

**Opening Remarks of FTC Chairwoman Edith Ramirez**  
**An FTC Workshop: Putting Disclosures to the Test**  
**Washington, D.C.**  
**September 15, 2016**

Welcome to today's Federal Trade Commission workshop on disclosures and specifically the importance of testing disclosures. This is a topic that the FTC has been thinking about and studying practically from the moment the agency opened its doors more than a hundred years ago.

In our consumer protection work, one of our primary tasks is to ensure that consumers have access to accurate information to enable them to make informed decisions in the marketplace. One way that businesses communicate information to consumers is through disclosures. "Disclosure" is a broad term that encompasses a range of statements. Here at the FTC, when we think about disclosures, we generally focus on the disclosure of information that affects consumer welfare.

In some cases, disclosures are necessary to limit or qualify other advertising or marketing statements in order to prevent deception. Other disclosures are required to inform consumers of the risks or dangers from using certain products. Still others make consumers aware of choices they may have. For instance, some of the disclosures required by FTC rules include energy consumption labels on appliances, fuel labels at the gas pump, and price lists for funeral services. These help inform consumers when they are choosing between different products or services. In our privacy work, we encourage companies to disclose their data practices so that consumers can make choices that allow them to exercise greater control over the way their personal information is used.

It's clear that disclosures play an important role in protecting consumers. That's why the FTC requires that necessary disclosures be "clear and conspicuous." We want consumers to see or hear the disclosure, to understand it, and to use the information conveyed to make informed decisions. But we recognize that accomplishing all three of these objectives can sometimes be challenging. We are here today to discuss how businesses can test and evaluate their disclosures to ensure they are effective.

## **I. FTC Guidance**

To set the stage for today's discussion, I would like to describe briefly some of the agency's recent efforts to help the business community provide meaningful and useful disclosures to consumers, particularly in the face of technological changes that have transformed the marketplace. The basic legal principles we apply remain the same, but context matters.

In the early 2000s, the FTC issued guidance on "Dot Com Disclosures."<sup>1</sup> This guidance explains what "clear and conspicuous" means in the context of online advertising and sales, explaining how the "4Ps" at the core of our "clear and conspicuous" standard – prominence, presentation, placement, and proximity – apply to the online world. We updated that guidance in 2013 to address technological developments like the use of smartphones, tablets, and apps.<sup>2</sup>

In addressing the challenges that new and emerging technologies can pose to effective disclosures, we have learned from research in the marketing field about the need not only for clear and conspicuous but also "just-in-time" disclosures. As discussed in a 2013 report on mobile privacy disclosures, we recommend that mobile platforms provide just-in-time

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<sup>1</sup> FED. TRADE COMM'N, DOT COM DISCLOSURES: INFORMATION ABOUT ONLINE ADVERTISING (May 2000), *available at* <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-issues-guidelines-internet-advertising/0005dotcomstaffreport.pdf>.

<sup>2</sup> FED. TRADE COMM'N, .COM DISCLOSURES: HOW TO MAKE EFFECTIVE DISCLOSURES IN DIGITAL ADVERTISING (Mar. 2013), *available at* <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

disclosures and obtain affirmative express consent before allowing apps to access sensitive content such as geolocation information.<sup>3</sup>

We have also provided specific guidance about social media marketing disclosure issues. Our Endorsement Guides have long required the disclosure of material relationships between an advertiser and an endorser. In 2009, we noted the need for bloggers and celebrities to disclose material connections when promoting products on social networks.<sup>4</sup> Last year, we provided recommendations about how to make material relationship disclosures in connection with social media contests, online review programs, and claims by expert endorsers outside of traditional ads.<sup>5</sup>

We have also sought to highlight the importance of disclosures in these areas with active enforcement. Recently, for example, we settled charges against Warner Brothers Home Entertainment, alleging that it failed to adequately disclose that it paid YouTube influencers thousands of dollars to post positive video reviews of the company's games.<sup>6</sup> Among other things, we emphasized that it is not enough to include disclosures in easy-to-miss description boxes of YouTube videos, rather than in the videos themselves.

Additionally, with the rise of new forms of non-traditional advertising, we provided detailed guidance last year on disclosures in "native ads," which are ads that are made to look

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<sup>3</sup> FED. TRADE COMM'N STAFF, MOBILE PRIVACY DISCLOSURES: BUILDING TRUST THROUGH TRANSPARENCY, 15-16 (Feb. 2013), available at <https://www.ftc.gov/sites/default/files/documents/reports/mobile-privacy-disclosures-building-trust-through-transparency-federal-trade-commission-staff-report/130201mobileprivacyreport.pdf>.

<sup>4</sup> See FED. TRADE COMM'N, Press Release, *FTC Publishes Final Guides Governing Endorsements, Testimonials* (Oct. 5, 2009), available at <https://www.ftc.gov/news-events/press-releases/2009/10/ftc-publishes-final-guides-governing-endorsements-testimonials>.

