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Advanced Media and Technology Law

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ALERT

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FTC Sends Warning Letters to Major Advertisers About Inadequate Disclosures

by Tom Jirgal, Partner and David Mallen, Partner

The FTC announced it has sent letters to over 60 major retailers, including 20 of the 100 largest advertisers in the U.S., that failed to make adequate disclosures in their television and print ads.

In the warning letters, FTC staff identified problematic ads, recommended that advertisers review all of their advertising to ensure that any necessary disclosures are truly "clear and conspicuous," and asked them to notify the staff of the actions they intended to take with respect to their advertising.

The FTC's initiative, called Operation Full Disclosure, is intended to remind advertisers that disclosures in their ads should be close to the claims to which they relate – not hidden or buried in unrelated details, as the FTC stated – and they should appear in a font that is easy to read and in a shade that stands out against the background. Disclosures for television ads should be on the screen long enough to be noticed, read, and understood, and other elements in the ads should not obscure or distract from the disclosures.

FTC staff reviewed national television and print advertisements in a wide range of industries including food, drugs, household items, consumer electronics, personal care products and weight loss products. These are some of the types of ads that FTC staff identified as having inadequate disclosures:

- Ads that quoted the price of a product or service, but did not adequately disclose the conditions for obtaining that price
- Disclosures that were in fine print or were otherwise easy to miss or hard to read, yet contained important information needed to avoid misleading consumers
- Ads that failed to disclose an automatic billing feature
- Ads that claimed a product capability or that an accessory was included, but did not adequately disclose the need to first own or buy an additional product or service
- Comparative ads in which an advertiser claimed that a product was unique or superior in a product category, but did not adequately disclose how narrowly the advertiser defined the category
- Comparative ads that did not adequately disclose the basis of their comparisons
- Ads promoting a "risk-free" or "worry free" trial period that did not adequately disclose that consumers would need to pay for initial and/or return shipping
- Ads that made absolute or otherwise broad statements and had inadequate disclosures

explaining exceptions or limitations

- Weight-loss ads featuring testimonials claiming outlier results that did not adequately disclose the weight loss that consumers generally could expect to achieve
- Ads that did not adequately disclose issues related to the safety or legality of a product or service
- Ads that included a demonstration that was materially altered and did not adequately disclose the alteration
- Ads that made false claims that the advertisers attempted to cure with contradictory disclosures, which are not sufficient to prevent ads from being deceptive

Operation Full Disclosure follows last year's publication of the updated .com Disclosures: How to Make Effective Disclosures in Digital Advertising, which provided new guidance for mobile and other online advertisers on how to make online disclosures clear and conspicuous to avoid deception. Taken together, these actions underscore the FTC's continued commitment to help advertisers comply with federal law and not mislead consumers.

For more information about advertising practices and FTC enforcement, please contact Tom Jirgal (tjirgal@loeb.com) at 312.464.3150 or David Mallen (dmallen@loeb.com) at 212.407.4286.

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