



Consumer Federation of America

ConsumersUnion[®]

POLICY & ACTION FROM CONSUMER REPORTS

July 11, 2012

Donald S. Clark
Secretary
Federal Trade Commission
Room H-135 (Annex N)
600 Pennsylvania Avenue NW
Washington, DC 20580

VIA ELECTRONIC COMMENT SYSTEM

RE: In Short Workshop, FTC Project No. P114506

Dear Mr. Clark:

Consumer Federation of America (CFA), a nonprofit association of some 300 consumer organizations in the United States, and Consumers Union (CU), the advocacy and public policy arm of *Consumer Reports*[®], commend the Federal Trade Commission (FTC) for the excellent public workshop that it convened on May 30 to examine “Advertising and Privacy Disclosures in a Digital World.” What clearly emerged from the workshop was that while the core tenets on which the FTC based its 2000 “Dot Com Disclosures” guidance document have not changed – advertising must be truthful and not misleading, advertisers must be able to back up their claims, and advertisements cannot be unfair – new advertising media such as mobile devices and new advertising platforms such as social media networks raise challenging questions about how to make disclosures clear and conspicuous. To address those questions, the FTC should revise and expand the guidance document.

In doing so, the FTC should be mindful of a central observation that Robert Weissman, President of Public Citizen, made repeatedly during the panel on social media advertising disclosures: it is up to advertisers using new platforms to adapt to existing law, not the other way around.¹ He noted that if an advertiser cannot find a way to make a disclosure effectively on a particular platform, it should refrain from using that platform to advertise. We agree. Some platforms may simply be too constrained by size or number of characters to provide the disclosures that may be needed about particular

¹ See Weissman’s remarks in the transcript for Panel 2: Social Media Advertising Disclosures, at pages 4, 19, 22 and 26, http://htc-01.media.globix.net/COMP008760MOD1/ftc_web/transcripts/053012_FTC_sess2.pdf

offers. The FTC should provide a series of hypothetical examples that illustrate this point.

Another point that emerged from the workshop is the need to provide important information such as material limitations upfront, regardless of the medium used. Paul Singer, an Assistant Attorney General in the Consumer Protection Division of the Texas Attorney General's Office, noted that sometimes this type of information is buried in an endless series of hyperlinks or text message screens. He suggested that there should be a clear signal, or trigger, to alert consumers to the specific issue and an easy means for them to get further details.² New FTC examples would be helpful to illustrate the problem and approaches to address it.

There was considerable discussion about the crucial role that visual design plays in improving disclosures, starting with the excellent opening presentation on usability research by Jennifer King and continuing with the sessions on Mobile Advertising Disclosures and Mobile Privacy Disclosures. While it is obviously not the FTC's role to prescribe specific designs, the FTC can share what it has learned about basic design principles that can help to enhance consumers' ability to find and understand the information they need about the offers. For instance, Ms. King spoke about the need for disclosures to be contextually relevant and provide actionable choice. She also noted the importance of the location of information on a screen and the need for clear visual clues; the same point that was made by Mr. Singer and others.

In addressing the use of endorsements on blogs and social media platforms to promote specific products or services, the FTC should incorporate the relevant points from its revised Guides Concerning the Use of Endorsements and Testimonials in Advertising³ as well as the good points that were made in Panel 2 on Social Media Advertising Disclosures into the Dot Com Disclosures guidance. The fact that the endorser is being paid or compensated in some other way must be made clear, regardless of the platform or media that is being used. The FTC can provide examples of how that information should be disclosed on blog postings, tweets, and other platforms. For instance, during the panel discussion the question was raised about whether using "AD" or "#spon" in a tweet is sufficient to signal that it is an advertisement. There seemed to be general consensus that neither was effective. The FTC could suggest other approaches, such as including the full word "Advertisement," to make this fact clear. Again, the choice would be the advertiser's – if it is not possible to devote a sufficient number of characters to an adequate disclosure that a tweet is an advertisement, the advertiser should use another platform instead.

² See Singer's remarks in transcript for Panel 1: Universal and Cross-Platform Advertising, pages 14-15, 18-19, http://htc-01.media.globix.net/COMP008760MOD1/ftc_web/transcripts/053012_FTC_sess1.pdf

³Q and A at <http://business.ftc.gov/documents/bus71-ftcs-revised-endorsement-guideswhat-people-are-asking>, Guides at <http://ftc.gov/os/2009/10/091005revisedendorsementguides.pdf>

Finally, we felt that the discussion about mobile privacy disclosures was very useful because the issues are essentially the same as in online advertising – how to provide important information to consumers at the time that the information will be relevant to them and in a format that will work given the physical constraints of the technology. The design principles that were discussed to address those challenges are the same as well: use design to make consumers aware of the information, put it into context, motivate them to find more details, help them understand, and make it easy for them to act.

In closing, we believe that the Dot Com Disclosure guidance provides great benefit to advertisers and consumers because it is a flexible document that outlines long-standing consumer protection principles for advertising and provides advice about how to achieve the goals of those principles in the online context. It should be updated now and reviewed on a regular basis to ensure that it remains relevant and provides useful guidance as technology continues to evolve.

Sincerely,

Susan Grant
Director of Consumer Protection
Consumer Federation of America

Ioana Rusu
Regulatory Counsel
Consumers Union