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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 FEDERAL TRADE COMMISSION,
14 Plaintiff,
15 v.
16 COMMERCE PLANET, INC., et al,
17 Defendants.
18

Case No. SACV-09-01324 CJC
(RNBx)

**Memorandum of Points and
Authorities in Support of FTC's
Motion to Dismiss Defendant
Gugliuzza's Counterclaim**

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INTRODUCTION

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2 On May 4, 2010, Defendant Charles Gugliuzza (“Gugliuzza”) filed his First
3 Amended Answer to Complaint and Counterclaim (“Amended
4 Answer/Counterclaim”) (Docket No. 43). The counterclaim asserts that the “unfair
5 or deceptive acts or practices” language of Section 5 of the FTC Act, 15 U.S.C. §
6 45(a), is “vague in so far as it invites and has resulted in arbitrary and
7 discriminatory enforcement by failing to provide explicit standards” (Amended
8 Answer/Counterclaim ¶ 66) and, as a result, Gugliuzza “is suffering from unlawful
9 federal government action by Counterdefendant and has suffered injury.”
10 (Amended Answer/Counterclaim ¶ 67) Gugliuzza’s counterclaim smacks of
11 desperation. The Commission’s Complaint was filed in November, 2009, yet
12 Gugliuzza waited to file his Counterclaim until after the Commission’s Rule 26
13 production, which included thousands of emails and other incriminating
14 documents. As the following discussion makes clear, Gugliuzza’s challenge to the
15 constitutionality of the FTC Act falls far short of the standards for such a challenge
16 and, therefore, fails to state a claim upon which relief can be granted. Plaintiff
17 respectfully requests that Gugliuzza’s counterclaim be dismissed with prejudice.

I. PROCEDURAL BACKGROUND

18
19 The FTC’s Complaint (Docket No. 1) alleges two counts. Count I alleges
20 deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
21 § 45(a). Count II alleges unfair acts or practices in violation of the same statute.
22 Shortly after the FTC filed its Complaint, this Court entered stipulated Final Orders
23 against three of the four defendants in this action. (*See* Docket Nos. 7, 8 and 9)

24 On January 19, 2010, Defendant Gugliuzza (“Gugliuzza”) moved to dismiss
25 the Complaint. (Docket No. 13) On February 12, 2010, the Court denied
26 Gugliuzza’s motion. (Docket No. 19) Two weeks later, Gugliuzza filed his
27 Answer (Docket No. 20), which raised several affirmative defenses, but did not
28 contain a counterclaim. On March 19, 2010, Plaintiff moved to strike five of those

1 affirmative defenses (Docket No. 26), and on April 14, this Court granted
2 Plaintiff's motion to strike with leave to amend. (Docket No. 35). On May 4,
3 2010, Gugliuzza filed an Amended Answer and Counterclaim. (Docket No. 43)

4 **II. GUGLIUZZA'S COUNTERCLAIM**

5 Gugliuzza alleges that the core basis of the Federal Trade Commission's
6 consumer protection authority – the prohibition of “unfair or deceptive acts or
7 practices” – is unconstitutionally vague, and therefore violates his right to due
8 process under the Fifth Amendment of the United States Constitution, insofar as it
9 “invites and has resulted in arbitrary and discriminatory enforcement by failing to
10 provide explicit standards.” (Amended Answer/Counterclaim ¶ 66)

11 **III. STANDARD OF REVIEW**

12 Under Fed. R. Civ. P. 12(b), a party may assert the defense that a claim for
13 relief fails to state a claim upon which relief can be granted either in a responsive
14 pleading or by motion. Fed. R. Civ. P. 12(b)(6). A motion to dismiss tests the
15 legal sufficiency of the claims asserted in the counterclaim. *Navarro v. Block*, 250
16 F.3d 729, 732 (9th Cir. 2001). When a court evaluates a motion under Rule
17 12(b)(6), it must accept all material allegations in the challenged pleading as true
18 and construe them in the light most favorable to the non-moving party. *Id.* A
19 court may dismiss a claim either for “lack of cognizable legal theory,” or for
20 “insufficient facts under a cognizable legal claim.” *Aguilar v. Cabrillo Mortgage*,
21 2010 U.S. Dist LEXIS 46003, *2 (S.D. Calif. 2010), *citing SmileCare Dental*
22 *Group v. Delta Dental Plan of Calif.*, 88 F.3d 780, 783 (9th Cir. 1996). The court is
23 not obliged to assume that a party can prove facts that it has not alleged.
24 *Associated Gen'l Contractors, Inc. v. Calif. State Council of Carpenters*, 459 U.S.
25 519, 526 (1983). A motion to dismiss should be granted if the complaint does not
26 proffer facts stating a claim for relief that is plausible on its face. *Bell Atlantic*
27 *Corp. v. Twombly*, 550 U.S. 544, 558-59 (2007). “[W]here the well-pleaded facts
28 do not permit the court to infer more than the mere possibility of misconduct, the

1 complaint has alleged - but it has not ‘show[n]’ - ‘that the pleader is entitled to
2 relief.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009).

3 4 IV. ARGUMENT

5 A statute may be impermissibly vague under the Due Process Clause “if its
6 prohibitions are not clearly defined,” so that it does not “give the person of
7 ordinary intelligence a reasonable opportunity to know what is prohibited,” or does
8 not “provide explicit standards” for those who enforce the statute. *Grayned v. City*
9 *of Rockford*, 408 U.S. 104, 108 (1972).¹ See also *FTC v. National Urological*
10 *Group, Inc.*, 645 F. Supp. 2d 1167, 1186-87 (N.D. Ga. 2008), citing *Hill v.*
11 *Colorado*, 530 U.S. 703, 732 (2000) (statute may be impermissibly vague if it
12 either fails to provide people of ordinary intelligence a reasonable opportunity to
13 understand what conduct it prohibits or authorizes or encourages arbitrary and
14 discriminatory enforcement). The fact that a statute may require the exercise of
15 judgment because the standards are context-specific does not render it
16 impermissibly vague. *FTC v. National Urological Group*, 645 F. Supp. 2d at
17 1186. Nor is a statute void for vagueness because it raises difficult questions of
18 fact, but only because it fails to articulate a definite standard. *Id.* at 1187, citing
19 *United States v. Shackney*, 333 F.2d 475, 488 (2d Cir. 1964) (concurring opinion).

20 Economic regulation, such as is involved here, “is subject to a less strict
21 vagueness test because its subject matter is often more narrow, and because
22 businesses, which face economic demands to plan behavior carefully, can be
23 expected to consult relevant legislation in advance of action.” *Village of Hoffman*
24 *Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982). “The

25
26 ¹ Even though it alleges that the FTC’s enforcement “violates Gugliuzza’s and others’
27 right to due process,” which could suggest a facial attack, the counterclaim should be analyzed
28 as an as-applied attack on the FTC Act. See *Chapman v. United States*, 500 U.S. 453, 467
(1991) (Where First Amendment freedoms are not infringed, a vagueness claim must be
evaluated as the statute is applied to the facts of this case).

1 regulated enterprise may have the ability to clarify the meaning of the regulation
2 by its own inquiry, or by resort to an administrative process.” *Id.* Furthermore, the
3 Court has “expressed greater tolerance of enactments with civil rather than
4 criminal penalties because the consequence of imprisonment are qualitatively less
5 severe.” *Id.* 498-99.

6 In the following sections, we demonstrate that, far from being impermissibly
7 vague, Section 5 of the FTC Act, together with regulations promulgated by the
8 Commission and court and Commission rulings interpreting it, set out clear and
9 consistent standards for both “deception” and “unfairness.” Moreover, Gugliuzza
10 has failed to allege any facts that, if proved, would support his claim that Section 5
11 is vague or that the Commission’s enforcement of it has been arbitrary and
12 discriminatory.

13 **A. The FTC Act’s “Unfair or Deceptive Acts or Practices” Standard**
14 **is Not Vague**

15 Both “unfair” and “deceptive” have clear meanings in the context of the
16 enforcement of the FTC Act. The definition of “unfair” is set out in Section 5(n)
17 of the Act, which provides that an act or practice is unfair if it
18 causes or is likely to cause substantial injury to consumers which is not
19 reasonably avoidable by consumers themselves and not outweighed by
20 countervailing benefits to consumers or to competition.

21 15 U.S.C. § 45(n). Section 5(n) was added to the FTC Act in 1994 precisely to
22 provide clarity to the concept of “unfairness.” *FTC v. IFC Credit Corp.*, 543 F.
23 Supp. 2d 925, 934-35, 937 (N.D. Ill. 2008). Numerous courts, including in this
24 Circuit, have granted relief to the Commission on claims of unfairness brought
25 under this standard. *See, e.g., FTC v. Neovi, Inc.* 598 F. Supp. 2d 1104, 1112-16
26 (S.D. Calif. 2008), *aff’d* 2010 U.S. App. LEXIS 9888 (9th Cir. 2010); *FTC v.*
27 *Inc21.com Corp.*, 2010 U.S. Dist. LEXIS 14688, *31 (N.D. Calif. 2010); *FTC v.*
28 *J.K. Publications, Inc.*, 99 F. Supp. 2d 1176, 1201-03 (C.D. Calif. 2000); *see also*

1 *FTC v. Accusearch, Inc.*, 570 F.3d 1187, 1193-94 (10th Cir. 2009); *FTC v. IFC*
2 *Credit*, 543 F. Supp. 2d at 945-48. Several courts have applied the unfairness
3 standard of Section 5(n) to allegations of unauthorized billing comparable to the
4 unfairness allegation in the Commission’s Complaint. *See FTC v. Neovi*, 598 F.
5 Supp. 2d at 1112-16; *FTC v. J.K. Publications*, 99 F. Supp. 2d at 1201-03.

6 The definition of “deceptive” is similarly clear. In 1983, in response to an
7 inquiry from a Congressional committee, the Commission issued its Deception
8 Statement, which was subsequently appended to the Commission’s decision in
9 *Cliffdale Associates*, 103 F.T.C. 110, 174 (1984). According to the Commission’s
10 Deception Statement, an act or practice is deceptive if (1) there is a representation,
11 omission or practice, (2) that is likely to mislead consumers acting reasonably
12 under the circumstances, and (3) the representation, omission or practice is
13 material. *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994). The
14 *Pantron I* court found that the Commission “has consistently adhered to the
15 *Cliffdale* standard.” *Id.* (citations omitted). *See also FTC v. Cyberspace.com,*
16 *LLC*, 453 F.3d 1196, 1199-1202 (9th Cir. 2006); *Novartis Corp. v. FTC*, 223 F.3d
17 783, 786-87 (D.C. Cir. 2000); *Kraft, Inc. v. FTC*, 970 F.2d 311, 314 (7th Cir. 1992).

