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### FTC Plans to Update Dot Com Disclosure Guidance

*DM Confidential*

*Update:* On June 10, 2011, the Federal Trade Commission staff announced that the comment deadline was extended for 30 days until August 10, 2011.

Digital advertising and marketing is constantly evolving. "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."

The Federal Trade Commission ("FTC" or "Commission") recently announced that it was updating its *Dot Com Disclosures: Information About Online Advertising* guidance document and would seek comments on proposed areas for changes through July 11, 2011.

The primary focus of the document, which has not been revised since it was first issued in 2000, informs advertisers that consumer protection laws and the requirement to provide clear and conspicuous disclosures applies to the online world in addition to the offline world.

#### FTC's Request for Comment

FTC requests comments on a change to its Internet "dot com disclosures" on the following questions:

- 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?
- What issues raised by new technologies or Internet activities or features on the horizon should be addressed in a revised business guide?
- What issues raised by new laws or regulations should be addressed in a revised guidance document?
- 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"?
- What research or other information regarding the effectiveness of disclosures – and, in particular, online disclosures – should the staff consider in revising "Dot Com Disclosures"?
- What specific types of online disclosures, if any, raise unique issues that should be considered separately from general disclosure requirements?
- What guidance in the original "Dot Com Disclosures" document is outdated or unnecessary?
- What guidance in "Dot Com Disclosures" should be clarified, expanded, strengthened, or limited?
- 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?
- What additional issues or principles relating to online advertising should be addressed in the business guidance document?
- What other changes, if any, should be made to "Dot Com Disclosures"?

#### Dot Com Disclosures 1.0 Background

The "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.

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 and provided a number of examples. In addition, the 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.

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