



United States of America
FEDERAL TRADE COMMISSION
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Division of Advertising Practices
Bureau of Consumer Protection

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In 2002, the staff of the Federal Trade Commission's Bureau of Consumer Protection published a letter ("2002 Search Engine Letter") advising search engines about the potential for consumers to be deceived, in violation of Section 5 of the FTC Act, unless search engines clearly and prominently distinguished advertising from natural search results.¹ After the 2002 Search Engine Letter was issued, search engines embraced the letter's guidance and distinguished any paid search results or other advertising on their websites. Since then, however, we have observed a decline in compliance with the letter's guidance.

Although the ways in which search engines retrieve and present results, and the devices on which consumers view these results, are constantly evolving, the principles underlying the 2002 Search Engine letter remain the same: consumers ordinarily expect that natural search results are included and ranked based on relevance to a search query, not based on payment from a third party.² Including or ranking a search result in whole or in part based on payment is a form of advertising. To avoid the potential for deception, consumers should be able to easily distinguish a natural search result from advertising that a search engine delivers.

In recent years, the features traditional search engines use to differentiate advertising from natural search results have become less noticeable to consumers, especially for advertising located immediately above the natural results ("top ads"). Indeed, a recent online survey by a

¹ Letter from Heather Hipsley, Acting Associate Director for Advertising Practices, to Gary Ruskin, Executive Director of Commercial Alert ("2002 Search Engine Letter"), *available at* <http://www.ftc.gov/os/closings/staff/commercialalertletter.shtm>.

² For example, a Pew Research Center survey conducted in 2005 reported that 45% of search engine users said they would stop using a search engine if it did not make it clear that some results were paid or sponsored. Pew Internet & Am. Life Project, *Search Engine Users: Internet searchers are confident, satisfied and trusting – but they are also unaware and naïve*, at 20 (Jan. 23, 2005), <http://www.pewinternet.org/Reports/2005/Search-Engine-Users/1-Summary-of-Findings.aspx> ("2005 Pew Search Engine Survey").

search strategies company found that nearly half of searchers did not recognize top ads as distinct from natural search results and said the background shading used to distinguish the ads was white.³

In addition, many general search engines now often integrate or offer specialized or vertical search options as part of their search service. This allows consumers to narrow their search to particular categories of information, such as news, images, local businesses, or consumer goods. Although sometimes specialized search is just another way of organizing and presenting a subset of natural results, in other instances, it is something different entirely. Sometimes the results returned as part of a specialized search are based at least in part on payments from a third party. If that is the case, it is also a form of advertising and should be identified as such to consumers.

Given the importance of distinguishing advertising from natural results in a clear and prominent manner, we recommend you review this letter and make any necessary changes to conform to this guidance.

I. Clarity and Prominence of Advertising Disclosures Are Key

Even with the growing number of searches conducted on mobile devices, search apps, and social media, the predominant means of search remains entering terms into a text-based box and receiving search results in return. Subsequent to the 2002 letter, most search engines engaged in this form of search have adopted similar conventions to distinguish any advertising from natural search results, usually giving advertising results a different background color or “shading” combined with a text label.⁴ To the extent that search engines continue to use this convention, we encourage them to consider several factors to ensure that any labels and visual cues used are sufficiently noticeable and understandable to consumers.⁵

³ SEOBook, *Consumer Ad Awareness in Search Results*, *2, 7-8 (Apr. 15, 2012), <http://www.seobook.com/consumer-ad-awareness-search-results>. Earlier published research has reported similar findings. For example, in the 2005 Pew Research Center survey, 62% of searchers were not even aware of the distinction between paid and non-paid results, with only 18% saying they could always differentiate paid from non-paid results. 2005 Pew Search Engine Survey at ii, 17.

⁴ Specifically, these conventions include: (1) labeling the advertising results as “sponsored” or “ad”; (2) shading any advertising result with a different background color (“background shading”); and/or (3) segregating advertising from the natural results, often placing the advertising results above, below, or to the right-hand side of the natural results.

⁵ Disclosures must be “sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression.” *Removatron Int’l Corp. v. FTC*, 884 F. 2d 1489, 1497 (1st Cir. 1989), *aff’d* 111 F.T.C. 206 (1988). Indeed, “simple, unequivocal” disclosures that are “conspicuously and prominently made” are required to overcome any

We understand that there is not any one specific method for clearly and prominently distinguishing advertising from natural search results, and that search engines may develop new methods for distinguishing advertising results. Any method may be used, so long as it is noticeable and understandable to consumers.⁶

A. Visual Cues

We have observed that, increasingly, search engines have introduced background shading that is significantly less visible or “luminous” and that consumers may not be able to detect on many computer monitors or mobile devices. Reliance on this method to distinguish advertising results requires that search engines select hues of sufficient luminosity to account for varying monitor types, technology settings, and lighting conditions.⁷ Accordingly, we recommend that in distinguishing any top ads or other advertising results integrated into the natural search results, search engines should use: (1) more prominent shading that has a clear outline; (2) a prominent border that distinctly sets off advertising from the natural search results; or (3) both prominent shading and a border.

