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July 11, 2012

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex Y)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: ***In Short Workshop (Advertising And Privacy Disclosures In A Digital World):***
FTC Project No. P114506:
COMMENTS ON BEHALF OF THE WORD OF MOUTH MARKETING
ASSOCIATION

On behalf of the Word of Mouth Marketing Association (“WOMMA”), I respectfully submit these Comments in response to the request by the Federal Trade Commission (“FTC”) for public comments that was made after the Workshop About Advertising and Privacy Disclosures in Online and Mobile Media that was held on May 30, 2012. *See* <http://www.ftc.gov/bcp/workshops/inshort/index.shtml#comment>.

WOMMA’s Comments are in four Sections.

Section I is an overview of the Word of Mouth Marketing Association, which is the premier trade association dedicated to advancing and advocating the discipline of credible word of mouth marketing.

Section II discusses the Comments previously submitted by WOMMA on August 9, 2011.

Section III introduces the WOMMA Social Media Disclosure Guide, which was recently updated by WOMMA's Member Ethics Advisory Panel. The Guide is designed to clarify the responsibilities of stakeholders, address the syndication of content across channels and new platform challenges, and define areas of concern. In addition, the Guide addresses many of the concerns that were expressed in the May 30 Workshop, and we hope that the Guide will serve as a foundation for industry best practices.

WOMMA seeks and welcomes commentary to the Guide.

Section IV provides general recommendations. Out the outset, the Section notes that while WOMMA is fundamentally committed to four key concepts that reside at the heart of consumer protection jurisprudence:

- (i) transparency (or the disclosure of "material connections");
- (ii) accuracy (or the communication of truthful information to consumers);
- (iii) honesty (or the avoidance of misleading or deceptive communications); and
- (iv) respect (or the recognition of the personal rights of others);

WOMMA is committed to the appropriate development of emerging media that is designed not only to enhance commercial transactions but to provide mechanisms for meaningful social dialogue and appropriate entertainment for consumers of all ages.

Accordingly, WOMMA recommends that any guidance by the FTC should be flexible and fluid, recognizing the practical constraints of certain media platforms, and without stifling innovation that may benefit consumers' access to and control over their commercial and personal information and communications. Moreover, WOMMA submits that the application of the "clear and conspicuous" standard depends upon several factors, relating to the "context" of the communication and the "totality of the circumstances," such as

- The communications platform being used;
- The type of consumer that is using that platform;
- The product being discussed and the intended audience who is targeted by the communicator or advertiser;
- The nature of the offer and the terms that apply; and
- How the consumer navigates through the platform and accepts the offer.

WOMMA looks forward to assisting the Commission and staff in evaluating the emerging technologies and trends in social media as well as the impact of any guidance on the marketing practices by advertisers and brands. Please let me know if you have any questions or need any additional information.

DATED: Washington, D.C.
July 11, 2012

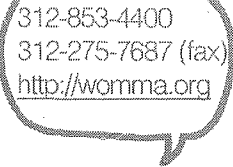
Respectfully Submitted,

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Re: ***In Short Workshop (Advertising And Privacy Disclosures In A Digital World): FTC Project No. P114506***
COMMENTS ON BEHALF OF THE WORD OF MOUTH MARKETING ASSOCIATION

The Word of Mouth Marketing Association (“WOMMA”) respectfully submits these Comments in response to the request by the Federal Trade Commission (“FTC”) for public comments on the potential modification to DOT COM DISCLOSURES: INFORMATION ABOUT ONLINE ADVERTISING, the guidance document that advises businesses how federal advertising law applies to advertising and sales on the Internet. The request was made after the Workshop About Advertising and Privacy Disclosures in Online and Mobile Media that was held on May 30, 2012.

- I -

OVERVIEW OF THE WORD OF MOUTH MARKETING ASSOCIATION

WOMMA was founded in 2004 on the premise of fostering the growth of credible and ethical word of mouth (“WOM”) marketing. Since then, WOMMA has developed into the premier trade association dedicated to advancing and advocating the discipline of credible word of mouth marketing.

WOMMA

WOMMA represents more than 350 member companies, including brands, researchers, service providers, and agencies that are actively engaged in WOM and social media.