18 In the specific context of the deceptive conduct alleged in this case, courts
19 and the Commission have consistently enunciated a “clear and conspicuous”
20 standard when assessing whether an advertiser has failed to disclose material terms
21 of an offer or contract. As early as 1970, the Commission issued a Statement of
22 Enforcement Policy that set out the standards for clear and conspicuous disclosures
23 in the context of television advertising. CCH Trade Reg. Rptr. ¶ 7569.09 (Oct. 21,
24 1970), *cited in* the Deception Statement, *Cliffdale Associates*, 103 F.T.C. at 184.
25 In 1973, the Commission promulgated a Trade Regulation Rule regarding the Use
26 of Negative Option Plans by Sellers in Commerce, 16 C.F.R. Part 425, which
27 included the requirement that, in connection with the use of a negative option plan,
28 such as that alleged in this case, sellers were required to “clearly and conspicuously

1 disclose the material terms of the plan.” 16 C.F.R. § 425.1(a)(1). Several statutes
2 and trade regulation rules that the Commission enforces incorporate a “clear and
3 conspicuous” standard or its equivalent.²

4 With the advent of internet sales, the Commission applied and courts have
5 adopted the “clear and conspicuous” standard in connection with online marketing.
6 *See, e.g., FTC v. Grant Connect, LLC*, 2009 U.S. Dist. LEXIS 94201, *24-25 (D.
7 Nev. 2009); *FTC v. Sili Neutraceuticals, LLC*, 2008 U.S. Dist. LEXIS 105683, *6
8 (N.D. Ill. 2008); *FTC v. Odysseus Marketing*, 2006 U.S. Dist. LEXIS 30230, *11-
9 12 (D. N.H. 2006) (stipulated preliminary injunction); *FTC v. Davison Associates*,
10 431 F.Supp.2d 548, 556 (W.D. Pa. 2006); *FTC v. J.K. Publications, Inc.*, 2000
11 U.S. Dist. LEXIS 14688, *7 (C.D. Calif. 2000). In May, 2000, the Commission’s
12 Bureau of Consumer Protection published “Dot.Com Disclosures: Information
13 about Online Advertising,” a guide for businesses on how FTC law regarding
14 disclosures applies in the context of online marketing.³ It recapitulates earlier
15 Commission law on disclosures:

16 Disclosures that are required to prevent an ad from being misleading, to
17 ensure that consumers receive material information about the terms of a
18 transaction or to further public policy goals, must be clear and conspicuous.
19 In evaluating whether disclosures are likely to be clear and conspicuous in
20 online ads, advertisers should consider the *placement* of the disclosure in an
21 ad and its *proximity* to the relevant claim.

22 Dot.Com Disclosures at p. 1 (*italics in original*).

23 ² *See, e.g.*, 15 U.S.C. § 70b(i) (Textile Fiber Products Identification Act); 15 U.S.C. §
24 1667a (Consumer Leasing Act); 16 C.F.R. Part 425 (Use of Negative Option Plans by Sellers in
25 Commerce); 16 C.F.R. Part 432 (Power Output Claims for Amplifiers Utilized in Home
26 Entertainment Products); 16 C.F.R. Part 435 (Mail Order Merchandise); 16 C.F.R. Part 436
27 (Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity
28 Ventures); 16 C.F.R. Part 453 (Funeral Industry Practices); 16 C.F.R. Part 460 (Labeling and
Advertising of Home Insulation).

³ A copy of the Dot.Com Disclosures publication is attached as Exhibit 1 to this
Memorandum. It is also available at <http://www.ftc.gov/bcp/edu/pubs/ecommerce/bus41.pdf>.

1 The history of the “unfair or deceptive” standard demonstrates emphatically
2 that the FTC Act articulates a definite standard, both in general and in the context
3 of this case. There is no set of facts that Gugliuzza can prove under which he can
4 show that Section 5 of the FTC Act is impermissibly vague. His counterclaim
5 should be dismissed on that basis alone.

6 **B. Gugliuzza has Failed to Allege Facts Sufficient to Show that the**
7 **FTC’s “Unfair or Deceptive” Standard is Impermissibly Vague**

8 Furthermore, Gugliuzza’s only allegations that arguably go to the question
9 of whether Section 5 is vague as applied in this matter are his assertions that
10 Commission staff have not explained the rationale for the determination that the
11 defendants’ conduct violated Section 5. (Amended Answer/Counterclaim ¶¶ 22,
12 25, 60, 61) Such informal statements do not provide a sufficient basis for a
13 vagueness challenge. *United States v. Lachman*, 387 F.3d 42, 59 (1st Cir. 2004)
14 (holding that informal statements, such as ones made at industry seminars, do not
15 render a regulation unconstitutionally vague).⁴

16 Specifically, the counterclaim includes no factual allegations that address the
17 elements of a “vagueness” claim. It does not allege facts to support the contention
18 that the FTC Act or interpretations of it do not “give the person of ordinary
19 intelligence a reasonable opportunity to know what is prohibited,” or do not
20 “provide explicit standards” for those who enforce the statute. *Grayned*, 408 U.S.
21 at 108. “A vagueness challenge will not be upheld if judicial explication of a
22 statute provides sufficient clarity to afford fair notice.” *United States v. Bohonus*,
23 628 F.2d 1167, 1174 (9th Cir. 1980); *see also Grayned*, 408 U.S. at 111-12
24 (relying on state court interpretations of statute to find no vagueness); *United*
25 *States v. Fitzgerald*, 676 F.Supp. 949, 952 (N.D. Cal. 1987); *Daily v. Bond*, 623
26 F.2d 624, 626 (9th Cir. 1980). Given the many cases interpreting and applying

27
28 ⁴ The case also indicates that formal policy statements suffice to provide guidance.

1 Section 5’s “unfair and deceptive practices” language, the counterclaim, in order to
2 survive a motion to dismiss, must also allege that Defendants were unable to
3 discern applicable standards by examining relevant case law. Similarly, the
4 Commission’s regulations, such as “Use of Negative Option Plans by Sellers in
5 Commerce,” 16 C.F.R. Part 425, provide additional clarity. *Dial Information*
6 *Servs. Corp. of New York v. Thornburgh*, 938 F.2d 1535, 1540-51 (2d Cir. 1991)
7 (relying on regulation to demonstrate absence of vagueness). The counterclaim
8 does not allege that the Commission’s regulations fail to provide guidance.
9 Gugliuzza’s meager allegation and his failure to allege, even in a conclusory way,
10 facts necessary to show that Section 5 is impermissibly vague are an independent
11 basis for dismissing his counterclaim.

12 **C. Gugliuzza has Failed to Allege Facts Sufficient to Show that the**
13 **FTC’s “Unfair or Deceptive” Standard has been Applied in an**
14 **Arbitrary or Discriminatory Manner**

15 The bulk of the factual allegations in Gugliuzza’s Counterclaim appear to go
16 to the claim that the Commission’s enforcement of Section 5 of the FTC Act’s
17 “deceptive and unfair” standard is vague insofar as it “invites and has resulted in
18 arbitrary and discriminatory enforcement by failing to provide explicit standards.”
19 (Amended Answer/Counterclaim ¶ 66) In the previous discussion, we
20 demonstrated that Section 5 of the FTC Act, on its face and as it has been
21 developed by the Commission and the courts, is not impermissibly vague, but,
22 rather, articulates a clear standard of what constitutes lawful conduct. In this
23 section, we demonstrate that Gugliuzza’s alleged facts cannot support a showing
24 that the Commission’s enforcement has been arbitrary or discriminatory.

25 The factual allegations in Gugliuzza’s counterclaim fall into several
26 categories:

- 27 1. General jurisdictional allegations and descriptions of the parties
(Amended Answer/Counterclaim ¶¶ 1-4);
- 28 2. Allegations concerning Commerce Planet’s organizational structure

- 1 and business practices (Amended Answer/Counterclaim ¶¶ 5-26);
- 2 3. Allegations concerning individuals connected with Commerce Planet
- 3 or its subsidiaries that the FTC knew about but declined to name in
- 4 the Complaint (Amended Answer/Counterclaim ¶¶ 27-46);
- 5 4. Allegations relating to the settlements between the Commission and
- 6 Defendants Michael Hill and Aaron Gravitz and a comparison of
- 7 between their settlements and the relief demanded of Gugliuzza
- 8 (Amended Answer/Counterclaim ¶¶ 47-49);
- 9 5. Allegations that the practices Commerce Planet and its subsidiaries
- 10 engaged in, as described in the Complaint, were in conformity with
- 11 industry standards (Amended Answer/Counterclaim ¶¶ 50-51);
- 12 6. An allegation that Gugliuzza had conferred with counsel and that the
- 13 conduct he engaged in was consistent with that advice of counsel
- 14 (Amended Answer/Counterclaim ¶ 52);
- 15 7. Allegations concerning other online marketing companies that have
- 16 not been sued by the FTC (Amended Answer/Counterclaim ¶¶ 53-59);
- 17 8. Allegations that the FTC did not explain its rationale for suing
- 18 Commerce Planet or the individual defendants prior to filing this
- 19 action to Gugliuzza's satisfaction (Amended Answer/Counterclaim ¶¶
- 20 60-61);
- 21 9. Allegations that the FTC has used Section 5 to selectively target
- 22 certain companies and individuals with the sole aim of punishing
- 23 Gugliuzza (Amended Answer/Counterclaim ¶¶ 62, 64); and
- 24 10. An allegation that the FTC's regulatory scheme is unlawful because
- 25 the "deceptive and unfair practices" standard is arbitrary, capricious
- 26 and discriminatory, (Amended Answer/Counterclaim ¶ 63)

27 In short, Gugliuzza alleges that the vagueness of the "unfair or deceptive
28 acts or practices" standard permits the Commission to choose whom it sues, that is

1 to engage in prosecutorial discretion. As “proof” of the arbitrary and
2 discriminatory nature of the Commission’s enforcement, Gugliuzza charges

- 3 1. That there were other people and entities that the Commission could
4 possibly have named in its Complaint, but did not;
- 5 2. That there are other companies that may be engaged in comparable
6 conduct that the Commission could have sued, but did not; and
- 7 3. That the settling defendants in this case had their judgments
8 suspended based on their ability to pay, while Gugliuzza faces the
9 possibility of a multi-million dollar judgment in restitution.

