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## FTC RELEASES UPDATED ONLINE ADVERTISING GUIDELINES

The Federal Trade Commission recently released .COM DISCLOSURES, HOW TO MAKE EFFECTIVE DISCLOSURES IN DIGITAL ADVERTISING, updating its 2000 staff guidance DOT COM DISCLOSURES. The FTC has authority to enforce general consumer protection laws that prevent advertisements from being deceptive, unfair or otherwise in violation of FTC rules and to require disclosures to be presented clearly and conspicuously. According to the FTC, whether a disclosure meets this standard is measured by performance — that is, how consumers actually perceive and understand the disclosure in the context of the entire ad.

The FTC notes that general principles of advertising law apply online, but new issues arise as technology develops. Most recently, new issues have arisen concerning space-constrained screens and social media platforms as more consumers access the internet on hand held devices. The FTC guidance document describes the issues businesses should consider as they develop ads for online media to ensure that they comply with the law. Among the that businesses should consider to make disclosures clear and conspicuous are the following:

- Place the disclosure “as close as possible” to the triggering claim.
- Take account of the various devices and platforms consumers may use to view advertising and any corresponding disclosure.
- When using a hyperlink to lead to a disclosure,
  - Make the link obvious;
  - Label the hyperlink appropriately to convey the importance, nature and relevance of the information;
  - Place the hyperlink as close as possible to the relevant information it qualifies;
  - Assess the effectiveness of the hyperlink by monitoring click-through rates and other information about consumer use and make changes accordingly.
- Design advertisements so that “scrolling” is not necessary in order to find a disclosure.

- Display disclosures before consumers make a decision to buy.

The guidance recommends repeating disclosures on lengthy sites and when consumers may enter a site at different locations. The guidance focuses on proximity and placement, prominence, distracting factors, multimedia messages and understandable language. The guidance contains an appendix with 22 examples of issues relating to on-line advertising.

The guidance is a reminder to review new and existing on-line advertising in light of legal requirements and new technologies. The emphasis on placing disclosures (or disclaimers) “as close as possible” to triggering claims (or potentially misleading statements) suggests that some creditors and advertisers may need to redesign their ads and reconsider the use of footnotes and links. Of course, it may be better to simply revise statements to eliminate potentially misleading elements and/or clarify terms more directly. We are available to assist with reviews under these evolving standards. □

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