Members of WOMMA abide by mandatory Standards of Conduct and a Code of Ethics that establishes guidelines and criteria designed to assist in the development of compliance procedures to evaluate and execute marketing campaigns. This Code, in fact, was favorably received and referenced by the FTC in its 2009 release of its *Guides Concerning the Use of Endorsements and Testimonials in Advertising*.

- II -

COMMENTS PREVIOUSLY SUBMITTED BY WOMMA CONCERNING DOT COM DISCLOSURES

On August 9, 2011, WOMMA supplied Comments to the FTC on the potential modification of DOT COM DISCLOSURES: INFORMATION ABOUT ONLINE ADVERTISING. Those Comments provided a snapshot of the current marketing environment and discussed how the marketing and advertising industry is in the midst of a fundamental paradigm shift. They discussed the FTC jurisprudence concerning the application of the “clear and conspicuous” standard, and provided a high-level discussion of emerging technology, identifying five general categories with examples. They also set forth general recommendations, proposing that any guidance should be flexible and fluid, should recognize the practical constraints of certain media platforms, but should not stifle innovation that may benefit consumers’ access to and control

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over their commercial and personal information and communications. WOMMA also recommended that the FTC hold a public workshop on these issues to obtain input from all stakeholders; and WOMMA thanks the FTC for conducting such a meaningful and comprehensive program on May 30, 2012.

- III -

DISCLOSURE DOCUMENT

Attached to these Comments is WOMMA's Social Media Disclosure Guide which was recently updated by WOMMA's Member Ethics Advisory Panel. It is designed to clarify the responsibilities of various stakeholders (such as advertisers, bloggers, agencies, vendors, and influencers), address syndication of content across channels and new platform challenges, and define areas of concern (such as non-monetary incentives and promotions).

WOMMA welcomes feedback and commentary to the Disclosure Guide.

- IV -

GENERAL RECOMMENDATIONS

WOMMA is committed to four key concepts that reside at the heart of consumer protection jurisprudence:

- (i) transparency (or the disclosure of "material connections");
- (ii) accuracy (or the communication of truthful information to consumers);
- (iii) honesty (or the avoidance of misleading or deceptive communications); and

WOMMA

(iv) respect (or the recognition of the personal rights of others).

At the same time, however, WOMMA is committed to the appropriate development of emerging media that is designed not only to enhance commercial transactions but to provide mechanisms for meaningful social dialogue and appropriate entertainment for consumers of all ages.

Therefore, any guidance by the FTC should be flexible and fluid, recognizing the practical constraints of certain media platforms, and without stifling innovation that may benefit consumers' access to and control over their commercial and personal information and communications.¹ WOMMA submits that the application of the "clear and conspicuous" standard depends upon several factors, relating to the "context" of the communication and the "totality of the circumstances," such as

- The communications platform being used;
- The type of consumer that is using that platform;
- The product being discussed and the intended audience who is targeted by the communicator or advertiser;
- The nature of the offer and the terms that apply; and

¹Indeed, the fundamental intent of consumers communicating on many of these emerging technologies is to engage in social interaction or entertainment, not obtain information that could materially influence their commercial business decisions. Furthermore, it must be recognized that even for those communications that constitute commercial transactions, consumers have become sophisticated and savvy in navigating through various platforms to locate material information and discern what is and is not material to their decision-making.

WOMMA

- How the consumer navigates through the platform and accepts the offer.

In addition, WOMMA believes that certain features of the guidance originally provided in the Dot Com Disclosures need to be re-evaluated in light of these emerging technologies. Specifically, with respect to the factor of “prominence,” considerations of size, color, and graphics must be re-evaluated given the nature of certain new media platforms found in the social and mobile environments. With respect to the factor of “presentation,” text may not be available to prompt a consumer’s attention, links play a much more prominent role in user interaction, and sound is not available on many platforms. Obviously, hyperlinks can play a key role for qualifying information, and links or URLs that indicate a specific type of disclosure and direct users to information for context should now be considered appropriate in many media environments. Finally, the factors of “placement” and “proximity” should be considered in terms of the user experience of the message in each platform where links might be the operative function of a given message. Scrolling may not be a viable option, and the ability to engage in more clicks should not be interpreted as constituting less comprehension.

