



FTC Updated Dot Com Disclosure Guide

How to Make Your Website, Mobile Apps, Social Media and Online Media Comply

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The Federal Trade Commission (“FTC”) recently announced final revisions to its guidance on how to keep advertising and promotions on websites, mobile apps and online media in compliance with the FTC Act. Under the title “.com Disclosures, How to Make Effective Disclosures in Digital Advertising” (the “Revised Guide”), the FTC updated its 2000 Guide titled “Dot Com Disclosures: Information About Online Advertising.” The Revised Guide addresses smartphones, tablets and space-constrained media such as Banner Ads, Pop-Up ads, Twitter and Facebook.

General Advertising Legal Principles Apply to All Forms of Online Media

The Revised Guide reiterates the basic principles that advertising laws and consumer protection laws apply to all forms of online media including websites, mobile apps, banner ads and pop-ups. These principles include the following:

1. Advertising claims must be truthful and not misleading.
2. Before dissemination, advertisers must have evidence to back up their claims “substantiation”).
3. Advertising claims must comply with the [FTC Revised Endorsement and Testimonial Guides](#).
4. If a separate disclosure of information is necessary to prevent a claim from being deceptive, misleading or unfair, it has to be clear and conspicuous.
5. When practical, advertisers should incorporate relevant limitations and qualifying information into the underlying claim, rather than having a separate disclosure qualifying the claim.

New Guidance on Clear and Conspicuous Disclosures

The Revised Guide emphasizes that disclosures must be clear and conspicuous on all devices and platforms where consumers may see ads. More importantly, the Revised Guide makes clear if an ad claim would be deceptive or unfair without a disclosure — but the disclosure cannot be made clearly and conspicuously on a particular device or platform — then that ad claim should not be made on that device or platform.

The Revised Guides Redefine Proximity for Disclosures to Claims

The old guidelines defined “proximity” as “near, and when possible, on the same screen.” The Revised Guide offers several new clarifications. For example, disclosures should be “as close as possible” to the relevant claim. Also, the Revised Guide suggests avoiding buried or generically labeled hyperlinks. It also warns against using hyperlinks for disclosures involving key categories of information — for



example, how much a product costs or certain health or safety information. The new guidance specifically calls on advertisers to label hyperlinks as accurately as possible; for example, “Click here for clarifying information.” The guidance also suggests making sure that the disclosure hyperlinks will function on all programs and devices that consumers are likely to use.

New Guidance for Some Ads and Space-Constrained Platforms

In recent years, advertising through social media channels has experienced rapid growth due to its demographic-targeting capabilities and popularity. And, while the traffic volumes and features of such platforms are attractive to advertisers, they also present unique space constraints. While the Revised Guide acknowledges the space constraints, it does not budge from its position that necessary disclosures must be proximate, clear and conspicuous. Also, the FTC also acknowledged in a [Twitter chat](#) that there is very little (if any) good research available on what consumers would view as “clear and conspicuous.” While the Revised Guide provides some concrete examples and clear guidance, it takes a conservative approach to what consumer expectations and habits are regarding the use of linking and off-site information.

It is Best to Avoid the Need for Disclosures

In many cases, the need for a disclosure is really a warning sign that the underlying ad claim may contain some element of confusion or could be considered deceptive. Sometimes there may be no way around the need for additional disclosure, but in other cases ads could be reformulated to avoid the need for additional disclosure. For example, suppose the ad claim initially is “Lower Cost by 10%” but is potentially deceptive because it does not state whether comparison is to a previous plan or a competitor’s plan. Changing the ad claim to “Lower Cost by 10% over Acme’s Previous Plan” removes this ambiguity without the need for a separate disclosure.

The use of social media platforms with space constraints already presents advertisers with challenges in developing advertising copy that is effective in these space-constrained formats. When developing creative solutions to communicate an advertising message effectively within these constraints, advertisers should remember that the legal principles mandated by advertising laws must also be addressed within the same constraints.

Locke Lord’s Advertising, Marketing and Social Media Law Group

The attorneys in Locke Lord’s [Advertising, Marketing and Social Media](#) practice group have experience at the FTC and the offices of state attorneys general, as well as expertise in the areas of advertising, promotion, marketing and privacy law, and consumer class action defense. We are available to assist clients with developing strategies to address issues contained in this article.

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