



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. 20006-1109

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](http://www.earthlink.net). For example, in one promotion EarthLink distributed tens of thousands of bags of cookies to consumers stating, "Do you know where your cookies come from? EarthLink Protects Your Privacy." Additionally, in one television ad where a morphing effect was used to obscure the identity of actors going through a daily routine, EarthLink represented that it delivers the "totally anonymous Internet."<sup>(1)</sup> Also, on its Web site on several privacy-related Web pages, EarthLink stated without qualification: "Privacy. Protect your anonymity."

Similarly, the staff was concerned about some of EarthLink's claims regarding its ability to prevent unsolicited commercial email, or "spam." In certain recent television ads (*i.e.*, "Joe Wants to Go Back to Uganda" and "Boy's Bully Problem Solved") and radio ads, EarthLink had represented that it provides spam prevention through its "tools to stop spam." EarthLink also made references to its spam prevention services on its Web site such as "[k]eeping your email account spam-free" and "Get Rid of Spam . . . When you combine the Spaminator with email filters, you can cut your spam down to almost nothing."

EarthLink has discontinued its dissemination of the aforementioned "totally anonymous Internet" privacy promotion campaign and has revised its spam ads and Web site references to state that EarthLink provides "tools to reduce spam" rather than eliminate it. The staff recommends that EarthLink be careful not to overstate the degree of consumer risk on the Internet from invasions of privacy, or the protections 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 be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

Very truly yours,

Mary Koelbel Engle  
Associate Director  
Division of Advertising Practices

1. *See* "Composite Figure: They're Watching You" (30 second TV ad).