Comment to FTC on Ecommerce (1999)

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Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue
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Comment, P994312

Dear Secretary Clark:

    I salute the FTC for recognizing that its expertise is valuable to United States residents despite technological changes and industry resistance. Thank you for the opportunity to submit comments. Thank you for allowing submission by email.

Proposal: Government Backed Hyperlink “Seal of Reliability”

    The FTC should sponsor a United States Government backed certification mark, a “Seal
of Reliability” available for tangible goods sold by ecommerce and delivered to consumers inside the United States. The seal logo should be a hyperlink to a government run web page (“Seal Home Page”). The Seal Home Page would provide details on the exact type of consumer protection guaranteed by businesses allowed to use the seal.

A government backed hyperlink seal would ensure believability. Any image of the seal that did not operate as a hyperlink would be self-revealed as an imposter. The government, as web page operator, would monitor the pages hyper linking into the Seal Home Page. As a belt-and-suspenders check, the Seal Home Page would include an easily searchable registry listing all approved seal holders.

The Seal would be given only to businesses that (i) gave money-back guarantees under listed conditions; (ii) followed a listed privacy policy; (iii) accepted jurisdiction in the consumer’s home state under American law, and (iv) posted financial security available to pay adverse judgments if a consumer won an American law suit pertaining to commercial or privacy harm (without need to show actual reliance on the Seal).

The government would not need to impose the seal conditions on anyone. The choice to apply for a seal would be a private decision made by individual businesses. Once a business

1 Sales or licenses of intellectual property are beyond the scope of this comment. The author, however, strongly urges the FTC not to blindly follow the forthcoming Uniform Communications Information Transaction Act (formerly known as UCC2B) sponsored by the National Conference of Commissioners on Uniform State Laws. That document is extremely unfair to buyers, both businesses and consumers. See, e.g., postings at <kaner@kaner.com> (major problems include sellers’ lack of accountability for known defects, ability to disclaim warranties, ability to bypass consumer protection laws, ability to limit post-transaction transfers, ability to chose law and forum, ability to impose conditions not revealed before the product is transferred, and ability to hold consumers liable for mistakes made by electronic agents).

2 The Seal should be available for merchandise ordered on the Internet and for merchandise window shopped on the Internet but ordered by mail, telephone, or other means.

3 The “referrer log” tells site operators the pages from which visitors have linked. To locate sites with as-yet-unused links, the site operator can search for URLs using one of several available search engines, including Hotbot and AltaVista.

4 To clarify, I am suggesting American law on the right to refund of the amount paid for the ordered merchandise. As for advertising, American law should control as to whether misleading advertisements supported forced refund. For other purposes, different law could control advertising issues, but the issue is complex and need not be decided before instituting a “Seal of Reliability” program. As for tort, the stakes are high enough to leave consumers to existing methods of relief.

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obtained a seal, however, violation of the conditions it had accepted could be a federal offense — even a federal criminal offense. Financial security could be arranged by private trade associations, thus allowing relatively small businesses the advantage of inexpensively obtained, believable reputation. If other countries set up similar programs, resources could be pooled. The fee charged for seals could be used to help cover monitoring expenses. To lower monitoring costs, businesses could be required to submit reports under penalty of perjury.

While I urge simplicity, many modifications are possible. An Alternative Dispute Resolution service could be offered and could accept complaints filed by Internet. Different types of seals with different guarantees could be created. One federal statute could provide the required “American law,” or the law of the consumer’s domicile could control.

Background

International sales to consumers are not a big business — yet. The Internet makes possible numerous international sales to consumers because it lowers advertising and ordering costs. The same technology that lowers these costs, however, prevents the non-electronically sophisticated consumer from verifying the location, identity, and reputability of the merchant involved. Unless consumers feel comfortable, ecommerce will never bloom.

Despite hoopla to the contrary, small and medium sized businesses are disadvantaged by a government hands-off attitude to ecommerce. In the absence of government regulation, consumers will shop by reputation. International reputation costs money, even more money than nationwide reputation. Yes, certification organizations are springing up, but it costs money to join one that consumers will trust. The certifying organization needs to create valid reputation; the certifying organization, therefore, needs to spend money on both information distribution and monitoring of the retailers it certifies. The type of reputation needed, furthermore, is not easily acquired by a non-governmental actor. Consumers should trust only organizations who can

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I leave aside the question of whether credit card companies’ charge back programs provide relief in appropriate situations. While some commentators have suggested credit card companies, VISA’s comment announces such companies’ inability to handle the job of processing a multiplicity of international consumer complaints. See posted comment No. 47 (VISA) at <http://www.ftc.gov/bcp/icpw/comments/index.html> (visited April 20, 1999). The United States credit card charge back system, furthermore, exists in the incentive-creating shadow of governmentally imposed legal requirements. See Federal Reserve Board Regulation Z, 12 C.F.R. § 226.1

Many commentators have urged the government to stand by and let “market forces,” “empowered consumers,” or “industry self-regulation” shape ecommerce. Such suggestions are unrealistic. Strong industry self-regulation occurs only when industry perceives a real threat of government action. Consumer reaction to bad actors (i.e., “market forces”) are diluted by the size of the Internet. Businesses can survive without repeat customers. Businesses can change identities at very low cost. Consumers have less ability to monitor on-line businesses’ compliance with stated commercial policies than to monitor businesses tied to physical stores at known street addresses. Consumers have little, if any, ability to monitor businesses’ compliance with posted privacy policies. The FTC and DOJ have overwhelming proof of consumers’ inability to protect themselves from even traditional merchants.

Reputable firms, furthermore, need protection from reputation free riders. Reputation costs money to earn and to advertise. Because of low entry costs and the ease of online masquerade, consumers doubt their ability to trust what they read on the Internet. Consumer distrust means that businesses’ advertising money is partly wasted. The government-backed seal/registry that I suggest would provide a relatively low cost method for firms to prove their good faith to potential customers.


Until consumer laws are harmonized around the globe, some one will have to pay the cost of learning and adapting to legal variations; some one will have to pay the cost of litigating in a foreign forum; some one will have to pay the cost of litigating under foreign law; some one will have to pay the cost of enforcing judgments across borders. Individual consumers generally cannot afford these costs. Businesses have the best ability to spread these costs over multiple transactions and through trade associations. By setting up this type of government sponsored program, the United States government would lower the costs foreign companies would have to impose harsh sanctions. So far, only the government qualifies. See 4 Pollack

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bear to do ecommerce in the United States while protecting and reassuring United States consumers.

To summarize, without intrusive government regulation, a government backed, hyper link “Seal of Reliability” could protect interested businesses and consumers at moderate cost.

Respectfully Submitted,
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7 Malla Pollack can be reached through Florida State University School of Law, Tallahassee, Florida from June 1999 through December 1999.

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