June 16, 2020

The Honorable Joseph J. Simons
Federal Trade Commission
600 Pennsylvania Ave NW
Washington, D.C. 20580

Dear Chairman Simons,

We write you today with grave concern over reports that Google is failing to protect consumers by allowing scammers to target vulnerable Americans seeking information on their Economic Impact Payments. As you know, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) included a $1,200 economic impact payment for eligible individuals. As anxious Americans wait for their checks, many are turning to Google to find out when relief is coming – unaware of the dangers and deceit in the advertisements they see on Google’s site. We are alarmed at the breadth of fraudulent advertising and Google’s inaction in the face of a perennial problem. We urge the Commission to swiftly act to end a cycle of neglect.

A report released by the Tech Transparency Project (TTP) documents how Google searches for phrases such as “where is my stimulus check,” “claim stimulus money,” and “government check” return a substantial number of ads for scams, phony sites, and malware. Someone searching for stimulus check information has a high likelihood of facing fraud; TTP found that at least 45 of the 126 ads identified clearly violated Google’s advertising policies, and only 17 linked to government or other official sources. The cost of Google’s failure to enforce its own policies falls hardest on Americans desperate for the CARES Act’s financial help for putting food on the table and paying the bills.

The FTC should take action against those behind the fraudulent advertisements, which appear to violate the FTC’s prohibition against unfair or deceptive advertising and other consumer protection rules.\(^1\) The FTC has fined data brokers like the ones who were documented in the TTP report as using deceptive practices to extract users’ sensitive personal information.\(^2\) Section 5 of the FTC Act also prohibits credit card scams like the one perpetrated by a Google advertiser who was documented as charging users a $34 “facilitation fee” to file for stimulus benefits. Other sites identified appear to run afoul of the FTC’s rules against government

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impersonation.³ But it is not enough to just go after the sites because history has shown that for each fraudulent advertiser or marketer the FTC scares off with warning letters and restraining orders, two more crop up.

To truly protect consumers, the FTC must also look at the root of this recurring problem: Google’s advertising practices. According to the report, advertisers pay Google between $1-2 every time someone clicks on these ads. Google’s economic interest is to allow these ads to continue. In fact, the more compelling the ads – even if fraudulent – the better it is for Google’s bottom line.

Google’s failure to enforce its own terms and conditions must addressed. According to Google’s own policies, these ads should not appear – the ads violate policies against misrepresentation, unwanted software, dishonest business practices, collecting user data for unclear purposes, and advertising arbitrage. Google maintains it has created and offered tools to help users spot scams disseminated through email and other platforms. The TTP report, however, shows that the company failed to do the bare minimum to keep scams out of its search advertising.⁴

While advertisers bear the primary legal responsibility for deceptive ads, Google should also face scrutiny for the continued failure to address the known problem of fraudulent actions, especially where it financially benefits from such fraud. The FTC notes that “third parties - such as advertising agencies or website designers and catalog marketers - also may be liable for making or disseminating deceptive representations if they participate in the preparation or distribution of the advertising, or know about the deceptive claims.”⁵ Since Google claims that it reviews all advertising content and distributes the ads, the company either knowingly disseminated deceptive advertising or failed to do its due diligence.

In addition, Google has exacerbated this problem in the interest of driving up advertiser clicks. Google’s recent design changes make ads virtually indistinguishable from organic search results and could qualify search ads as “native advertising,” which also exposes the Google to liability.⁶ These changes have made it harder for consumers to protect themselves even when they are aware fraud is rife on Google search.

The FTC has devoted considerable resources to combatting opportunistic scammers looking to take advantage of the coronavirus pandemic and the government aid packages passed to

³ According to the FTC, “it’s illegal for any promoter to lie about an affiliation with — or an endorsement by — a government agency or any other well-known organization. https://www.consumer.ftc.gov/articles/0048-government-imposter-scams

⁴ https://scamspotter.org/

⁵ https://www.ftc.gov/tips-advice/business-center/guidance/advertising-marketing-internet-rules-road

ameliorate its consequences. Tech companies should not be allowed to contribute to the significant personal health and financial risks that consumers are facing because their laissez-faire attitudes toward their platforms and marketplace. As our primary enforcer for consumer protection, you must be willing to hold large tech companies—such as Google—accountable for their continued and recurring role in violations of the law.

Please respond, electronically, no later than June 30th. Thank you for your time and consideration during these difficult times.

Sincerely,

U.S. Representative Jan Schakowsky
Chair, Consumer Protection and Commerce Subcommittee
House Energy and Commerce Committee

Senator Richard Blumenthal
Ranking Member, Commerce, Manufacturing and Trade Subcommittee
Senate Commerce Committee

7 https://www.consumer.ftc.gov/blog/2020/06/how-avoid-covid-19-government-imposter-scams,