10 The Court must accept these propositions as true. Taken together, however,
11 they establish only the unremarkable propositions that a federal regulatory agency
12 often chooses not to sue everyone who might possibly be named in a particular
13 action, that an agency almost certainly has to choose to among the available targets
14 of its enforcement, and that one of the benefits of settling a case is eliminating the
15 risk of an adverse judgment. None of these even begins to rise to the level of a
16 constitutional attack on the FTC’s statutory scheme or enforcement policies.

17 Gugliuzza’s burden in pleading and proving that the Commission’s
18 enforcement of Section 5 is arbitrary and discriminatory is heavy, because the
19 applicable “standard is a demanding one.” *United States v. Armstrong*, 517 U.S.
20 456, 463 (1996). “The decision whether to prosecute may not be based on ‘an
21 unjustifiable standard such as race, religion, or other arbitrary classification,’ *Id.*,
22 quoting *Oyler v. Boles*, 368 U.S. 448, 456 (1962), nor can it be based upon a
23 defendant’s exercise of protected statutory and constitutional rights. *Wayte v.*
24 *United States*, 470 U.S. 598, 608 (1985). However, the “presumption of
25 regularity” supports an agency’s prosecutorial decisions and, in the absence of
26 clear evidence to the contrary, courts presume that it has properly discharged its
27 official duties. *Armstrong*, 517 U.S. at 464; see also *Moog Indus., Inc. v. FTC*, 355
28 U.S. 411, 413 (1958) (Commission alone is empowered to develop an enforcement

1 policy best calculated to achieve the ends contemplated by Congress and to
2 allocate its available funds and personnel in such a way as to execute its policy
3 efficiently and economically); *Wayte v. United States*, 470 U.S. at 607
4 (government retains broad discretion as to whom to prosecute).

5 In order to defeat the courts' traditional deference to agency prosecutorial
6 decisions, a defendant must demonstrate that the law enforcement action is
7 "directed so exclusively against a particular class of persons ... with a mind so
8 unequal and oppressive' that the system of prosecution amounts to a 'practical
9 denial' of equal protection of the law." *Armstrong*, 517 U.S. at 464-65 (quoting
10 *Yick Ho v. Hopkins*, 118 U.S. 346, 373 (1886)). Accordingly, the "claimant must
11 demonstrate that the federal prosecutorial policy 'had a discriminatory effect and
12 that it was motivated by a discriminatory purpose.'" *Id.* at 465 (quoting *Wayte*, 470
13 U.S. at 608). He or she must also "produce some evidence of differential treatment
14 of similarly situated members of other races or protected classes." *Armstrong*, 517
15 U.S. at 470; *see also C.E. Carlson, Inc. v. SEC*, 859 F.2d 1429, 1437 (10th Cir.
16 1988).

17 Gugliuzza has not alleged any of these facts. Nowhere does the
18 counterclaim allege that Gugliuzza is a member of a protected class or was
19 exercising constitutionally protected rights. The counterclaim seems to suggest
20 that it was impermissible for the FTC to bring an enforcement action against
21 Gugliuzza because he failed to settle. (Amended Answer/Counterclaim ¶¶ 24, 25,
22 47, 48) Failure to settle, however, is a rational basis for prosecutorial decision
23 making. *Amato v. SEC*, 18 F.3d 1281, 1284-85 (5th Cir. 1994). Gugliuzza also
24 suggests that the FTC purposefully singled out the Defendants here while not
25 proceeding against other potential parties whose conduct may have contributed to
26 the injury in this case or other companies engaged in similar conduct. (Amended
27 Answer/Counterclaim ¶¶ 56-60) The Ninth Circuit's recent *Neovi* decision
28 suggests that a defendant may be held liable for violations of the FTC Act, even

1 where other entities may have contributed to the consumer injury. *Neovi*, 2010
2 U.S. App. LEXIS 9888 at *8-10.⁵ In addition, allegations that companies selling
3 similar products did not have enforcement actions brought against them is
4 insufficient to support a claim of selective prosecution. *United States v. Pan*
5 *American Pharmaceutical, Inc.*, 1990 U.S. Dist. LEXIS 12275 at *16 (W.D. Mich.
6 1990). The counterclaim also may suggest that the FTC impermissibly threatened
7 to ruin Gugliuzza economically. (Amended Answer/Counterclaim ¶¶ 24, 25)
8 However, even where it was alleged that a prosecution was intended to drive
9 someone out of business, such motive was found not to be of a “constitutional
10 dimension” and therefore insufficient for a selective prosecution claim. *Tri-State*
11 *Rubbish, Inc. v. Waste Management, Inc.*, 803 F.Supp. 451, 463 (D. Me. 1992).

12 Even assuming that Gugliuzza could ultimately demonstrate that Section 5
13 of the FTC Act was impermissibly vague, he has failed to allege sufficient facts to
14 support his claim that such vagueness allowed the Commission to enforce the
15 statute in a manner that was arbitrary or discriminatory. Gugliuzza’s counterclaim
16 should be dismissed on this basis.

17 IV. CONCLUSION

18 Gugliuzza has failed to allege facts sufficient to support either part of his
19 counterclaim. He has not alleged facts that would support his claim that Section 5
20 of the FTC Act is impermissibly vague, which it most certainly is not. He has not
21 alleged facts sufficient to support his claim that the Commission’s enforcement of
22 Section 5 is arbitrary and discriminatory. Most importantly, a plain reading of
23 Section 5 of the FTC Act and pronouncements by the Commission and the courts
24

25 ⁵ The *Neovi* court was not addressing the question of selective prosecution. Rather, the
26 court rejected defendants’ argument that they were not liable because other parties had engaged
27 in the actual fraud. “At most, [defendant’s] argument shows that [it] and the users each
28 contributed to the [violative conduct]. But, even granting this characterization, [defendant] is not
discharged from liability under the FTC Act – a single violation of the Act may have more than
one perpetrator. *See, e.g., FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d 627, 630 (7th Cir. 2005)
(holding multiple defendants liable under § 5 of FTC Act).” 2010 U.S. App. 9888 at *9-10.

1 interpreting it make it clear that “unfairness” and “deception” are both clearly
2 articulated standards. For these reasons, Plaintiff FTC respectfully requests that
3 the Court dismiss Gugliuzza’s Counterclaim without leave to amend.

4
5 Dated: May 25, 2010

Respectfully submitted,

6 /s/ David M. Newman
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**EXHIBIT 1:
DOT.COM DISCLOSURES**

D ● T C ● M

DISCLOSURES

INFORMATION ABOUT ONLINE ADVERTISING

D  T C  M

DISCLOSURES

OVERVIEW

Although the number of companies advertising online—and the number of consumers shopping online—are soaring, fraud and deception may dampen consumer confidence in the e-marketplace. But cyberspace is not without boundaries, and fraud and deception are unlawful no matter what the medium. The FTC has enforced and will continue enforcing its consumer protection laws online to ensure that products and services are described truthfully in online ads and that consumers get what they pay for. These activities benefit consumers as well as sellers, who expect and deserve a fair marketplace.

Many of the general principles of advertising law apply to Internet ads, but new issues arise almost as fast as technology develops. This booklet describes the information businesses should consider as they develop online ads to ensure that they comply with the law. Briefly,

- ① The same consumer protection laws that apply to commercial activities in other media apply online. The FTC Act’s prohibition on “unfair or deceptive acts or practices” encompasses Internet advertising, marketing and sales. In addition, many Commission rules and guides are not limited to any particular medium used to disseminate claims or advertising, and therefore, apply to online activities.
- ② Disclosures that are required to prevent an ad from being misleading, to ensure that consumers receive material information about the terms of a transaction or to further public policy goals, must be clear and conspicuous. In evaluating whether disclosures are likely to be clear and conspicuous in online ads, advertisers should consider the *placement* of the disclosure in an ad and its *proximity* to the relevant claim. Additional considerations include: the *prominence* of the disclosure; whether items in other parts of the ad *distract attention* from the disclosure; whether the ad is so lengthy that the disclosure needs to be *repeated*; whether disclosures in audio messages are presented in an adequate *volume and cadence* and visual disclosures appear for a sufficient *duration*; and, whether the language of the disclosure is *understandable* to the intended audience.
- ③ To make a disclosure clear and conspicuous, advertisers should:
 - Place disclosures near, and when possible, on the same screen as the triggering claim.
 - Use text or visual cues to encourage consumers to scroll down a Web page when it is necessary to view a disclosure.
 - When using hyperlinks to lead to disclosures,
 - make the link obvious;
 - label the hyperlink appropriately to convey the importance, nature and relevance of the information it leads to;
 - use hyperlink styles consistently so that consumers know when a link is available;

- place the hyperlink near relevant information and make it noticeable;
 - take consumers directly to the disclosure on the click-through page;
 - assess the effectiveness of the hyperlink by monitoring click-through rates and make changes accordingly.
- Recognize and respond to any technological limitations or unique characteristics of high tech methods of making disclosures, such as frames or pop-ups.
 - Display disclosures prior to purchase, but recognize that placement limited only to the order page may not always work.
 - Creatively incorporate disclosures in banner ads or disclose them clearly and conspicuously on the page the banner ad links to.
 - Prominently display disclosures so they are noticeable to consumers, and evaluate the size, color and graphic treatment of the disclosure in relation to other parts of the Web page.
 - Review the entire ad to ensure that other elements—text, graphics, hyperlinks or sound—do not distract consumers’ attention from the disclosure.
 - Repeat disclosures, as needed, on lengthy Web sites and in connection with repeated claims.
 - Use audio disclosures when making audio claims, and present them in a volume and cadence so that consumers can hear and understand them.
 - Display visual disclosures for a duration sufficient for consumers to notice, read and understand them.
 - Use clear language and syntax so that consumers understand the disclosures.
- ④ Commission rules and guides that use specific terms—“written,” “writing,” “printed” or “direct mail”—are adaptable to new technologies.
- Rules and guides that apply to written ads or printed materials also apply to visual text displayed on the Internet.
 - If a seller uses email to comply with Commission rule or guide notice requirements, the seller should ensure that consumers understand that they will receive such information by email and provide it in a form that consumers can retain.
 - “Direct mail” solicitations include email. If an email invites consumers to call the sender to purchase goods or services, that telephone call and subsequent sale must comply with the Telemarketing Sales Rule requirements.

