

FTC Revises Online Advertising Disclosure Guidelines

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The Federal Trade Commission (“FTC”) has revised its guidance on online advertising disclosures, known as the [“Dot-Com Disclosure Guidelines.”](#) Whereas the 2000 Guidelines dealt largely with disclosures made on traditional websites and on blogs, the new version addresses use of disclosures in social media and on mobile devices. As was expected, the basic rules have not changed: (1) if an advertiser makes an express or implied claim that is likely to mislead consumers without qualifying information, the information must be disclosed; (2) an advertiser cannot cure a false claim with a disclosure; and (3) all necessary disclosures must be clear and conspicuous. The revised Guidelines explain the FTC’s views on applying these basic rules.

First, the FTC says that advertisers should only relegate disclosures to hyperlink if impossible to make the disclosures otherwise. When using a hyperlink to disclose material terms, the FTC has the following guidance: use an obvious link; label it to convey the information with detailed titles (for example, say “restocking fees apply” as the hyperlink title, not simply “terms”); do not put material terms behind the hyperlink; make links consistent in style; put the link close to the information it qualifies; take consumers directly to the disclosures on the click-through; and monitor click-through rates to assure effectiveness. To make disclosures clear and conspicuous, advertisers should minimize or eliminate scrolling. But if scrolling is inevitable, provide text or visual cues to let consumers know that disclosures will be found after scrolling. The FTC also recommends that companies repeat disclosures for long websites or for disclosures that are easily missed, such as on pages with a lot of text. The FTC has specific recommendations for Twitter, as well. For example, do not simply use “#spon” to indicate that a Tweet is sponsored, because consumers do not understand what #spon means. Further, advertisers should avoid placing disclosures after a bit.ly link on the theory that consumers stop reading a tweet once they arrive at the link.

One area that the FTC has attempted to tackle with more specificity in the revised Guidelines is the issue of space constraints, especially as they pertain to mobile devices and social media posts. The FTC applies the same principles from 2000—proximity, placement, and prominence—to the new space-constrained media. Regarding the proximity between the claim and disclosure on space-constrained ads and the placement of disclosures, the FTC calls on the ad community to be creative in flagging important disclosures and, importantly, states that the disclosure should be “as close as possible” to the relevant claim. Further, the FTC specifically states that the term “Ad” at the beginning of a tweet or other short-form message or the word “sponsored” are typically clear enough to disclose that the message is an ad, and that the message was sponsored by an advertiser. The FTC recommends putting these disclosures at the beginning of short-form messages, because they are less likely to be removed during

republication. As for the prominence of disclosures on mobile devices or for other space-constrained online ads, the FTC recommends making disclosures large enough to be seen on small screens or having a mobile-optimized version of any site that requires ad disclosures. In a slight—but important—change from the previous guidance, the FTC recommends that advertisers label hyperlink disclosures as specifically as possible and right next to the claim requiring disclosure.

TIP: The FTC’s bottom line on online ad disclosures is clear: Even though it may be difficult or undesirable to provide all necessary qualifications, if a disclosure is necessary to keep an online ad from being misleading, the disclosure *must* be included.

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