



What Priorities Will FTC Stress in Its Impending Online Advertising Guidelines?

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If you advertise or sell over the Internet, be aware that changes are afoot at the FTC that will affect your business. The Commission is in the midst of revamping its Dot Com Disclosures, guidelines it prepared back in 2000 regarding online advertising. It issued a request for public comment on prospective revisions in late May. Now that the comment period has ended in early August, we are in a wait-and-see period until the new guidelines are published.

The original guidelines were pretty broad, generally providing that advertising standards that applied to more traditional media also applied to advertising over the Internet.

Acknowledging the vast technological developments in marketing since the Dot Com Disclosures were published over a decade ago — e.g., mobile marketing, the app economy, pop-up blockers and social networking — the FTC requested comment on a number of issues, in 11 questions. For instance, it requested comment on (1) what issues have been raised by new technologies or Internet features, (2) what should its staff consider regarding online advertising techniques or consumer online behavior, and (3) what issues have arisen from multi-party selling arrangements.

As we wait for the FTC's revisions, we can anticipate several areas that the new guidelines will address. Generally speaking, the FTC likely will express interest in two broad categories affected by new technology: (1) what is conveyed and (2) what is collected.

What is conveyed. A general concern with disclosure standards since the earlier guidelines were published is how disclosure applies to marketing through new media. How do traditional "clear and conspicuous" standards (such as proximity of a disclosure to the relevant claim, prominence of the disclosure, or duration of the disclosure) play out on a small mobile device such as a smartphone? How can advertisers effectively disseminate disclosures on such devices?

What is collected. A greater concern, as expressed in many of the public comments submitted to the FTC, is the development of consumer tracking online and online behavioral advertising. Something that can be a great boon to sellers, who can now tailor their advertising to an individual user's interests, or to advertisers who collect and sell that consumer data, can become a privacy nightmare. One group that made a



comment to the FTC noted the development of technologies that can track consumer behavior both on and offline.

Recent enforcement actions as well as informal initiatives by the FTC and consumer groups demonstrate the likelihood that the Commission will address consumer privacy in the new guidelines. For instance, the FTC just settled charges with W3 Innovations, a mobile app company, for alleged violations of the Children's Online Privacy Protection Act. The action, based on the company's failure to obtain parental consent before collecting children's personal information, was the first of its kind. The FTC has also been promoting its Do Not Track program, which calls for enhanced consumer controls over online data tracking.

It's worth noting the likelihood that the FTC will devote a part of its new guidelines to multi-party selling arrangements. Affiliate marketing-related issues involve both broad categories above, impacting both what is disseminated and what is collected. The Commission may highlight the importance of effective disclosure at all levels when multi-party selling arrangements are involved. It may also address privacy concerns along the various levels of the advertising chain. And there are good indications the FTC will take the view for enforcement purposes that all parties along the advertising chain are subject to FTC standards.

FTC Beat is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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