WOMMA’s updated Guide to Disclosure in Social Media Marketing addresses many of the concerns that were outlined in the Workshop in more detail, and we hope that this document will serve as a guide to the advertising community to provide clarity and a foundation for industry best practices.

WOMMA

CONCLUSION

WOMMA hopes that these Comments are beneficial, and looks forward to assisting the Commission and staff in evaluating the emerging technologies and trends in social media as well as the impact of any guidance on the marketing practices by advertisers and brands.

DATED: Washington, D.C.
July 10, 2012

Respectfully Submitted,

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WOMMA Guide to Disclosure in Social Media Marketing

The WOMMA Guide to Disclosure in Social Media Marketing

The WOMMA Ethics Code is the cornerstone for prudent practices in the WOM industry. In light of the December 2009 effective date of the Federal Trade Commission (FTC) Guides Concerning the Use of Endorsements and Testimonials in Advertising, WOMMA leadership responded to member demand for additional meaningful disclosures for social media marketing. Thus, in 2008, WOMMA began formalizing best practices by engaging industry leaders, members, non members, academics and consumers. These guidelines are considered living documents and are updated on occasion to reflect changes in regulation and in the marketplace. The process includes:

- Launching the inaugural *Living Ethics* process in November 2008 at the WOMMA Summit, leading to meaningful changes to the WOMMA Code in 2009;
- Convening an expert panel in September 2009 to address transparency and disclosure in social media;
- Creating the *Living Ethics* Blog to allow comments/questions concerning transparency and disclosure in social media;
- Incorporating feedback from the *Living Ethics* Blog to create the first draft of this WOMMA Guide to Disclosure;
- Presenting the preliminary Disclosure Guide at the 2009 WOMMA Summit and re-opening the *Living Ethics* Blog annually from November thru January to obtain public comments;
- Consulting with the Members Ethics Advisory Panel on issues of ethics and disclosure as well as US & international regulatory/marketplace updates; and
- Formalizing final recommendations for industry use.

SCOPE OF WOMMA GUIDE

As social media is ever-changing, the WOMMA Disclosure Guide will be a living document – continuing to be refined to reflect evolving industry best practices. Note also that many WOM programs are hybrid in nature and are developed to incentivize traditional (offline) as well as digital and social initiatives. While the mechanics of these types of conversation might be different, the expectation is that such communications should be consistently ethical and credible, both in the online and offline environment.

Key online platforms covered in this Guide include, but are not limited to blogs (e.g., Blogger, Wordpress), microblogs (e.g., Twitter, Pinterest), online comments (e.g., Disqus), social networks (e.g., Facebook, LinkedIn, Bebo, Hi5), video sharing websites (e.g., YouTube, Vimeo), photo sharing websites (e.g., Flickr, Picasa, Pinterest), curated content (Storify.com, Paper.li, Scoop.it), sponsored content, affiliate networks, referral networks and podcasts. Note, platform names are for example only and may be updated from time to time as new platforms and types emerge or evolve.

DEFINITIONS

For the purposes of this document, the following definitions should apply.

- Advocate – Advocates are those with a “material connection” to a marketer sharing a message in connection with a marketing initiative.
 - Independent Advocate – Any individual not directly affiliated with a marketer who speaks, writes or conveys a marketing message about a company or brand (including but not limited to bloggers, vloggers, brand advocates, influencers, brand ambassadors, consumer/customer reviewers) in connection with a marketing initiative.
 - Affiliated Advocate – Any individual directly affiliated (as an employee, affiliate, representative, agency, vendor, etc.) with a marketer who speaks, writes or conveys a marketing message about a company or brand (including but not limited to bloggers, vloggers, brand advocates, influencers, brand ambassadors, consumer/customer reviewers) in connection with a marketing initiative.
- Marketer – Any individual or entity engaged in the promotion and/or selling of a product or service of that entity as part of a marketing initiative (Advertisers, Public Relations and other professional communicators are considered marketers for the purpose of this document).
- Marketing Initiative – An organized or coordinated effort to market or promote a brand, product or service.
- Consideration – Might include benefits or incentives such as monetary compensation, loaner products, free products or services, in-kind gifts, special access privileges, affiliate commissions, referral incentives, loyalty points, discounts, gift cards, sweepstakes entries or non-monetary incentives provided by a marketer, employee, agency or vendor as an inducement to an advocate to deliver a marketing message
- Signs of Approval – Tools or functions of a platform that enable a user to communicate approval of a given account, user, post, page or content. Such approvals may be broadcast out across a given social network and may integrate into elements that exist outside of that social network in social functionality on third-party sites, widgets and advertising tools.
- Material Connection – Any connection between an advocate and a marketer that could affect the credibility consumers give to that advocate’s statements.
- Consumer – The target or recipient of a message as a result of a marketing initiative.