I. INTRODUCTION

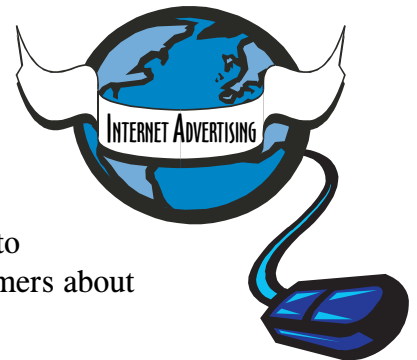
Day in and day out, businesses are going online to advertise and sell their products and services. The Internet combines aspects of print, television, and radio advertising in an interactive environment, and while it presents a new and fast-paced experience for consumers, it also raises interesting—and occasionally complex—questions about the applicability of laws that were developed long before “dot com” became a household phrase.

The Federal Trade Commission has examined how its own consumer protection rules and guides apply to advertising and sales made via the Internet. This staff working paper discusses FTC requirements that disclosures be presented clearly and conspicuously, in the context of Internet advertisements. It also discusses how certain rules and guides apply to online activities, when the rule or guide refers to “written” ads or “direct mail” solicitations or requires notices to be sent to consumers.

The publication of this staff working paper follows a public comment period and a public workshop which was held to discuss the applicability of FTC rules and guides to online activities.¹ In evaluating how disclosures can be displayed clearly and conspicuously in online ads, the comments and workshop discussion focused specifically on disclosures required by the rules and guides.² The same analysis that applies to rule and guide disclosures also applies to disclosures that are necessary to prevent deception under Section 5 of the FTC Act. They, too, must be clear and conspicuous. Therefore, this paper addresses both types of disclosures.³

II. THE APPLICABILITY OF FTC LAW TO INTERNET ADVERTISING

The FTC Act’s prohibition on “unfair or deceptive acts or practices” broadly covers advertising claims, marketing and promotional activities, and sales practices in general.⁴ The Act is not limited to any particular medium. Accordingly, the Commission’s role in protecting consumers from unfair or deceptive acts or practices encompasses advertising, marketing, and sales online, as well as the same activities in print, television, telephone and radio. Indeed, since 1994, the Commission has brought over 100 law enforcement actions to stop fraud and deception online and is working to educate businesses about their legal obligations and consumers about their rights.



For certain industries or subject areas, the Commission issues rules and guides. Rules prohibit specific acts or practices that the Commission has found to be unfair or deceptive.⁵ Guides help businesses in their efforts to comply with the law by providing examples or direction on how to avoid unfair or deceptive acts or practices.⁶ Many rules and guides address claims about products or services or

advertising in general and are not limited to any particular medium used to disseminate those claims or advertising.⁷ Therefore, the plain language of many rules and guides applies to claims made on the Internet.⁸ For example, the Mail or Telephone Order Merchandise Rule, which addresses the sale of merchandise that is ordered by mail, telephone, facsimile or computer, applies to those sales regardless of “the method used to solicit the order.”⁹ Solicitations made in print, on the telephone, radio, TV or online naturally fall within the Rule’s scope. In addition, the Guides Concerning the Use of Endorsements and Testimonials in Advertising apply to endorsements, which are defined as “any advertising message . . . [that] consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser.”¹⁰ The Guides refer to advertising without limiting the media in which it is disseminated, and therefore, encompass online ads.

THE PLAIN LANGUAGE OF MANY RULES AND GUIDES APPLIES TO CLAIMS MADE ON THE INTERNET.

III. CLEAR AND CONSPICUOUS DISCLOSURES IN ONLINE ADVERTISEMENTS

When it comes to online ads, the basic principles of advertising law apply:

1. Advertising must be truthful and not misleading;¹¹
2. Advertisers must have evidence to back up their claims (“substantiation”);¹² and
3. Advertisements cannot be unfair.¹³

Unique features in Internet ads also may affect how an ad and any required disclosures are evaluated.



A. Background on Disclosures

Advertisers must identify all express and implied claims that the ad conveys to consumers. When identifying claims, advertisers should not focus only on individual phrases or statements, but should consider the ad as a whole, including the text, product name and depictions.¹⁴ If an ad makes express or implied claims that are likely to be misleading without certain qualifying information, the information must be disclosed. Advertisers must determine which claims might need qualification and what information should be provided in a disclosure. If qualifying information is necessary to prevent an ad from being misleading, advertisers must present the information clearly and conspicuously.

A disclosure only qualifies or limits a claim, to avoid a misleading impression. It cannot cure a false claim. If a disclosure provides information that contradicts a claim, the disclosure will not be sufficient to prevent the ad from being deceptive. In that situation, the claim itself must be modified.

Many Commission rules and guides spell out the information that must be disclosed in connection with certain claims. In many cases, these disclosures prevent a claim from being misleading or deceptive.¹⁵ Other rules and guides require disclosures to ensure that consumers receive material information about the terms of a transaction,¹⁶ or to further public policy goals.¹⁷ These disclosures also must be clear and conspicuous.

B. The Clear and Conspicuous Requirement

Disclosures that are required to prevent deception—or to provide consumers material information about a transaction—must be presented “clearly and conspicuously.”¹⁸ Whether a disclosure meets this standard is measured by its performance—that is, how consumers actually perceive and understand the disclosure within the context of the entire ad. The key is the *overall net impression* of the ad—that is, whether the claims consumers take from the ad are truthful and substantiated.¹⁹

In reviewing their online ads, advertisers should adopt the perspective of a reasonable consumer.²⁰ They also should assume that consumers don’t read an entire Web site, just as they don’t read every word on a printed page.²¹ In addition, it is important for advertisers to draw attention to the disclosure. Making the disclosure available somewhere in the ad so that consumers who are looking for the information *might* find it doesn’t meet the clear and conspicuous standard.

Even though consumers have control over what and how much information they view on Web sites, they may not be looking for—or expecting to find—disclosures. Advertisers are responsible for ensuring that their messages are truthful and not deceptive. Accordingly, disclosures must be communicated effectively so that consumers are likely to notice and understand them.

C. What are Clear and Conspicuous Disclosures?

There is no set formula for a clear and conspicuous disclosure. In all media, the best way to disclose information depends on what information must be provided and the nature of the advertisement. Some disclosures are quite short, while others are more detailed. Some ads use only text, while others use graphics, video and audio. Advertisers have the flexibility to be creative in designing their ads, so long as necessary disclosures are communicated effectively and the overall message conveyed to consumers is not misleading.

To evaluate whether a particular disclosure is clear and conspicuous, consider:

- the **placement** of the disclosure in an advertisement and its **proximity** to the claim it is qualifying,
- the **prominence** of the disclosure,

- whether items in other parts of the advertisement **distract attention** from the disclosure,
- whether the advertisement is so lengthy that the disclosure needs to be **repeated**,
- whether disclosures in audio messages are presented in an adequate **volume and cadence** and visual disclosures appear for a sufficient **duration**, and
- whether the language of the disclosure is **understandable** to the intended audience.

The following discussion uses these traditional factors to evaluate whether disclosures are likely to be clear and conspicuous in the context of online ads. In the online version of this booklet, the underlined hyperlinks link to mock ads. In the printed booklet, the circles in the margin correspond to mock ads in the appendix. Each mock ad presents a scenario to illustrate one or more particular factors. Advertisers must consider all of the factors, however, and evaluate an actual disclosure in the context of the ad as a whole.

Ex.

Refer to Example #
in the Appendix.

1. Proximity and Placement

A disclosure is more effective if it is placed near the claim it qualifies or other relevant information. Proximity increases the likelihood that consumers will see the disclosure and relate it to the relevant claim or product. For print ads, an advertiser might measure proximity in terms of whether the disclosure is placed adjacent to the claim, or whether it is separated from the claim by text or graphics. The same approach can be used for Internet ads. Web sites, however, are interactive and have a certain depth—with multiple pages linked together and pop-up screens, for example—that may affect how proximity is evaluated.

a. Evaluating Proximity in the Context of a Web Page

Some disclosures must be made when an ad contains a certain claim (often referred to as a “triggering claim”). On a Web page, the disclosure is more likely to be effective if consumers view the claim and disclosure together on the same screen. Even if a disclosure is not tied to a particular word or phrase, it is more likely that consumers will notice it if it is placed next to the information, product, or service to which it relates.

Ex.
1

In some circumstances, it may be difficult to ensure that a disclosure appears on the “same screen” as a claim or product information. Some disclosures are long and difficult to place next to the claims they qualify. In addition, computers and other information “appliances” have varying screen sizes that display Web sites differently.²² In these situations, consumers may need to scroll to view a disclosure. If scrolling is necessary, advertisers should ask whether consumers are likely to do it. If consumers don’t scroll, they may miss important qualifying information and be misled.

In these circumstances, advertisers are advised to:

Use text or visual cues to encourage consumers to scroll.

Text prompts can indicate that more information is available. An explicit instruction like “see below for important information on diamond weights” will alert consumers to scroll and look for the information. The text prompt should be tied to the disclosure that it refers to. General or vague statements, such as “see below for details,” provide no indication about the subject matter or importance of the information that consumers will find and are not adequate cues.

Ex.
2

The visual design of the page also could help alert consumers to the availability of more information. For example, text that clearly continues below the screen, whether spread over an entire page or in a column, would indicate that the reader needs to scroll for additional information. Advertisers should consider how the Web page is displayed by the default Web browser setting for which the ad is designed, as well as for different display options.

A scroll bar on the side of a computer screen is not a sufficiently effective visual cue. Although the scroll bar may indicate to some consumers that they have not reached the end of a page, many consumers may not look at the scroll bar. In fact, some consumers access the Internet with devices that don’t display a scroll bar.

