

FTC Staff Requests Information Regarding Digital Advertising Business Guidance Publication

In May 2000, the FTC staff issued a business guidance document, “[Dot Com Disclosures: Information about Online Advertising](#).” Its primary focus was to counsel marketers on how to provide clear and conspicuous disclosures of information that consumers needed in order to make informed decisions about goods and services offered on the internet. In March 2013, FTC staff announced a revised guidance document, “[.com Disclosures – How to Make Effective Disclosures in Digital Advertising](#),” (“[.com Disclosures](#)”) that sought to address the dramatic changes that had occurred in the online world, including the ubiquity of smartphones and the use of social media as a marketing tool.

Specifically, [.com Disclosures](#) advises online advertisers that the same consumer protection laws that apply to commercial activities in other media apply online, and that any disclosures required to prevent an online advertisement from being misleading must be clear and conspicuous. It focuses on how required disclosures may be presented clearly and conspicuously and provides key considerations for evaluating their effectiveness. [.com Disclosures](#) discusses, in the context of online advertisements, the traditional factors used to evaluate whether disclosures are likely to be clear and conspicuous, including: the placement of the disclosure and its proximity to the relevant claim; the prominence of the disclosure; whether items in other parts of the advertisement distract from the disclosure; whether the advertisement is so lengthy that the disclosure needs to be repeated; whether disclosures in audio messages are presented in an adequate volume and cadence, and visual disclosures appear for a sufficient duration; and, whether the language of the disclosure is understandable to the intended audience. The document’s appendix contains mock advertisements that illustrate these particular factors.

The FTC staff is now considering updating and reissuing its guidance document on digital advertising. Although the Commission has gained substantial experience with how online advertisers make claims and disclosures, the staff welcomes all comments on the publication and the issues it addresses, and has also identified the following questions on which it has a particular interest in obtaining the public’s views:

1. What issues raised by current or emerging online technologies, activities, or features, such as sponsored and promoted advertising on social media platforms or otherwise, the use of advertising content embedded in games, or the use of dark pattern techniques in digital advertising, should be addressed in a revised guidance document? Why and how should they be addressed?
2. What issues raised by new laws or regulations should be addressed in a revised guidance document? Why and how should they be addressed?
3. What research or other information regarding the online marketplace, online advertising techniques, consumer online behavior, or consumer mobile behavior should the staff consider in revising its online advertising guidance document?

4. What research or other information regarding the effectiveness of disclosures – and, in particular, online disclosures – should the staff consider?
5. What specific types of online disclosures, if any, raise unique issues that should be addressed in a revised guidance document separately from a discussion of general disclosure requirements?
6. What guidance in the .com Disclosures document is outdated or unnecessary?
7. What guidance should be clarified, expanded, strengthened, or limited?
8. How can the guidance on the use of hyperlinks be clarified to provide better guidance on the appropriate use of hyperlinks and how hyperlinks should be labeled?
9. Does the guidance adequately address how to make qualifying disclosures when consumers must navigate multiple webpages in order to complete a purchase? If not, how should the guidance be modified?
10. The guidance says that when designing space-constrained ads, “disclosures may sometimes be communicated effectively to consumers if they are made clearly and conspicuously on the website to which the ad links.” Should that guidance be modified, and if so, how? Should the guidance document clarify when a disclosure on a marketer’s website can and cannot be sufficient to prevent a representation in an earlier communication that links to the website from being misleading?
11. Does the guidance adequately address advertising on mobile devices? If not, how should the guidance be changed?
12. Should the guidance document address issues unique to specific audiences or demographics in seeing, hearing, or comprehending disclosures? If so, how should the guidance be modified? Should any such guidance address microtargeted advertisements, and if so, how should it do so?
13. Should the guidance document address issues that have arisen from multi-party selling arrangements in internet commerce such as (1) established online sellers providing a platform for other firms to market and sell their products online, (2) website operators being compensated for referring consumers to other internet sites that offer products and services, and (3) other affiliate marketing arrangements? If so, how should the guidance be modified?
14. Should the guidance document address issues that have arisen with respect to advertising that appears in virtual reality or the metaverse, and, if so, how should those issues be addressed?
15. What additional issues or principles relating to online advertising should be addressed in

the guidance document?

16. What other changes, if any, should be made to the guidance document?

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 2, 2022. Write “Digital Advertising, P114506” on your comment. Your comment – including your name and your state – will be placed on the public record, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write “Digital Advertising, P114506” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential” – as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before [60 days from issuance]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.