

United States Senate

WASHINGTON, DC 20510

November 15, 2012

The Honorable Jon Leibowitz
Chairman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Chairman Leibowitz:

The United States continues to endure one of the worst recoveries in our nation's history. We believe the current Administration has created and perpetuates a climate of uncertainty for American businesses, contributing to poor employment and economic growth. The Federal Reserve Bank of San Francisco recently estimated "that uncertainty has pushed up the U.S. unemployment rate by between one and two percentage points since the start of the financial crisis in 2008."

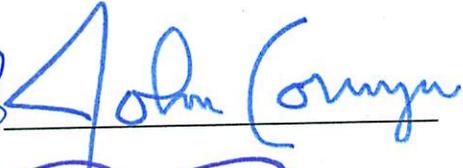
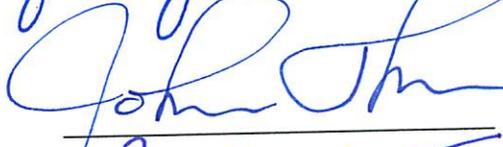
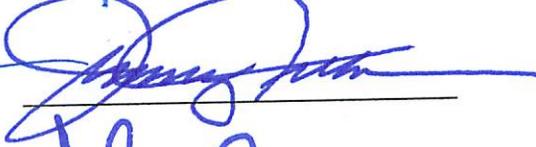
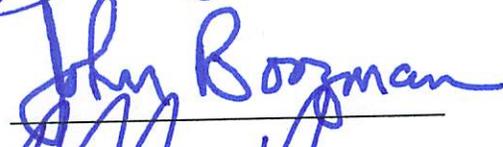
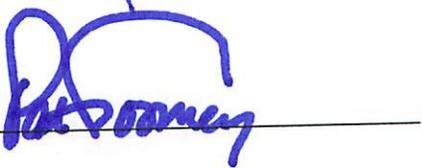
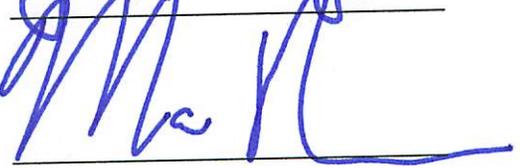
In the interest of providing more regulatory certainty for American consumers and job creators, we urge the Federal Trade Commission to act with humility and restrain itself to activities for which it has clear legal authority. As the Federal Trade Commission Act states, the FTC is primarily empowered to act in response to a practice which "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition" (15 USC §45(n)).

Further, we seek clarity related to the FTC's ongoing and intended use of Section 5 authority granted under the Federal Trade Commission Act. We take no position regarding the merits of any matter currently under investigation by the Commission; however, we are concerned about the apparent eagerness of the Commission under your leadership to expand Section 5 actions without a clear indication of authority or a limiting principle. When a federal regulatory agency uses creative theories to expand its activities, entrepreneurs may be deterred from innovating and growing lest they be targeted by government action.

The potential use of such uncertain authority against businesses in the rapidly evolving technology industry – one of the few bright spots in an otherwise dismal economy – highlights our concerns. While the number of jobs in the United States shrank by 4.5 percent between 2001 and 2011, a recent study by the Technology Industry Council indicates that information technology jobs grew by 6.8 percent. We believe our nation's recovery, although severely impeded by the current Administration, will ultimately be driven by those sectors with the most potential growth and resiliency.

We hope the Commission considers the consequences of hampering legitimate business model innovations and market activities of companies under an aimless, expansive, and possibly unauthorized use of the Commission's powers. We support innovation and believe economic expansion will follow if the government acts with humility rather than experimentation.

Sincerely,

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Cc: Commissioner J. Thomas Rosch
Commissioner Edith Ramirez
Commissioner Julie Brill
Commissioner Maureen Olhausen