



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

Division of Advertising Practices  
Mary Koelbel Engle  
Associate Director  
May 31, 2002

Thomas M. Hughes Esq.  
Hunton & Williams  
1900 K Street, N.W.  
Washington, D.C. 20006109

Re: EarthLink, Inc., Matter No. 002 3258

Dear Mr. Hughes:

The staff of the Federal Trade Commission has conducted an investigation of EarthLink, Inc. ("EarthLink"). Our inquiry concerned whether EarthLink had violated Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a)(1), in its advertising of the privacy and spam protection available to users of its Internet service.

The staff was concerned about some of EarthLink's privacy protection claims in its television ads, promotional materials, and on its Web site, www.earthlink.net. For example, in one promotion EarthLink distributed tens of millions of e-mails that it delivers the "totally anonymous" e-mail service. On several related Web pages, EarthLink stated "Protect your anonymity."

The staff was also concerned about some of EarthLink's claims regarding its ability to protect e-mail, or "spam." In certain recent television ads for "EarthLink's Spam Protection" and "Boy's Bully Problem Solver" and radio ads, EarthLink had advertised spam prevention through its "tools to stop spam." EarthLink also advertised spam prevention services on its Web site such as "[k]eeping your email safe from Spam . . . When you combine the Spaminator with email protection, spam is brought down to almost nothing."

The staff is concerned about the dissemination of the aforementioned "totally anonymous Internet" e-mail service and has revised its spam ads and Web site references to state that "we will help you reduce spam" rather than eliminate it. The staff recommends that EarthLink restate the degree of consumer risk on the Internet from invasions of privacy that EarthLink actually provides against those risks, so that consumers

are not misled. In the staff's view, EarthLink should continue to review its advertising and Web site ensure that future claims are accurate and substantiated.

After careful review, the staff had decided not to recommend enforcement action at this time. Accordingly, the investigation has been closed. This action is not to be construed as a determination that a violation did not occur, just as the pendency of an investigation should not