Avoid Web page formats that discourage scrolling.

Ex.
3

The design of some pages might indicate that there is no more information on the page and no need to continue scrolling. If the text ends before the bottom of the screen or readers see several inches of blank space, chances are they will stop scrolling and miss the disclosure. In addition, if there is a lot of unrelated information—either words or graphics—separating a claim and a disclosure, even a consumer who is prompted to scroll might miss the disclosure or not relate it to a distant claim they’ve already read.

b. Hyperlinking to a Disclosure

Ex.
4

With hyperlinks, additional information, including disclosures, might be placed on a Web page entirely separate from the relevant claim. Disclosures that are an integral part of a claim or inseparable from it, however, should be placed on the same page and immediately next to the claim. In these situations, the claim and the disclosure should be read at the same time, without referring the consumer somewhere else to obtain the disclosure. This is particularly true for cost information or certain health and safety disclosures. For example, if the total cost of a product is advertised on one page, but there are significant additional fees that the consumer would not expect to be charged, the existence of those additional fees should be disclosed on the same page and immediately adjacent to the total cost claim.²³ In other situations, it may not even be necessary to use a hyperlink to convey disclosures. Often, disclosures consist of a word or phrase that may be

Ex.
5

easily incorporated into the text, along with the claim. This placement increases the likelihood that consumers will see the disclosure and relate it to the relevant claim.

Under some conditions, however, a disclosure accessible by a hyperlink may be sufficiently proximate to the relevant claim. Hyperlinked disclosures may be particularly useful if the disclosure is lengthy or if it needs to be repeated (because of multiple triggers, for example). The key considerations for effective hyperlinks are:

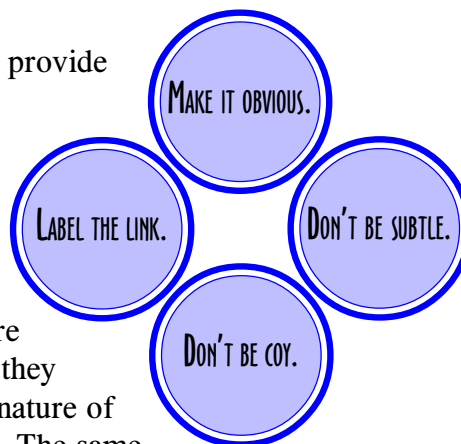
- the labeling or description of the hyperlink,
- the consistency in the use of hyperlink styles,
- its placement and prominence on the Web page, and
- the handling of the disclosure on the click-through page.

Choosing the right label for the hyperlink. A hyperlink that leads to a disclosure should be labeled clearly and conspicuously. The hyperlink's label—the text or graphic assigned to it—affects whether consumers actually click on it and see and read the disclosure.

- **Make it obvious.** Consumers should be able to tell that they can click on a hyperlink to get more information.
- **Label the link to convey the importance, nature and relevance of the information it leads to.** The hyperlink should give consumers a *reason* to click on it. That is, the label should make clear that the link is related to a particular advertising claim or product and indicate the nature of the information to be found by clicking on it. The hyperlink label should use clear, understandable text. Although the label itself does not need to contain the complete disclosure, it may be useful to incorporate part of the disclosure to indicate the type and importance of the information the link leads to.
- **Don't be coy.** Some text links may provide no indication about why a claim is qualified or the nature of the disclosure. In most cases, simply hyperlinking a single word or phrase in the text of an ad may not be effective. Although some consumers may understand that there is additional information available, they may have different ideas about the nature of the information and its significance. The same

Ex.
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Ex.
7



Ex.
8-10

may be true of hyperlinks that simply say “disclaimer,” “more information,” “details,” or “terms and conditions.”

Ex.
11-12

- **Don’t be subtle.** Asterisks or other symbols by themselves may not be effective. Typically, they provide no clues about why the claim is qualified or the nature of the disclosure.²⁴ In fact, consumers may view an asterisk or another symbol as just another graphic on the page. Even if a Web site explains that a particular symbol is a hyperlink to important information, consumers might miss the explanation, depending on where they enter the site and how they navigate through it.

Using hyperlink styles consistently allows consumers to know when a link is available. Although the text or graphics used to signal a hyperlink may differ among Web sites, treating hyperlinks inconsistently within a single site can increase the chances that consumers will *not* notice—or click on—a disclosure hyperlink. For example, if hyperlinks usually are underlined in a site, chances are consumers wouldn’t recognize italicized text as being a link, and could miss the disclosure.

Ex.
13-14

Placing the link near relevant information and making it noticeable. The hyperlink should be proximate to the claim that triggers the disclosure so that consumers can notice it easily and relate it to the claim. Typically, this means that the hyperlink is adjacent to the triggering term or other relevant information. Consumers may miss disclosure hyperlinks that are separated from the relevant claim by text, graphics, blank space, or intervening hyperlinks. Format, color or other graphics treatment also can help to ensure that consumers notice the link. (See below for more information on prominence.)

Ex.
15

Getting to the disclosure on the click-through page should be easy. The click-through page—that is, the page the hyperlink leads to—must contain the complete disclosure. The disclosure must be displayed prominently. Distracting visual factors, extraneous information, and many “click-away” opportunities to link elsewhere before viewing the disclosure can obscure an otherwise adequate disclaimer.

Ex.
16

- **Get consumers to the message quickly.** The hyperlink should take consumers directly to the disclosure. They shouldn’t have to search a click-through page or go to other pages for the information. In addition, the disclosure should be easy to understand.
- **Assessing the effectiveness of a hyperlink disclosure is important.** Tools are available to allow advertisers to evaluate the effectiveness of disclosures through hyperlinks. For example, advertisers can monitor click-through rates—how often consumers click on a hyperlink and view the click-through page—for accurate data on the efficacy of the hyperlink. Advertisers also can evaluate the amount of time visitors spend on a certain page, which may indicate whether consumers are reading the disclosure.

- **Don't ignore your data.** If hyperlinks are not followed, another method of conveying the required information would be necessary.

c. Using High Tech Methods For Proximity and Placement

Disclosures may be displayed on Web sites in many ways. For example, a disclosure may be placed in a frame that remains constant even as the consumer scrolls down the page or navigates through another part of the site. A disclosure also might be displayed in a window that pops-up or on interstitial pages that appear while another Web page is loading. New techniques for displaying information are being unveiled all the time. But there are special considerations for evaluating whether a technique is appropriate for providing required disclosures.

Ex.
17-18

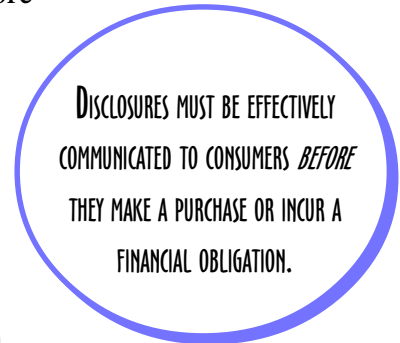
- **Don't ignore technological limitations.** A scrolling marquee—information that scrolls through a box on a Web site—may display differently depending on the type of browser a consumer uses. Similarly, some browsers or information appliances may not support or display frames properly, so a disclosure placed in one portion of the frame may not be viewable. Certain Internet tools may overcome this limitation by determining if a consumer's Web browser can view frames and if not, serving a page that is formatted differently. Without such tools, advertisers should be concerned about whether a required disclosure will appear; if it won't, they should choose different ways to communicate the disclosure.

Ex.
19

- **Recognize and respond to characteristics of each technique.** Some consumers may miss information presented in a pop-up window or on an interstitial page if the window or page disappears and they are unable or unaware of how to access it. Others may inadvertently minimize a pop-up screen by clicking on the main page and may not know how to make the pop-up screen reappear. There may be ways to get around these drawbacks, such as requiring the consumer to take some affirmative action to proceed past the pop-up or interstitial (for example, by clicking on a "continue" button).
- **Research can help.** Research may be useful to help advertisers determine whether a particular technique is an effective method of communicating information to consumers. For example, research may show that consumers don't actually read information in pop-up windows because they immediately close the pop-up on the page they want to view. It also may indicate whether consumers relate information in a pop-up window or on an interstitial page to a claim or product they haven't encountered yet. Advertisers should consider this information in determining effective methods of presenting required disclosures.

d. Displaying Disclosures Prior to Purchase

Disclosures must be effectively communicated to consumers *before* they make a purchase or incur a financial obligation. Disclosures are more likely to be effective if they are provided in the context of the ad, when the consumer is considering the purchase. Where advertising and selling are combined on a Web site, disclosures should be provided before the consumer makes the decision to buy, say, before clicking on an “order now” button or a link that says “add to shopping cart.”



Ex.
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- **Don't focus only on the order page.**

Some disclosures must be made in connection with a particular claim or product. Consumers may not relate a disclosure on the order page to information they viewed many pages earlier. It also is possible that after surfing a company's Web site, some consumers may decide to purchase the product from the company's "bricks and mortar" store. Those consumers would miss any disclosures placed only on the ordering page.

e. Evaluating Proximity With Banner Ads

Most banner ads displayed today are teasers. Because of their small size, they generally do not provide complete information about a product or service. Instead, consumers must click through to the Web site to get more information and learn the terms of an offer. In some instances, a banner may contain a claim that requires qualification.

- **Disclose required information in the banner itself or clearly and conspicuously on the Web site it links to.** In some cases, a required disclosure can be incorporated into a banner ad easily. Because of the space constraints of banner ads, other disclosures may be too detailed to be disclosed effectively in the banner. In some instances, these disclosures may be communicated effectively to consumers if they are made clearly and conspicuously on the Web site the banner links to and while consumers are deciding whether to buy a product or service. In determining whether the disclosure should be placed in the banner itself or on the Web site the banner links to, advertisers should consider how important the information is to prevent deception, how much information needs to be disclosed, the burden of disclosing it in the banner ad, how much information the consumer may absorb from the ad, and how effective the disclosure would be if it was made on the Web site.²⁵

Ex.
21

- **Use creativity to incorporate or flag required information.** Scrolling text or rotating panels in a banner can present an abbreviated version of a required disclosure that indicates that there is additional important information and a more complete disclosure available on the click-through page. With lengthier disclosures, the banner can direct consumers to the Web site for more information. The full disclosure then must be clearly and conspicuously displayed on the Web site.

