



Advanced Media and Technology Law

Advertising and Promotions Law

ALERT

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FTC Updates Dot Com Disclosures to Address Mobile and Social Media Advertising

Today the Federal Trade Commission released an updated version of its 2000 guidance on how to make disclosures clear and conspicuous to avoid deception. [Dot Com Disclosures: How to Make Effective Disclosures in Digital Advertising](#) takes into account the expanding use of smartphones with small screens and the rise of social media marketing. It also contains mock ads that illustrate the updated principles.

The 2013 *Dot Com Disclosures* reminds advertisers that consumer protection laws apply equally across all mediums, whether an ad is delivered on a desktop computer, a mobile device, or more traditional media such as television, radio, or print. If a disclosure is needed to prevent an online ad claim from being deceptive or unfair, it must be clear and conspicuous. Under the new guidance, this means advertisers should ensure that the disclosure is clear and conspicuous on all devices and platforms that consumers may use to view the ad.

The new guidance also explains that if an advertisement without a disclosure would be deceptive or unfair, or would otherwise violate a Commission rule, and it is not possible to make the disclosure clearly and conspicuously, then that ad should not be disseminated. This means that if a particular platform does not provide an opportunity to make clear and conspicuous disclosures, then that platform should not be used to disseminate advertisements that require disclosures.

The 2000 guidance stated advertisers should place disclosures "near, and when possible, on the same screen" as the relevant claim; in the 2013 guidance, the FTC changed this to recommend that disclosures be placed "as close as possible" to the relevant claim.

Like the original guidance, the updated *Dot Com Disclosures* calls on advertisers to avoid using hyperlinks for disclosures that involve pricing information or certain health and safety issues. The new guidelines also call for labeling hyperlinks as specifically as possible, and they caution advertisers to consider how their hyperlinks will function on various programs and devices. Also, the new guidance advises marketers to avoid conveying disclosures through pop-ups, because they are often blocked.

The new guidance points out that advertisers using space-constrained ads, such as on some social media platforms, must still provide disclosures necessary to prevent an ad from being deceptive. The examples include a paid spokeswoman tweeting about using a product to lose weight; there are several illustrations of how a tweet can include the necessary disclosures that the speaker is a paid endorser and that her weight loss is not typical.

The 2013 *Dot Com Disclosures* describes additional ways advertisers can make disclosures clear and conspicuous:

- Take account of the various devices and platforms consumers may use to view advertising and any corresponding disclosure. If an ad is viewable on a particular device or platform, any necessary disclosures should be sufficient to prevent the ad from being misleading when viewed on that device or platform.
- When a space-constrained ad requires a disclosure, incorporate the disclosure into the ad whenever possible. However, when it is not possible to make a disclosure in a space-constrained ad, it may, under some circumstances, be acceptable to make the disclosure

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clearly and conspicuously on the page to which the ad links.

- When using a hyperlink to lead to a disclosure,
 - Make the link obvious;
 - Label the hyperlink appropriately to convey the importance, nature, and relevance of the information it leads to;
 - Use hyperlink styles consistently, so consumers know when a link is available;
 - Place the hyperlink as close as possible to the relevant information it qualifies and make it noticeable;
 - Take consumers directly to the disclosure on the click-through page; and
 - Assess the effectiveness of the hyperlink by monitoring click-through rates and other information about consumer use and make changes accordingly.
- Preferably, design advertisements so that “scrolling” is not necessary in order to find a disclosure. When scrolling is necessary, use text or visual cues to encourage consumers to scroll to view the disclosure.
- Keep abreast of empirical research about where consumers do and do not look on a screen.
- Recognize and respond to any technological limitations or unique characteristics of a communication method when making disclosures.
- Display disclosures before consumers make a decision to buy – e.g., before they “add to shopping cart.” Also recognize that disclosures may have to be repeated before purchase to ensure that they are adequately presented to consumers.
- Repeat disclosures, as needed, on lengthy websites and in connection with repeated claims. Disclosures may also have to be repeated if consumers have multiple routes through a website.

- If a product or service promoted online is intended to be (or can be) purchased from “brick and mortar” stores or from online retailers other than the advertiser itself, then any disclosure necessary to prevent deception or unfair injury should be presented in the ad itself – that is, before consumers head to a store or some other online retailer.
- Necessary disclosures should not be relegated to “terms of use” and similar contractual agreements.
- Prominently display disclosures so they are noticeable to consumers, and evaluate the size, color, and graphic treatment of the disclosure in relation to other parts of the web page.
- Review the entire ad to assess whether the disclosure is effective in light of other elements – text, graphics, hyperlinks, or sound – that might distract consumers’ attention from the disclosure.
- Use audio disclosures when making audio claims, and present them in a volume and cadence that allows consumers to hear and understand them.
- Display visual disclosures for a duration sufficient for consumers to notice, read, and understand them.
- Use plain language and syntax so that consumers understand the disclosures.

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