B. Text Labels

In addition to the visual cues a search engine may use to distinguish advertising, it also should have a text label that: (1) uses language that explicitly and unambiguously conveys if a search result is advertising; (2) is large and visible enough for consumers to notice it; and (3) is located near the search result (or group of search results) that it qualifies and where consumers will see it.⁸

misleading impressions created. *Thompson Medical Co.*, 104 F.T.C. 648, 783 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986).

⁶ See *FTC Policy Statement on Deception*, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174 n.20 (1984) (“An interpretation may be reasonable even though it is not shared by a majority of consumers in the relevant class, or by particularly sophisticated consumers. A material practice that misleads a significant minority of reasonable consumers is deceptive.”).

⁷ We recognize the need for flexibility in optimizing web pages for viewing on mobile devices, including selecting an attractive color scheme that displays nicely. However, in designing web pages, search engines also should ensure that any visual cues used to distinguish advertising, such as background shading, are sufficiently visible on both mobile devices and desktop computers. Indeed, a search engine at a minimum can determine whether a web page will be displayed on a mobile device as opposed to desktop computer, based on the operating system detected. Consequently, we believe that search engines should consider using web pages of different luminosities for mobile devices and desktop computers.

⁸ Further, if a voice interface is used to deliver search results, a search engine should make an audio disclosure that is of an adequate volume and cadence for ordinary listeners to hear and comprehend it.

We have observed that search engines have reduced the font size of some text labels to identify top ads and other advertising and often locate these labels in the top right-hand corner of the shaded area or “ad block,” as is the case with top ads. Consumers may not as readily notice the labels when placed in the top right-hand corner, especially when the labels are presented in small print and relate to more than one result. Web research suggests that web pages are normally viewed from left-center to right, with substantially less focus paid to the right-hand side.⁹

Thus, we recommend that search engines place any text label used to distinguish advertising results immediately in front of an advertising result, or in the upper-left hand corner of an ad block, including any grouping of paid specialized results, in adequately sized and colored font.

In addition, to avoid the potential for ambiguity and deception, search engines should consider using the same terminology to label any form of advertising delivered to consumers. For example, if a search engine labels some advertisements as “ads,” it should consider using the same label for any other advertisements. Using different terms to label various types of advertisements risks confusing consumers.

II. New Search Platforms

Online search is far from static, and continues to evolve. Indeed, in the past few years, the growth of social media and mobile apps, and the introduction of voice assistants on mobile devices, have offered consumers new ways of getting information. Regardless of the precise form search may take in the future, the long-standing principle of making advertising distinguishable from natural results will remain applicable. For example, if a social network were to stream recommended restaurants based on what a particular consumer’s social contacts have enjoyed, it should clearly distinguish as advertising any information feeds included or prioritized based in whole or in part on payments from a third party.

We recognize that business models for these new search platforms are changing and that flexibility is required in developing the most effective methods for clearly and prominently differentiating advertising from other information. To ensure that advertising is easily distinguishable on any future search platform, we encourage businesses to consult the guidance provided in this letter, as well as staff’s recently published guidelines for mobile and other online advertisers, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising*.¹⁰

⁹ See, e.g., Jakob Nielsen, Horizontal Attention Leans Left (Apr. 26, 2010), <http://www.useit.com/alertbox/horizontal-attention.html>.

¹⁰ FTC Staff Revises Online Advertising Disclosure Guidelines: “Dot Com Disclosures” Guidance Updated to Address Current Online and Mobile Advertising Environment (Mar. 4, 2013), <http://ftc.gov/opa/2013/03/dotcom.shtm>.

III. Conclusion

Search engines provide invaluable benefits to consumers. By using search engines, consumers can find relevant and useful information, typically at no charge. At the same time, consumers should be able to easily distinguish natural search results from advertising that search engines deliver. Accordingly, we encourage you to review your websites or other methods of displaying search results, including your use of specialized search, and make any necessary adjustments to ensure you clearly and prominently disclose any advertising. In addition, as your business may change in response to consumers' search demands, the disclosure techniques you use for advertising should keep pace with innovations in how and where you deliver information to consumers.

We appreciate your cooperation in ensuring your business practices conform to the supplemental guidance provided in this letter. Please contact Commission staff with any questions you may have about this letter.

Very truly yours,

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