USE CREATIVITY TO INCORPORATE
OR FLAG REQUIRED INFORMATION.



- **Provide any required disclosures in interactive banners.** Some banner ads allow consumers to interact within the banner, so that they may conduct a transaction without clicking through to a Web site. If consumers can get complete information about a product or make a purchase within an interactive banner, all required disclosures should be included in the banner.

2. Prominence

It's the advertiser's responsibility to draw attention to the required disclosures.

- **Display disclosures prominently so they are noticeable to consumers.** The size, color, and graphics of the disclosure affect its prominence.
 - **Size Matters.** Disclosures that are at least as large as the advertising copy are more likely to be effective.
 - **Color Counts.** A disclosure in a color that contrasts with the background emphasizes the text of the disclosure and makes it more noticeable. Information in a color that blends in with the background of the ad is likely to be missed.
 - **Graphics Help.** Although using graphics to display a disclosure is not required, they may make the disclosure more prominent.
- **Evaluate the size, color, and graphics of the disclosure in relation to other parts of the Web site.**²⁶ The size of a disclosure should be compared to the type size of the claim and other text on the page. If a claim uses a particular color or graphic treatment, the disclosure can be formatted the same way to help ensure that consumers who view the claim are able to view the disclosure as well. In addition, the graphic treatment of the disclosure may be evaluated in relation to how graphics are used to convey other items in the ad.

Ex.
22-23

- **Don't bury it.** The prominence of the disclosure also may be affected by other factors. A disclosure that is buried in a long paragraph of unrelated text would not be effective. The unrelated text detracts from the message and makes it unlikely that a consumer would notice the disclosure or recognize its importance. Even though the unrelated information may be useful, advertisers must ensure that the disclosure is communicated effectively.

3. Distracting Factors in Ads

The clear and conspicuous analysis does not focus only on the disclosure itself. It also is important to consider the entire ad. Elements like graphics, sound, text or even hyperlinks that lead to other pages or sites, may result in consumers not noticing, reading or listening to the disclosure.

Ex.
24

- **Don't let other parts of an ad get in the way.** On television, moving visuals behind a text message make the text hard to read and may distract consumers' attention from the message. Using graphics online raises similar concerns: flashing images or animated graphics may reduce the prominence of a disclosure. Graphics on a Web page *alone* may not undermine the effectiveness of a disclosure. It is important, however, to consider all the elements in the ad, not just the text of the disclosure.

4. Repetition

It may be necessary to disclose important information more than once in an advertisement to convey a non-deceptive message. Repeating a disclosure makes it more likely that a consumer will notice and understand it. Still, the disclosure need not be repeated so often that consumers would ignore it and that it would clutter the ad.

- **Repeat disclosures on lengthy Web sites, as needed.** Consumers can access and navigate Web sites differently. Many consumers may access a site through its homepage, but others might enter in the middle, perhaps by linking to that page from a search engine or another Web site. Consumers also might not click-on every page of the site and may not choose to scroll to the bottom of each page. And many may not read every word on every page of a Web site. As a result, advertisers should question whether consumers who see only a portion of their ad are likely to miss a necessary disclosure and be misled.²⁷
- **Repeat disclosures with repeated claims, as needed.** If claims requiring some qualification are repeated throughout an ad, it may be necessary to repeat the disclosure too. In some situations, a disclosure is tied so closely to a claim that it must always accompany the claim to prevent deception. Depending on the disclosure, a clearly-labeled hyperlink could be repeated on various pages so that the full disclosure would be placed on only one page of the site.

5. Multimedia Messages

Internet ads may contain audio messages, video clips and other animated segments with claims that require qualification. As with radio and television ads, the disclosure should accompany the claim. In evaluating whether disclosures in these multimedia portions of online ads are clear and conspicuous, advertisers should evaluate all of the factors discussed in this paper and these special considerations:

- **For audio claims, use audio disclosures.** The disclosure should be in a volume and cadence sufficient for a reasonable consumer to hear and understand it. The volume of the disclosure can be evaluated in relation to the rest of the message, and in particular, the claim. Of course, consumers who do not have speakers, appropriate software, or appliances with audio capabilities will not hear the claim or the disclosure. Because some consumers may miss the audio portion of an ad, disclosures triggered by a claim or other information in an ad's text should not be placed solely in an audio clip.
- **Display visual disclosures for a sufficient duration.** Visual disclosures presented in video clips or other dynamic portions of online ads should appear for a duration sufficient for consumers to notice, read and understand them. As with brief video superscripts in television ads, fleeting disclosures on Web sites are not likely to be effective.

6. Understandable Language

To ensure that disclosures are effective, consumers must be able to understand them. Advertisers should use clear language and syntax and avoid legalese or technical jargon. Disclosures should be as simple and straightforward as possible. Incorporating extraneous material into the disclosure also may diminish the message that must be conveyed to consumers.

IV. SPECIFIC ISSUES IN APPLYING CERTAIN RULES AND GUIDES TO INTERNET ACTIVITIES

A. It's Not Just Paper Anymore

Some Commission rules and guides use certain terms—such as “written,” “writing” and “printed”—that connote words or information on paper. With the increasing use of computers and other electronic devices, that meaning is changing. In addition, thanks to email, businesses are no longer limited to using traditional communications vehicles like mail or the telephone to comply with rule or guide requirements to notify consumers.

1. Rules and Guides that Use the Terms “Written,” “Writing” or “Printed”

Many rules and guides use the terms “written,” “writing” and “printed,” but in different ways. Some apply to written ads or transactions, using the term written to connote visual text. Others require information to be disclosed in writing, signaling the importance of text and the ability to retain and refer to the information more than once. Because each term must be analyzed within the context of the rule and guide itself, the Commission will continue to examine the exact nature of how these rules and guides apply to the paperless world of e-commerce and online advertising on a case-by-case basis and through periodic rule and guide reviews.²⁸

For the most part, however, Commission rules and guides that use the words “written,” “writing” and “printed” will apply online. In many cases, an Internet ad that uses visual text is the equivalent of a “written” ad. Consumers expect to receive the same information and protections whether they’re looking at a paper catalog or an online one. For example:

- Claims “in writing . . . or in any broadcast advertisement” about an appliance’s energy use or efficiency must be tested in accordance with the Appliance Labeling Rule.²⁹ Common sense dictates that this includes online claims. An energy use claim presented in visual text on a Web site should be treated the same as a claim in a print ad.
- If certain information about energy efficiency must be provided in “printed” catalogs featuring appliances,³⁰ the information also should be provided online. There are no more constraints to providing this information on a Web site than there would be on paper.

2. Using New Technologies to Comply with Rules & Guides

As more activities and transactions take place online, businesses are using email to communicate with their customers. In some cases, email may be used to comply with a rule or guide requirement to provide or send required notices or documents to consumers. A key consideration for choosing this method of delivery is whether consumers understand or expect that they will receive important information by email. In addition, information should be provided in a form that consumers can retain, either by saving or printing. Here are examples of how these considerations apply to particular rules:



- If a seller cannot ship goods ordered by mail, telephone, or computer within the time promised (or otherwise 30 days), the seller must inform consumers of the delay and give them the option to agree to the delay or cancel the order and get a refund.³¹ Sellers are not required to use a particular method to send delay notices and online merchants may use email to send these notices. Consumers often provide their email address as part of an online order form. It may make good business sense for a seller to tell consumers that they plan to send any delay notices to that email address. This information may be added to an online order form without substantial cost or difficulty and may alert consumers that future communications about the order will occur online.
- Online sellers of negative option plans—such as book-of-the-month clubs—also may use email to communicate with consumers. With these plans, sellers send announcements that identify the merchandise that will be shipped and billed for that month unless the consumer declines by a certain date.³² These monthly notices are an important part of the plan. If consumers don't understand that notices are sent by email, they may not respond and may incur charges for merchandise they don't want. Because sellers are required to clearly and conspicuously disclose the material terms of the plan in their promotional materials, they should clearly inform consumers about how the notices will be sent before consumers enroll in the plan.
- Sellers that offer written warranties on consumer products must include certain information in their warranties and make them available for review at the point of purchase.³³ Warranties communicated through visual text on Web sites are no different than paper versions and the same rules apply. The requirement to make warranties available at the point of purchase can be accomplished easily on the Internet. For example, Internet merchants may use a clearly-labeled hyperlink such as “click here for warranty information” to lead to the full text of the warranty. Because consumers may need to refer to the warranty while comparison shopping or after the purchase, the warranty should be presented in a way that is capable of being preserved, either by downloading or printing. This is especially important if a paper warranty is not included with the product.

B. Direct Mail Solicitations Online

“Direct mail” solicitations generally refer to promotional materials that consumers receive through traditional mail. With technological advances, these kinds of solicitations have moved online.

Although the Telemarketing Sales Rule applies largely to telemarketing calls from business-to-consumer, it also applies to telephone calls the consumer places in response to a “direct mail” advertisement.³⁴ As with direct mail sent by traditional means, email can convey the false impression that the recipient has been “specially selected” for an offer not available to the general public. That impression may be exploited in a telemarketing call, particularly if the direct mail piece omits important information about the products or services offered. Therefore, if an email invites consumers to telephone the sender to purchase goods or services, the phone call is subject to the Telemarketing Sales Rule³⁵—as is the subsequent sale.

Not all online advertisements are considered “direct mail” solicitations. Consumers who view most Web sites, newsgroups, or electronic bulletin board postings are likely to understand that the goods or services are being offered on the same terms and conditions to all consumers—and that they haven’t been “specially selected” for the offer. Like television and newspaper advertisements, Web sites generally, newsgroups, and electronic bulletin board postings are different forms of advertising than “direct mail.”³⁶ Telephone calls placed in response to these types of ads would generally be exempt from the Telemarketing Sales Rule.³⁷

V. CONCLUSION

Although the number of companies advertising online—and the number of consumers shopping online—are soaring, fraud and deception may dampen consumer confidence in the e-marketplace. To ensure that products and services are described truthfully in online ads and that consumers get what they pay for, the FTC has, and will continue to, enforce its consumer protection laws. Many of the general principles of advertising law apply to online ads, but new issues arise almost as fast as technology develops. The FTC will continue to evaluate online advertising, using traditional criteria, while recognizing the uniqueness of the new medium. Businesses as well should consider these criteria when developing online ads and ensuring they comply with the law.



