

On September 23, 2014, the US Federal Trade Commission (FTC) announced its launch of “Operation Full Disclosure” – an effort to improve the effectiveness of disclosures in advertising. According to the FTC’s [press release](#), the FTC staff sent warning letters to more than 60 advertisers, including 20 of the 100 largest US advertisers. The letters warned that the recipient’s advertising failed to make adequate disclosures in its television and/or print advertising. The letters recommended that advertisers review their advertising to make sure that necessary disclosures meet the legal “clear and conspicuous” standard. The recipients were requested to inform the FTC staff of the corrective actions that the company would take.

The FTC is charged with enforcing Section 5 of the FTC Act, 15 U.S.C. §45, which prohibits “unfair or deceptive acts or practices.” In the FTC’s view, disclosures must be “clear and conspicuous” if they are necessary to avoid deception. In past cases and statements, the FTC has interpreted that standard as meaning that disclosures should be near the claims to which they relate (rather than hidden or buried), and the disclosures should be in an easy-to-read font and contrasting print. Disclosures in television commercials should stay on the screen long enough to be read and understood. The FTC staff letters also advised the recipient advertisers that to be “clear and conspicuous,” the disclosures should use plain, unambiguous language and should stand out in the advertising; consumers should be able to notice the disclosures easily and not have to look for them.

These letters indicate that the FTC staff continues to enforce basic truth-in-advertising principles, including the “clear and conspicuous” standard. Among the reasons that ads were cited for lacking sufficient disclosures to meet that standard:

- Ads claiming that a product was unique or superior in a product category, without disclosing the nature of the category.
- Ads with product comparisons that failed to disclose the basis of the comparisons.
- Ads offering “Risk-Free” or “Worry Free” trial periods without adequate disclosures that consumers had to pay for initial and/or return shipping.
- Ads making broad or absolute statements without adequate disclosure of exceptions or limitations.
- Weight loss ads with testimonials attesting to specific results that failed to disclose the weight loss that consumers typically could expect to achieve.

- Ads showing demonstrations to illustrate a point, but failing to disclose material alterations of the demonstration.
- Ads making false claims which the advertisers tried to cure with explanations or contradictions in the footnotes – despite “black letter FTC law” that false statements cannot be “cured” in that way.

The newly-launched Operation Full Disclosure focuses on traditional television and print advertisements. In 2013, the FTC staff released guidance regarding making effective disclosures in online advertising, “.com Disclosures: How to Make Effective Disclosures in Digital Advertising” (see the March 12, 2013 FTC [press release](#)). That publication provided tips for meeting the “clear and conspicuous” standard in mobile and online advertising. The new FTC initiative is a reminder that the “clear and conspicuous” standard, and other truth-in-advertising basics, apply to advertising in all media and formats.

If you have any questions about “Operation Full Disclosure” or compliance with the FTC’s consumer protection standards and guidance, please contact your Squire Patton Boggs lawyer or one of the individuals listed in this publication.

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