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MEMORANDUM

October 8, 2009

To Our Clients and Friends

Re: FTC Proposed Rule Regarding Free Credit Report Advertising

The Federal Trade Commission (“FTC”) has proposed rules under Section 205 of the Credit CARD Act of 2009 to prevent consumer confusion in connection with marketing “free credit reports.” The proposed rules require certain advertisements for “free credit reports” to include prominent disclosures designed to prevent consumers from confusing these “free” offers with the federally mandated free annual credit reports available through nationwide consumer reporting agencies (“CRAs”). In addition, the FTC is proposing to require nationwide CRAs to delay advertisements for their products until after the consumer receives his or her free annual credit report. Comments are due by November 30, 2009.

CREDIT CARD ACT

The Credit CARD Act of 2009 directs the FTC to adopt rules by February 22, 2010, requiring certain disclosures in the advertising of free credit reports to reduce the possibility of consumer confusion. Currently, consumers are entitled to receive a copy of their credit reports without charge once each year from each nationwide consumer reporting agency. The Act requires that television and radio advertisements contain the disclosure “This is not the free credit report provided for by Federal law.” For television advertisements, the disclosure must appear both in the audio and visual portions of the advertisement. The Act also directs the FTC to determine the content and placement of the disclosures for all other media.

FTC PROPOSAL

The proposed rule requires that the mandated disclosures be sufficiently prominent. For example, websites containing advertisements for free credit reports must include a distinct landing page that directs consumers to AnnualCreditReport.com. Print advertisements must contain the statement “This is not is not the free credit report provided for by Federal law. To get your free report, visit

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www.AnnualCreditReport.com or call 877-322-8228.” The disclosure must be at least one-half the size of the largest letter or numeral used in the name of the website or the telephone number to which consumers are referred. Telephone requests and telemarketing solicitations must first state “This is not the source for the free credit report provided for by Federal law. To get your free credit report, call 877-322-8228 or visit www.AnnualCreditReport.com.”

The proposals also address the FTC’s concern with customer confusion arising from nationwide CRAs advertising their products and services in connection with providing the free credit reports to which consumers are entitled under Federal law. Accordingly, the proposal requires CRAs to delay advertising or marketing their products and services until after consumers have obtained their free annual credit reports. The proposals also prohibit CRAs from engaging in certain other practices, such as prohibiting hyperlinks that take consumers away from AnnualCreditReport.com.

A copy of the FTC’s proposed rules can be found on our website at http://www.schwartzandballen.com/whats_new.html.

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox or Heidi Wicker at (202) 776-0700.