

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

[DATE]

Via Federal Express
[NAME]

Dear [NAME]:

The Federal Trade Commission ("FTC") is an independent federal agency whose mission is to protect consumers by enforcing laws and rules that promote truth in advertising and fair business practices. As part of that mission, we work to educate marketers and businesses about their rights and responsibilities.

It has come to our attention that companies that provide marketing, advertising, or consulting services in connection with matching prospective adoptive parents with birth parents for private adoptions ("adoption intermediaries") may be violating the FTC Act or the Consumer Review Fairness Act.

Under the FTC Act, an advertisement is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and if the advertisement is material—that is, if the ad is likely to affect a consumer's conduct or decision with regard to a product or service. For example, an adoption intermediary that represents in paid Google advertisements that it is an "adoption agency" may leave consumers with the false impression that the adoption intermediary is a licensed, child-placing adoption agency. Even if the adoption intermediary disclaims on its website that it is not a licensed adoption agency, disclaimers are not always effective. Accordingly, a disclaimer may not be a defense to liability if the "net impression" provided by the advertisement is still misleading, or in cases where the "first contact" between the company and the consumer "occurs through a deceptive practice."

FTC staff is also concerned that adoption intermediaries may be making claims that fail to disclose information important to consumers. It is a deceptive practice to omit "qualifying information necessary to prevent a practice, claim, representation, or reasonable expectation or

¹ See Federal Trade Commission Policy Statement on Deception, appended to Cliffdale Assocs., 103 F.T.C. 110, 174–83 (1984). To determine whether an advertising claim is deceptive, the FTC examines the entirety of the ad, not isolated excerpts, and considers the net impression the ad conveys from the perspective of the audience to whom it is directed. *Id.*

² See id. at 180 & n.37.

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belief from being misleading."³ For example, it may be misleading to advertise that a birth parent will be able to choose an "open" adoption while failing to clearly and conspicuously disclose that open adoption agreements may not be legally enforceable depending on the applicable state law. By omitting this material information, the advertisement deceptively suggests that an open adoption arrangement is an option when it may not be.

We are also concerned about representations made to prospective adoptive parents about high placement rates (sometimes called "success rates") and short placement times for completing a successful adoption. Before making any such claim, the adoption intermediary must possess adequate substantiation that its claimed success rate is accurate and its placement time is representative of what prospective adoptive parents achieve. If these claims are not accurate or representative, they are deceptive. Likewise, it may be deceptive to advertise that financial assistance or free housing, counseling, or other aid is available to birth parents if that is not representative of the services the typical birth parent receives.

Finally, it has come to our attention that some adoption intermediaries may be preventing consumers from giving honest reviews about the services they received. The Consumer Review Fairness Act (CRFA) makes it illegal for companies to include standardized contract provisions that threaten or penalize people for posting honest reviews. Thus, it would be illegal for a company to include a standardized provision in its agreements that prohibits or punishes negative reviews by customers. Companies that violate the CRFA may face civil penalties of over \$50,000 per violation.

You should conduct a comprehensive review of your advertising practices—including paid Google or other online ads, as well as representations made on your websites, on social media, and in other promotional materials and communications—to ensure that you are not engaging in deceptive or misleading conduct. You should also review your contracts and agreements to ensure that you are not violating the CRFA. Pursuant to that review, you should cease any practices that allow for or result in unfairness or deception. We will continue to monitor for potentially unfair or deceptive practices and take follow-up action as warranted.

Thank you for your attention to this matter. Please direct any inquiries concerning this letter to Naomi Takagi at ntakagi@ftc.gov and Joyce Dela Peña at jdelapena@ftc.gov.

Very truly yours,

Serena Viswanathan Associate Director Division of Advertising Practices

³ *Id.* at 110 n.4. A misleading omission violates the FTC Act where "the omitted information would be a material factor in the consumer's decision to purchase the product." *Id.* at 182 n.44.