ENDNOTES

- ¹ The Commission initially requested written comment on a proposal that discussed how it would apply its rules and guides to online activities. 63 Fed. Reg. 24998 (May 6, 1998). After reviewing the comments, the Commission held a public workshop on May 14, 1999, to explore the issues further. *See* 64 Fed. Reg. 14156 (Mar. 24, 1999) (announcing the workshop). Twenty-five groups, including businesses, trade associations and consumer organizations, participated in the workshop discussion. The focus of the workshop was an evaluation of how disclosures required by FTC rules and guides can be displayed clearly and conspicuously in Internet advertisements. A shorter session examined how terms such as “written,” “writing” and “printed” are used in FTC rules and guides and should be interpreted in light of the use of electronic media. Additional written comments were submitted after the workshop. The public comments and the workshop transcript are available at <http://www.ftc.gov/bcp/rulemaking/electmedia/index.htm> or from the FTC’s Consumer Response Center, 600 Pennsylvania Avenue, NW, Room 130, Washington, DC 20580.
- ² With the rules and guides, the content of the disclosure generally is prescribed. Thus, it was unnecessary to examine broader issues that might arise in examining advertising in general—for example, whether a disclosure is even necessary or what it should say.
- ³ This working paper, however, does not address disclosures required by regulations issued by the Federal Reserve Board: Regulation B, 12 C.F.R. Part 202; Regulation E, 12 C.F.R. Part 205; Regulation M, 12 C.F.R. Part 213; Regulation Z, 12 C.F.R. Part 226. This paper also does not address which country’s laws govern a particular transaction or sale. The FTC and other countries and organizations have been evaluating these issues and will continue to work cooperatively in this area. *See* <http://www.ftc.gov/bcp/icpw/index.htm> for more information about international issues.
- ⁴ The Commission’s authority covers virtually every sector of the economy, except for certain excluded industries, such as the business of insurance and banks.
- ⁵ The Commission issues rules pursuant to Section 5 of the FTC Act when it has reason to believe that certain unfair or deceptive acts or practices are prevalent in an industry. 15 U.S.C. § 57a(a)(1)(B). The Commission may seek civil penalties from any person or company that violates a rule “with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule.” 15 U.S.C. § 45(m)(1)(A). The Commission also may seek redress for consumers. 15 U.S.C. § 57b(a)(1). In addition, the Commission promulgates rules pursuant to specific statutes, which are designed to further particular policy goals. The remedies available to enforce these rules vary.

- ⁶ Guides are “administrative interpretations of the laws administered by the Commission.” 16 C.F.R. § 1.5. Although the guides do not have the force and effect of law, the Commission may bring an enforcement action if a person or company fails to comply with a guide and engages in an unfair or deceptive practice in violation of the FTC Act.
- ⁷ The following rules and guides are included in this category: Guides for the Nursery Industry (16 C.F.R. Part 18); Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry (16 C.F.R. Part 20); Guides for the Jewelry, Precious Metals, and Pewter Industries (16 C.F.R. Part 23); Guides for Select Leather and Imitation Leather Products (16 C.F.R. Part 24); Tire Advertising and Labeling Guides (16 C.F.R. Part 228); Guides Against Deceptive Pricing (16 C.F.R. Part 233); Guides Against Bait Advertising (16 C.F.R. Part 238); Guides for the Advertising of Warranties and Guarantees (16 C.F.R. Part 239); Guides for the Household Furniture Industry (16 C.F.R. Part 250); Guide Concerning Use of the Word “Free” and Similar Representations (16 C.F.R. Part 251); Guides for Private Vocational and Distance Education Schools (16 C.F.R. Part 254); Guides Concerning Use of Endorsements and Testimonials in Advertising (16 C.F.R. Part 255); Guides Concerning Fuel Economy Advertising for New Automobiles (16 C.F.R. Part 259); Guides for the Use of Environmental Marketing Claims (16 C.F.R. Part 260); Rules and Regulations Under the Wool Products Labeling Act of 1939 (16 C.F.R. Part 300); Rules and Regulations Under Fur Products Labeling Act (16 C.F.R. Part 301); Rules and Regulations Under the Textile Fiber Products Identification Act (16 C.F.R. Part 303); Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (“Appliance Labeling Rule”) (16 C.F.R. Part 305); Rule Concerning Automotive Fuel Ratings, Certification and Posting (16 C.F.R. Part 306); Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles (16 C.F.R. Part 309); Telemarketing Sales Rule (16 C.F.R. Part 310); Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets (16 C.F.R. Part 410); Retail Food Store Advertising and Marketing Practices (16 C.F.R. Part 424); Use of Prenotification Negative Option Plans (16 C.F.R. Part 425); Power Output Claims for Amplifiers Utilized in Home Entertainment Products (16 C.F.R. Part 432); Preservation of Consumers’ Claims and Defenses (16 C.F.R. Part 433); Mail or Telephone Order Merchandise Rule (16 C.F.R. Part 435); Credit Practices Rule (16 C.F.R. Part 444); Used Motor Vehicle Trade Regulation Rule (16 C.F.R. Part 455); Labeling and Advertising of Home Insulation (16 C.F.R. Part 460); Interpretations of Magnuson-Moss Warranty Act (16 C.F.R. Part 700); Disclosure of Written Consumer Product Warranty Terms and Conditions (16 C.F.R. Part 701); Pre-Sale Availability of Written Warranty Terms (16 C.F.R. Part 702); Informal Dispute Settlement Procedures (16 C.F.R. Part 703).
- ⁸ A rule or guide applies to online activities if its scope is not limited by how claims are communicated to consumers, how advertising is disseminated, or where commercial activities occur. As needed, the Commission will amend or clarify the scope of any particular rule or guide in more detail during its regularly scheduled

review. The Commission has a program in place to periodically review its rules and guides to evaluate their continued need and to make any necessary changes.

⁹ 16 C.F.R. § 435.2(a).

¹⁰ 16 C.F.R. § 255(b).

¹¹ As explained in the FTC’s Deception Policy Statement [hyperlink], an ad is deceptive if it contains a statement—or omits information—that is likely to mislead consumers acting reasonably under the circumstances and is “material” or important to a consumer’s decision to buy or use the product. *See FTC Policy Statement on Deception, appended to Cliffdale Associates, Inc.*, 103 F.T.C. at 174 (“Deception Policy Statement”). A statement also may be deceptive if the advertiser does not have a reasonable basis to support the claim. Advertising Substantiation Statement [hyperlink]. *See FTC Policy Statement on Advertising Substantiation, appended to Thompson Medical Co.*, 104 F.T.C. 648, 839 (1984), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

¹² Before disseminating an ad, advertisers must have reasonable support for all express and implied objective claims that the ad conveys to consumers. When an ad lends itself to more than one reasonable interpretation, there must be substantiation for each interpretation. The type of evidence needed to substantiate a claim may depend on the product, the claims, and what experts believe is necessary. If an ad specifies a certain level of support for a claim—“tests show x”—the advertiser must have at least that level of support.

¹³ According to the FTC Act, 15 U.S.C. § 45(n) and the FTC’s Unfairness Policy Statement [hyperlink], an advertisement or business practice is unfair if it causes or is likely to cause substantial consumer injury that consumers could not reasonably avoid and that is not outweighed by the benefit to consumers or competition. *See FTC Policy Statement on Unfairness, appended to International Harvester Co.*, 104 F.T.C. 949, 1070 (1984).

¹⁴ Copy tests or other evidence of how consumers actually interpret an ad can be valuable. In many cases, however, the implications of the ad are clear enough to determine the existence of the claim by examining the ad alone, without extrinsic evidence.

¹⁵ For example, if an endorsement is not representative of the performance that consumers can generally expect to achieve with a product, advertisers must disclose this fact so that consumers are not misled. *Guides Concerning the Use of Endorsements and Testimonials in Advertising*, 16 C.F.R. § 255.2.

¹⁶ For example, any solicitation for the purchase of consumer products with a warranty must disclose the text of the warranty offer or how consumers can obtain it for free. *Pre-Sale Availability of Written Warranty Terms*, 16 C.F.R. § 702.3.

- ¹⁷ For example, the required energy efficiency disclosures in the Appliance Labeling Rule, 16 C.F.R. § 305.4, further the public policy goal of promoting energy conservation.
- ¹⁸ Some rules and guides, as well as some FTC cases, use the phrase “clearly and prominently” instead of “clearly and conspicuously.” These two phrases are synonymous.
- ¹⁹ Deception Policy Statement at 175-76.
- ²⁰ Deception Policy Statement at 178.
- ²¹ Deception Policy Statement at 180-81.
- ²² Web pages can vary in length, and one Web page may be the equivalent of many printed pages.
- ²³ In some cases, the details about the additional fees might be too complex to describe adjacent to the price claim and may be provided by using a hyperlink. But, a clear statement about the existence and nature of the extra fees should appear adjacent to the price. Of course, all cost information should be presented to consumers at the time of purchase. Consumers should understand the exact amount they will be charged and should not have to learn this information by clicking on hyperlinks.
- ²⁴ Asterisks and other symbols also are used in different ways on Web pages, which may confuse consumers as to where the related disclosure may be found. Some online asterisks and symbols are hyperlinks that click-through to a separate page and others are static, referring to a disclosure at the bottom of the page.
- ²⁵ This approach is consistent with Commission policy for disclosures in other media. For example, the Commission has required fuller disclosures in print ads and a shorter disclosure in a short television ad with a referral to another location for more complete information. *See, e.g., Nutri/System, Inc.*, 116 F.T.C. 1408 (1993) (consent order requiring a shorter disclosure for 15 second television ads).
- ²⁶ Web sites may display differently depending on the browser, computer screen, or other information appliance used. Advertisers may be working with a default view, but also evaluating different display options so that the site will be attractive and accessible to most consumers. Considering different display options also may be necessary to ensure that qualifying information is displayed clearly and conspicuously. Evaluating the prominence of the disclosure in relation to the rest of the ad helps ensure that consumers are able to view the disclosure.
- ²⁷ *See, e.g., Kent & Spiegel Direct, Inc.*, 124 F.T.C. 300 (1997); *Synchronal Corp.*, 116 F.T.C. 1189 (1993) (consent orders requiring disclosures to be repeated during television infomercials).