SOCIAL MEDIA AND THE RESPONSIBILITIES OF MARKETERS AND ADVOCATES

With the rising popularity of social media websites from blogs to Twitter to Facebook, the issue of ethical word of mouth marketing has taken on new prominence. Many brands and agencies are designing word of mouth marketing programs to foster relationships with social media participants. (Those sponsored participants or speakers are referred to in this document as “advocates.”)

Consumers have a right to know the marketer behind sponsored marketing messages that could influence their purchasing decisions, but key sponsorship information is not always adequately disclosed in a social media context. Thus, for testimonials and endorsements delivered to consumers through social media - - whether by consumers, experts, celebrities, or organizations - - the FTC requires that both marketers and advocates to ensure that all “material connections” are disclosed. Such “material connections” may be defined as any connection between an

advocate and a marketer that could affect the credibility consumers give to that advocate's statements. Important examples of "material connections" may include (i) consideration (benefits or incentives such as monetary compensation, loaner products, free products or services, in-kind gifts, special access privileges, affiliate commissions, discounts, gift cards, sweepstakes entries or non-monetary incentives) provided by a marketer to an advocate, or (ii) a relationship between a marketer and an advocate (such as an employment relationship).

RESPONSIBILITY OF MARKETERS

Marketers must institute a company-wide social media policy that takes these responsibilities into account for their own employees and ensure that their agencies, partners, networks and vendors have policies that are in alignment with the marketer's policy or guidelines ensuring that advocates are educated, monitored and supervised accordingly.

Furthermore, Marketers have a responsibility to ensure that their relationships to advocates are adequately disclosed in five ways. First, marketers must educate advocates, agencies, partners, networks and vendors they work with on marketing campaigns about the circumstances when disclosure is required and what that disclosure could look like. Second, marketers must reasonably monitor their campaigns to ensure that advocates are making the required disclosures and that claims by agents and third-parties are substantiated and not false or misleading. Third, if the required disclosures do not appear or claims are not in compliance, marketers must employ commercially reasonable efforts to address the situation, which may range from having advocates insert the required disclosures to requesting they pull the content in question. Marketers should also have a policy or guidelines in place to deal with non-compliant advocates, including "compliance training" for first time non-disclosers and dismissal for repeat non-disclosers. Fourth, marketers must ensure that their agencies, partners, networks and vendors who may be responsible for engaging advocates on their behalf have a policy that are in alignment with the marketer's policy or guidelines with regard to these responsibilities. Fifth, marketers must educate their employees regarding the nature of required disclosures to ensure that when employees communicate about the products or services of the company for which they work, they appropriately disclose their relationship to that company and that they do not misrepresent themselves as ordinary customers in providing endorsements or reviews of the brands or products associated with that company.

RESPONSIBILITY OF ADVOCATES

Advocates also have a responsibility to ensure their relationship to a marketer is adequately disclosed. An advocate must disclose his or her relationship to a marketer when making statements or providing reviews about that marketer's product or service, or a competitor's, as part of a marketing program or initiative in effect at the time of review or statement. Finally, an advocate must comply with stated social media or blogging policies.

