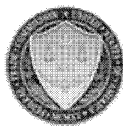


EXHIBIT 2



**Federal Trade Commission
Protecting America's Consumers**

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

June 27, 2002

Mr. Gary Ruskin
Executive Director
Commercial Alert
3719 SE Hawthorne Blvd.
Suite 281
Portland, OR 97214

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

Dear Mr. Ruskin:

This letter responds to the July 16, 2001 complaint filed by Commercial Alert requesting that the Federal Trade Commission ("FTC" or "Commission") investigate whether Alta Vista Co., AOL Time Warner, Inc., Direct Hit Technologies, iWon, Inc., Looksmart, Ltd., Microsoft Corp., and Terra Lycos S.A. (hereinafter, "named search engine companies") are violating Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a)(1),(1) by failing to disclose that advertisements are inserted into search engine results lists.

I. Overview

Your 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. Your complaint 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." After careful review, the staff of the Bureau of Consumer Protection has determined not to recommend that the Commission take formal action against the search engine companies listed in your complaint at this time. That determination should not, however, be construed as a determination by either the Bureau of Consumer Protection or the Commission as to whether or not the practices described in your complaint violate the FTC Act or any other statute enforced by the Commission.

Although the staff is not recommending Commission action at this time, we are sending letters to search engine companies outlining the need for clear and conspicuous disclosures of paid placement, and in some instances paid inclusion, so that businesses may avoid possible future Commission action. In addition, this response to your complaint will be placed on the Commission's public record and on the FTC's Web site.(2) 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 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 by individual search engines are ranked in accordance with this standard industry practice - that is, based on a set of impartial factors. Thus, a departure from the standard practice, such as a search engine's insertion of paid-for placements in the search list, may need to be disclosed clearly and conspicuously to avoid the potential for deception.

Thus, any Web sites or URLs that have paid to be ranked higher than they would be ranked by relevancy, or other objective criteria, should be clearly labeled as such using terms conveying that the ranking is paid for. In the staff's view, to avoid deception such labels need to convey that the sites listed are placed higher, or otherwise presented more prominently, because they have paid for their ranking or position, rather than solely based on some objective criteria relating to the probable relevance of their content to any particular search request.

Paid placement listings may also be denoted by segregating them from non-paid listings. Each separate set of paid placement listings should be clearly labeled as such so they can be easily 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 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 disclosed adequately to avoid deception. Accordingly, the staff is encouraging search engines that offer paid inclusion programs to clearly describe how sites are selected for inclusion in their indices.

In short, through the use of clear and conspicuous disclosures, consumers should be able to easily locate a search engine's

explanation of any paid inclusion program, and discern the impact of paid inclusion on search results lists. In this way, consumers will be in a better position to 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 that certain sites or URLs in the search result list, or perhaps all of the sites or URLs in the search database, are participants in a paid inclusion program, rather than being included based on some other criteria that may not involve payment.(7)

III. Conclusion

In short, the staff is recommending that all search engine companies(8) review their Web sites and make any changes necessary 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.

To the extent that search engine companies provide search results to third-party Web sites, including other search engines or guides, we are encouraging the companies to discuss with the third-party Web sites whether the above criteria are being met with respect to any supplied search results that involve a payment of any kind for ranking, insertion of paid results into unpaid results, or any pay-for-inclusion program.

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 all companies making disclosures online to review and implement 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.(9)

We appreciate your bringing this matter to our attention. Complaints from groups such as yours are a helpful means of reviewing possible unfair or deceptive practices, and we hope you will continue to bring to our attention any practices that you believe may violate the FTC Act.

Very truly yours,

Heather Hipsley
Acting Associate Director
Division of Advertising Practices

Attachment

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.

6. Indeed, if the pay-for-inclusion mechanism does not distort the placement criteria, this fact might be a positive selling point for search engines.

7. Similarly, several of the named search engines that obtain listings from third parties using paid inclusion programs display the third-party's logo or terms such as "Provided By ____" or "Powered By ____" at the bottom of their search results lists. The staff believes that, as disclosures, these measures are not conspicuously located nor do they adequately explain the existence of paid inclusion or its impact on the search results list.

8. This would include the named search engine companies, and other companies providing similar Internet search services to consumers, as well as meta search engines that submit simultaneous search queries to (and display results from) numerous third-party search engines.

9. Dot Com Disclosures: Information About Online Advertising is available on the FTC Web site at www.ftc.gov/bcp/edu/pubs/business/e-commerce/bus41.pdf.

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