union also reported that "given the complicated situation, 56% say it would make no difference to them." It stated that the "combination of users' low level of knowledge of search engine practices and their strong demand that search engines should come clean leaves users splintered about how to react." *See* "A Matter of Trust: What Users Want From Web Sites," www.consumerwebwatch.com/news/report1.pdf (Apr. 16, 2002). A recent BBC-commissioned survey found that 71% of U.K. users were unaware that some search engines let advertisers pay to get more prominent positions in search results. *See, e.g.*, "BBC Launches its Non-Commercial Search Engine in Response to 'Tainted' Results," VentureReporter.net (May 2, 2002).
4. The Commission has brought actions against infomercial producers for failure to disclose that a television show was not an independent program but was, instead, a paid commercial advertisement. *See, e.g.*, National Media Corp., 116 F.T.C. 549 (1993) (consent order). Similarly, the Commission alleged as deceptive the use of misleading formats that made an advertisement appear to be an independently written article published in a magazine. *See, e.g.*, Georgetown Publishing House Limited Partnership, 122 F.T.C. 392 (1996) (consent order).
5. We note that several search engines not named in the complaint also use labels such as "Featured Search Results" and "Premier Listings" to denote paid-for higher rankings; some, however, provide no indication at all that certain sites have paid for their higher positions.