CLEAR AND PROMINENT DISCLOSURE

No matter which platform is used, adequate disclosures must be clear and prominent. Language should be easily understood and unambiguous. Placement of the disclosure must be easily viewed, in the body of a message, in close proximity to the statement(s) the disclosure modifies,

and not hidden deep in the text or deep on the page. All disclosures should appear in a reasonable font size and color that is both readable and conspicuous to consumers where they are accessing the content, provide context to the nature of the relationship being disclosed and be presented in a format which is consistently communicated across syndicated platforms or channels.

POLICY BEST PRACTICES

As stated above, marketers and their agencies, partners and vendors are required to have a social media policy, playbook or guidelines that are clearly stated, communicated and in alignment. Below are key considerations with regard to developing best practices:

1. Mandate a disclosure policy that complies with the law;
2. Make sure people who work for you or with you have a policy in place to ensure compliance; and
3. Monitor what employees or advocates are doing on your behalf for claims and disclosure.

DISCLOSURE BEST PRACTICES

As stated above, advocates are required to disclose “material connections” with marketers. Listed below is sample disclosure language, organized by the platform used. Alternative, but substantively comparable, language may also be used where appropriate.

Personal and Editorial Blogs

- *I received ___ (product / sample / information) ___ from ___ (company name) ___, or*
- *(Company name) ___ sent me ___ (product / sample / information) ___*

Product Review Blogs

- *I received ___ (product / sample / information) ___ from ___ (company name) ___ to review, or*
- *I was paid by ___ (company name) ___ to review*

Additionally for *product review blogs*, WOMMA strongly recommends creating and prominently posting a “Disclosure and Relationships Statement” section on the blog fully disclosing how a review blogger works with companies in accepting and reviewing products, and listing any conflicts of interest that may affect the credibility of their reviews.

Providing Comments in Online Discussions and/or Reviews

- *I received ___ (product / sample / information) ___ from ___ (company name) ___, or*
- *I was paid by ___ (company name) ___, or*
- *I am an employee [or representative] of ___ (company name) ___*

Microblogs

Include a notation that reasonably discloses any material connection, such as:

- A short phrase indicating that a specific type of “material connection” exists
- URLs indicating that a specific type of material connection exists and directing people to a “Disclosure and Relationships Statement.”
- or any of the following hashtags:
 - #spon
 - #paid
 - #samp

Additionally, WOMMA strongly recommends posting a link on your profile page directing people to a full “Disclosure and Relationships Statement.” This statement, much like the one WOMMA recommends for review blogs, should state how you work with companies in accepting and reviewing products, and listing any conflicts of interest that may affect the credibility of your sponsored or paid reviews. Note however that profile disclosures should not be considered a replacement for disclosure in individual posts. Advocate’s disclosures should appear close to the endorsement or testimonial statement they are posting.

Status Updates on Social Networks

- *I received ___ (product / sample / information) ___ from ___ (company name) ___, or*
- *I was paid by ___ (company name) ___*

If status updates are limited by character restrictions, the best practice disclosure requirement is to include a notation that reasonably discloses any material connection, such as a short phrase indicating that a specific type of “material connection” exists, URLs indicating that a specific type of material connection exists and directing people to a “Disclosure and Relationships Statement,” or any of the following hashtags: *#spon*, *#paid* or *#samp*. Additionally, WOMMA strongly recommends posting a full description or a link on your social network profile page directing people to a “Disclosure and Relationships Statement.” Note that if an employee posts about his or her company’s products, citing the identity of the employer in the profile should not be considered a replacement for disclosure in individual posts. Advocate’s disclosures should appear close to the endorsement or testimonial statement they are posting.

Video & Photo Sharing Websites

Include as part of the video/photo content and part of the written description:

- *I received ___ (product / sample / information) ___ from ___ (company name) ___, or*
- *I was paid by ___ (company name) ___*

Additionally, WOMMA strongly recommends posting a full description or a link on your video and/or photo sharing profile page directing people to a “Disclosure and Relationships Statement.” Note that for embeddable videos or assets that consideration should be made for the disclosure to be both readable/audible and conspicuous to consumers where they are accessing the content.

Podcasts

Include, as part of the audio content and part of the written description:

- *I received ___ (product / sample / information) ___ from ___ (company name) ___, or*
- *I was paid by ___ (company name) ___*

Additionally, WOMMA strongly recommends posting a full description or a link directing people to a “Disclosure and Relationships Statement.”

