

FTC Staff Invites Comments Regarding “Dot Com Disclosure” Business Guidance Publication

In May 2000, the FTC staff issued a business guidance document, “Dot Com Disclosures: Information about Online Advertising,” examining how the general principles of advertising law enforced by the Commission applied to advertising and sales on the Internet. The primary focus of the 2000 publication 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 being offered on the Internet.

Specifically, “Dot Com Disclosures” advised 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 advertisement from being misleading must be clear and conspicuous. It focused on how required disclosures may be presented clearly and conspicuously in online advertisements, and provided key considerations for evaluating their effectiveness. The business guide discussed, 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 in an advertisement and its proximity to the relevant claim; the prominence of the disclosure; whether items in other parts of the advertisement distract attention 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 contained mock advertisements that illustrated these particular factors.

The 2000 publication also addressed specific issues that arise from application of certain Commission rules and guides to Internet activities and the use of what were then new technologies to comply with those rules and guides. For example, some rules and guides use certain terms – such as “written,” “writing,” and “printed” – that connote words or information on paper. The document explained that those rules and guides that apply to written advertisements or printed materials also apply to visual text displayed on the Internet. In addition, the staff’s guidance document discussed the circumstances in which businesses may use email to comply with a Commission rule or guide requirement to provide or send required notices or documents to consumers.

The online world has changed dramatically since “Dot Com Disclosures” was first issued. Eleven years ago, mobile marketing was just a vision, there was not an “App” economy, the use of “pop-up blockers” was not widespread, and online social networking was nowhere as sophisticated or extensive as it is today.

Accordingly, the staff is considering updating and reissuing “Dot Com Disclosures” in order to provide guidance to businesses about how FTC law applies to current online activities. Although the Commission has gained substantial experience over the past decade with how online advertisers make claims and disclosures, the staff welcomes all comments on the 2000 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 have been raised by online technologies or Internet activities or features that have emerged since the business guide was issued (*e.g.*, mobile marketing, including screen size) that should be addressed in a revised guidance document?
2. What issues raised by new technologies or Internet activities or features on the horizon should be addressed in a revised business guide?
3. What issues raised by new laws or regulations should be addressed in a revised guidance document?
4. What research or other information regarding the online marketplace, online advertising techniques, or consumer online behavior should the staff consider in revising “Dot Com Disclosures”?
5. What research or other information regarding the effectiveness of disclosures – and, in particular, online disclosures – should the staff consider in revising “Dot Com Disclosures”?
6. What specific types of online disclosures, if any, raise unique issues that should be considered separately from general disclosure requirements?
7. What guidance in the original “Dot Com Disclosures” document is outdated or unnecessary?
8. What guidance in “Dot Com Disclosures” should be clarified, expanded, strengthened, or limited?
9. What issues relating to disclosures have arisen from such multi-party selling arrangements in Internet commerce 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?
10. What additional issues or principles relating to online advertising should be addressed in the business guidance document?
11. What other changes, if any, should be made to “Dot Com Disclosures”?

You can file a comment addressing the 2000 publication and the above questions online or on paper. For the Commission to consider your comment, we must receive it on or before July 11, 2011. Write “Dot Com Disclosures, P114506” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone'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 that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any "[t]rade secret or any commercial or financial information which is obtained from any person and 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). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/dotcomdisclosures>, by following the instructions on the web-based form.

If you file your comment on paper, write "Dot Com Disclosures, P114506" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex I), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Statement, and the Announcement and News Release describing this proceeding. 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 that it receives on or before July 11, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

¹ 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), 16 CFR 4.9(c).