<sup>5</sup> FED. TRADE COMM'N, *The FTC's Endorsement Guides: What People Are Asking* (May 2015), available at <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking>.

<sup>6</sup> See FED. TRADE COMM'N, Press Release, *Warner Bros. Settles FTC Charges It Failed to Adequately Disclose It Paid Online Influencers to Post Gameplay Videos* (July 11, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/07/warner-bros-settles-ftc-charges-it-failed-adequately-disclose-it>.

like news, entertainment, or other editorial content.<sup>7</sup> We emphasize that native advertising disclosures should appear where consumers will look. They should be in front of or above a headline. If an image is the ad's focal point, then the disclosure should be on top of the image.

This guidance, along with our enforcement actions, policy statements, rules, and reports, explain how we think about disclosure issues and how companies can stay on the right side of the law.

## **II. Importance of Testing Disclosures**

Let me now turn to the importance of testing the effectiveness of disclosures. The FTC has long benefitted from empirical testing of disclosures and used it to inform our enforcement and policy efforts.

In the last 15 years, for example, with the help of the economists in our Bureau of Economics and our marketing experts in the Bureau of Consumer Protection, we have tested a number of different disclosures: financial privacy notices; testimonial disclosures; disclosures related to health claims for foods; green marketing disclosures; energy label disclosures; “up to” claims; homeopathic disclosures; and organic disclosures.<sup>8</sup>

In addition to our own research and testing, we pay attention to the research of academics and experts in marketing, behavioral economics, cognitive science, computer science, and other relevant fields.

This brings me to the reason we are here today. Our focus in this workshop is not on what must be disclosed to consumers, or even on the most effective methods of disclosing

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<sup>7</sup> FED. TRADE COMM'N, *Native Advertising: A Guide for Businesses* (Dec. 2015), *available at* <https://www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses>.

<sup>8</sup> *See, e.g.*, FTC Disclosure Evaluation Reports (Sept. 2016), *available at* [https://www.ftc.gov/system/files/documents/public\\_events/950633/ftc\\_disclosure\\_evaluation\\_reports\\_0.pdf](https://www.ftc.gov/system/files/documents/public_events/950633/ftc_disclosure_evaluation_reports_0.pdf).

information to consumers. Rather, we will focus on how to evaluate whether disclosures are effective.

For example, we know that ineffective disclosures can overwhelm, confuse, or even distract consumers from making informed choices. This is due to the number of factors that can impact the effectiveness of disclosures, including whether consumers direct their attention towards them, understand them, and are able to use that information in their decision-making.

In our recent case against Practice Fusion, for instance, we made clear that the needed disclosures should grab a consumer's attention – or as we said in the order, they should be “difficult to miss.”<sup>9</sup> In that case, we alleged that the failure to provide a clear and conspicuous disclosure that patient feedback would be posted online resulted in the inadvertent revelation of personal and sensitive health information by hundreds of patients.<sup>10</sup>

In light of recent research on how consumers process information and behave, it is also important to pay attention to ensuring that disclosures provide useful information that can translate into consumer action.

There are also other issues that we have to consider. Some critics question the effectiveness of disclosures altogether in certain areas – privacy is one example. We disagree with those critics, not only because we believe that targeted, understandable, and timely disclosures can be useful to consumers in many circumstances but also because disclosures can serve different functions, including conveying important information to consumer advocates and regulators. I can assure you, however, that we are committed to asking hard questions about the

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<sup>9</sup> *FTC v. Practice Fusion, Inc.*, No. C-4591 (F.T.C. Aug. 15, 2016) (consent order), available at <https://www.ftc.gov/system/files/documents/cases/160816practicefusiondo.pdf>.

<sup>10</sup> See FED. TRADE COMM'N, Press Release, *Electronic Health Records Company Settles FTC Charges It Deceived Consumers About Privacy of Doctor Reviews* (June 8, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/06/electronic-health-records-company-settles-ftc-charges-it-deceived>.

effectiveness of disclosures and deepening our understanding of the role disclosures play in protecting consumers and enhancing consumer welfare.

Before I close, I also want to mention an important and related conference that our Bureau of Economics is co-hosting tomorrow with the journal *Marketing Science*. Among other things, we would like to see marketing experts do more potentially high impact research in the areas of consumer protection and regulation. All of the papers presented at that conference will be posted on our website, and I encourage you to take a look.

### **III. Conclusion**

Let me conclude by emphasizing that, with this workshop, we aim to highlight the importance of empirical analysis of disclosures and encourage marketers, businesses, and other organizations to test their own disclosures and learn from researchers.

And, finally, I want to thank our speakers for being here and sharing their expertise with us and the FTC staff who organized this workshop: Joe Calandrino, Ryan Mehm, Hampton Newsome, and Michael Ostheimer from our Bureau of Consumer Protection, Laura Hosken and Jan Pappalardo from our Bureau of Economics, and our Chief Technologist, Lorrie Cranor.

Thank you for joining us. I hope you enjoy what I know will be an informative and robust discussion.