ADDITIONAL DISCLOSURE ISSUES

For certain types of programs, additional disclosure may need to be made to consumers to ensure that the consumer is fully informed. These types continue to evolve and develop in complex interconnected social media environments, which are fluid, fast moving and ever changing. The examples below are meant to highlight some of the challenging and emerging areas that we see today, which may require additional consideration.

Contests & Promotions – May be considered a “material connection” or consideration and require disclosure

Like-Gating – Rules, terms and required disclosures should be made publicly available and not gated behind logins, firewalls, or only to users who have already approved or accepted those terms.

Social Incentives and Signs of Approval – These tools present unique challenges to disclosure and, therefore, for use by advocates. These challenges should be considered and may be addressed in a social media policy or guidelines.

Attribution of Social Incentives and Signs of Approval – Links and approval attribution should be directed only to content which the consumer reasonably believes that they are responding to.

Third-Party Product/Service Claims – Reasonable monitoring may include ensuring that claims made about your products and services by your advocates are truthful and accurate.

Celebrity Endorsements – Celebrity endorsements traditionally did not require disclosure in the context of traditional advertisements. In social media, both the understanding of what is clearly advertising and of who is a celebrity has been blurred. UK regulations require disclosure of celebrity endorsements and best practice would be to require disclosure of endorsements by all advocates (celebrity and otherwise) participating in a marketing initiative.

Terms of Service Disclosures - Terms of Service disclosures are recommended as a best practice to ensure that disclosures are clearly communicated. Note however, that they may not be a sufficient disclosure on their own and should not be considered a replacement for disclosure in individual posts. Disclosures should appear close to the endorsement or testimonial statement they are posting.

Profile and Background Disclosures – Profile and Background disclosures are recommended as a best practice to ensure that disclosures are clearly communicated. Note however, that they may not be a sufficient disclosure on their own and should not be considered a replacement for disclosure in individual posts. Disclosures should appear close to the endorsement or testimonial statement they are posting.

Syndication – Marketers should be aware that social media messages are often republished or repurposed and therefore disclosures should be placed in a way that they are likely to be included when the content to which they are repurposed or republished are displayed to consumers.

Product Reviews – Marketers should ensure that product reviews disseminated by advocates, affiliates or representatives are honest and truthful and that any “material connection” between the marketer and the reviewer are disclosed. Product review sites that have a connection to the marketer should not be presented as independent news reports and the nature and source of those reviews should be transparent. Additionally, advocates who have received consideration for the creation or placement of reviews by virtue of this consideration require disclosure.

Sponsored Content – Sponsored links or content should include “No Follow” tags and coding should be honest and truthful with regard to source, attribution, etc.. In addition, claims and required disclosures should be addressed in a policy or guidelines and included with sponsored or curated content.

Reasonable Monitoring – Brands should be aware of communications by advocates on their behalf with regard to disclosure and compliance with their stated policy. If the required disclosures do not appear, marketers must employ commercially reasonable efforts to address the situation, which may range from having advocates insert the required disclosures to requesting they pull the content in question. Marketers should also have a policy in place to deal with non-compliant advocates, including “compliance training” for first time non-disclosers and possible dismissal for repeat non-disclosers.

Sharing of Passwords – While monitoring of certain activities may be required, demands for passwords of personal accounts of employees (or others) on social media platforms or other accounts may violate platform terms of service and likely present ethical, privacy and other concerns.

Privacy & Data Collection/Retention - Organizations should be open and honest about Personally Identifiable Information ("PII") that they are collecting, using and sharing from consumers. PII is to be interpreted broadly, as encompassing not only any type of information that could be used to uniquely identify a person - including, for example, a person's name, address, phone number, birth date, social security number, or credit card or bank account numbers - but "personal information" that can be used to identify or locate a person. Organizations should communicate about data privacy policies, collection, retention and their responsibility in the event of a personal data leakage with consumers in a clear and conspicuous manner, and in a language that is understandable to the reasonable consumer or intended audience. For more information, please visit http://womma.org/ethics/privacy_guidance/.

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