



The FTC Issues Revised Guidance for Mobile Device and Social Media Advertising Claims

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On March 12, 2013, the Federal Trade Commission issued revisions to its digital advertising guidelines, “.com Disclosures: How to Make Effective Disclosures in Digital Advertising” (the “Guides”).¹ The Guides do not break new ground, but they provide advertisers with valuable examples of compliant disclosures that qualify advertising claims appearing on mobile devices, on social media such as Twitter and Facebook, and through any other non-traditional platform.

The Guides highlight the FTC’s fundamental belief about advertising claims: the medium does not matter; the advertising claim must be true and not misleading from the viewpoint of a reasonable consumer or else it violates Section 5 of the FTC Act.²

Disclosures that qualify an advertising claim must be clear and conspicuous – which can be difficult when dealing with social media or mobile devices due to space constraints. The FTC’s revised Guides helpfully explain that an advertiser must place a disclosure as close as possible to the qualified claim and must communicate the disclosure in a manner that a consumer is likely to notice and understand.

What if a platform does not provide an opportunity for an adequate disclosure (e.g., Twitter)? The FTC is clear: don’t use the platform or modify the claim for that platform so that a disclosure is unnecessary. The Guides do have some detailed suggestions, including:

- If a consumer has to scroll to view a disclosure, then the disclosure should be unavoidable;

¹ The entire 53-page Guidelines can be found here: <http://www.ftc.gov/os/2013/03/130312dotcomdisclosures.pdf>.

² It should be noted that the Guides, like all other FTC guide, are not laws, but if a company fails to comply, the FTC “might bring an enforcement action alleging an unfair or deceptive practice.”



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- Linking to the text of a disclose is permissible, but not if the disclosure is integral to the claim or inseparable from it;
- Don't use pop-ups because many browsers block them and most users ignore them;
- Disclosures should be made before a user clicks "add to cart" or "order now";
- If the advertised product is available through outlets other than the advertiser, for example, at an online or brick-and-mortar retailer, the disclosure must be in the ad itself; and
- for Tweets, the advertiser should use clear terms such as "Ad" or "Sponsored" at the beginning of the Tweet.

The most useful part of the Guides for advertisers are the many examples of compliant and non-compliant disclosures. Just to highlight a few:

- the advertiser should optimize its website for mobile devices to ensure that users zooming on a phone will not miss a disclosure;
- hyperlink disclosures should be right next to the claim they modify (if they can be used at all); and
- Tweets should include the necessary disclosure not link to it.

Advertisers must be aware of the impact of their claims, intentional or unintentional, and use proper disclosures – suitable to every platform on which the claim will be seen by a consumer – to qualify any potentially misleading claims. The Guides provide the FTC's position on the adequacy of a disclosure to avoid enforcement action. Of course, advertisers should consult their advertising review counsel to ensure compliance with the Guides and other advertising rules and regulations.

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