- ²⁸ For example, the Commission specifically amended the Textile Rules' requirement to disclose textile origin in "print" catalogs to clarify that these disclosures must be made in online catalogs as well. *See* 63 Fed. Reg. 7507 (Feb. 13, 1998) or <http://www.ftc.gov/os/1998/9802/textile.htm> for a discussion of the amendments to the Rules and Regulations Under the Textile Fiber Products Identification Act, 16 C.F.R. Part 303.
- ²⁹ 16 C.F.R. § 305.1(d).
- ³⁰ 16 C.F.R. §§ 305.2(m), 305.14.
- ³¹ Mail or Telephone Order Merchandise Rule, 16 C.F.R. § 435.1(b).
- ³² Rule Concerning Use of Prenotification Negative Option Plans, 16 C.F.R. § 425(a)(2).
- ³³ Disclosure of Written Consumer Product Warranty Terms and Conditions, 16 C.F.R. § 701.3, and Pre-Sale Availability of Written Warranty Terms, 16 C.F.R. § 702.3. According to the Rule Regarding Pre-Sale Availability of Written Warranty Terms, an alternative to making the warranty terms available prior to purchase is for sellers to provide information about how consumers may obtain the written warranty for free by mail. 16 C.F.R. § 702.3(c)(2).
- ³⁴ 16 C.F.R. § 310.6. The Telemarketing Sales Rule prohibits deceptive and abusive telemarketing practices. Among other things, it requires that certain information be disclosed in telemarketing calls. The scope of the Rule does not extend to transactions that take place *entirely* online. The sales transaction must involve a traditional voice telephone call. *See* 60 Fed. Reg. 30,406, 30,411 (June 8, 1995). In addition, in most situations, the Rule does not apply if a consumer calls a business in response to an advertisement. However, if a consumer calls a business in response to a "direct mail" advertisement, that call *is* subject to the Rule.
- ³⁵ The telephone call may be exempt from the Rule's coverage if the direct mail piece contains certain disclosures, such as the total cost to purchase the goods or services.
- ³⁶ Whether certain types of online ads, such as targeted banner ads or personalized solicitations on Web sites, constitute direct mail should be evaluated on a case-by-case basis.
- ³⁷ A small number of telemarketing transactions relating to specific types of goods or services are covered by the Telemarketing Sales Rule, regardless of the advertising method or manner in which the telemarketing calls were initiated. For example, credit repair services and advance fee loan services sold through telemarketing are covered by the Telemarketing Sales Rule, regardless of whether the consumer called in response to a direct mail piece, television advertisement, or Web site. 16 C.F.R. § 310.6(e) and (f).

APPENDIX: MOCK ADS

The disclosure "imitation" needs to accompany the triggering term "pearl" so that consumers are not misled about the type of pearls being sold. The disclosure would not be as effective if it was separated from the word pearl or placed on a different page. The FTC's Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 C.F.R. § 23.19, recognize this and advise that the disclosure "imitation" immediately precede the word pearl. In this situation, there is no reason to evaluate proximity differently in Internet ads than with other types of ads.

Ex.
1

FTC FASHION JEWELRY



Imitation Pearl Hoop Earrings



Retail Price - \$45.99
* Our Low Price - \$29.99

Item#: GRTDEAL
Shipping Weight: 0.1 Lbs.

[add to cart](#)

Lustrous imitation pearl hoop earrings. The highest quality imitation pearls fall delicately from these classically styled 14K gold hoops. The perfect fashion accessory for any occasion.

This ad contains visual cues that may indicate that more information is available. The vertical blue bar continues "below the fold" -- the end of the screen on the monitor -- and the text on the left column is continuous. A consumer who is already scrolling to read DJ Blackhand's endorsement, is also likely to see the disclosure that follows it.


Ex
2

Quick DDRIP


Stop the Waiting - Get in the Game

Home How QD Works What Customers Say Experts Privacy Policy

Hi-speed Internet can now reach YOUR door.



Quick DDRIP
Download
Decode
Record
Instant Play



ORDER NOW

Make the Internet FUN again.



Quick DDRIP is the REVOLUTIONARY device that easily hooks up to your home computer and phone line.



Quick DDRIP uses a special processing chip, and proprietary compression, decoding and caching techniques, to manipulate and speed up data transmissions.

"QD's superior real-time performance enhances the gaming experience for all levels of players. After I installed QD, it didn't take long for me to win my first Wrath of Thor national championship - and I'm still #1 this year. Whether you've got a 486 or a Pentium, QD can improve your "see-and-react" abilities. Soon you'll be winning all your matches."

-- D.J. Blackhand

(QuickDDRIP, Inc. has paid D.J. Blackhand for his endorsement.)

Quick DDRIP Gives You Unparalleled Internet Performance

- NO DELAY waiting for images to load -- Graphics-intensive Web pages load FAST!
- SPEEDY file downloads -- even huge files download in a fraction of the time it takes you now! Try it with your next online video purchase!
- ENHANCED streaming audio and video quality for live Web events!
- UNBELIEVABLY FAST "action" in online games!
- FAST DELIVERY of graphics for FANTASTIC virtual reality experiences!

Enjoy The Best Entertainment - All From Home



WATCH A FULL-LENGTH MOVIE ONLINE!

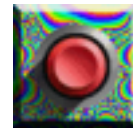
No more waiting in line for a ticket or for the rental. Find your favorite pay-per-view movies on the Web - and let QD do the rest. With QD, streaming pay-per-view movies start playing instantaneously -- **Quick DDRIP's** built in decoder sees to that!



Pay-Per-View Movie Releases



CONCERT IN A CAN! Buy a VIRTUAL TICKET and go on a LIVE WEB CONCERT TOUR with the best musicians without ever leaving your home! *And you won't believe the difference in audio and video quality over existing technology!* Whether you are a movie buff or an audiophile, **Quick DDRIP** is technology made for you.



Live Concert Webcasters

[Home](#)

[How QD Works](#)

[What Customers Say](#)

[Experts](#)

[Privacy Policy](#)

Some images are from "Corel Gallery Magic 200,000" by Corel Corporation

This ad must disclose that the diamond weights are not exact and that a 3/4 carat diamond may weigh between .70 and .84 carats. Because of the blank space between the textual description of the product and the disclosure, even consumers who scroll down the page will probably think that there is no more information to view and are likely to miss the disclosure.

Ex.
3

FTC FASHION JEWELRY



3/4 Ct. Diamond Earrings



Retail Price \$1365.00

 Our Low Price - \$ 975.00

Item#: GRTDEAL

Shipping Weight: 0.1 Lbs.

[add to cart](#)

Classic diamond solitaire earrings. Our sparkling round-cut diamonds are colorless and have only slight inclusions. Straight from the FTC's Washington DC diamond mines. Set in a stylish six-prong setting of 14 karat gold. The perfect fashion accessory for that special occasion.

Diamond weights may not be exact. A 3/4 ct. diamond may weigh between .70 - .84 carat.

Although QuickDDRIP's advertised price is \$129.95, there are additional conditions and fees associated with purchasing the product, including obtaining a rebate and contracting for 2 years of QD Internet Service. The Internet Service contract itself has significant costs and conditions. Although the details about these additional fees and conditions are described on the click through page, their existence is properly disclosed on the same page as and adjacent to the price claim.

Ex.
4

Quick DDRIP

Stop the Waiting - Get in the Game

[Home](#) [How QD Works](#) [What Customers Say](#) [Experts](#) [Privacy Policy](#)

**Hi-speed
Internet can
now reach
YOUR door.**



Quick DDRIP
Download
Decode
Record
Instant Play



ORDER NOW

**Make the Internet
FUN again.**



Priced At Only \$129.95*

*After \$200 Rebate. Requires 2 year (24 month) QD Internet Service contract at \$19.99/month.

[Early cancellation of Internet Service will result in substantial penalties.](#)
[You may have to pay significant telephone charges to use the Internet Service.](#)
[Click here for more information.](#)

[Home](#) [How QD Works](#) [What Customers Say](#) [Experts](#) [Privacy Policy](#)

Some images are from "Carol Gallery Media 200-000" by Carol Corporation

Click-through page

Quick DDRIP

Stop the Waiting - Get in the Game

[Home](#) [How QD Works](#) [What Customers Say](#) [Experts](#) [Privacy Policy](#)

REBATE AND INTERNET SERVICE INFORMATION

The \$200 Mail-In Rebate requires that you agree to a 2 year (24 month) contract for QD Internet service at \$19.99 per month.

If you cancel your contract for QD Internet service before your 2 year membership expires, you will be required to repay the rebate according to the following time schedule:

- If you cancel in months 1-6, you must repay the entire \$200 rebate.
- If you cancel in months 7-12, you must repay \$150.
- If you cancel in months 13-24, you must repay \$100.

You may incur significant telephone charges to access QD Internet service depending on your location and your calling plan. You may visit our web site or call 1-800-QNUMBER to learn the telephone access numbers available in your area. You must contact your local telephone company to find out any applicable charges for these numbers.

To obtain the \$200 rebate, you must send the completed required mail-in rebate form and a copy of your dated sales receipt to the address provided on the rebate form. The rebate form will be included with your Quick DDRIP. Allow 4-6 weeks to receive your rebate. To be eligible for the rebate, you must agree to the QD Internet service membership agreement and you must have a major credit card. The \$19.99 per month service charge will be billed to your credit card.

This offer is valid only in the United States. All customers must be 18 years or older.

[Home](#) [How QD Works](#) [What Customers Say](#) [Experts](#) [Privacy Policy](#)

Some images are from "Corel Gallery Magic 200,000" by Corel Corporation

The disclosure "imitation" needs to accompany the triggering term "pearl" so that consumers are not misled about the type of pearls being sold. It is not difficult to incorporate this one word disclosure in the text of this ad.



FTC FASHION JEWELRY



Imitation Pearl Hoop Earrings



Retail Price - \$45.99
* Our Low Price - \$29.99

Item#: GRTDEAL
Shipping Weight: 0.1 Lbs.

[add to cart](#)

Lustrous imitation pearl hoop earrings. The highest quality imitation pearls fall delicately from these classically styled 14K gold hoops. The perfect fashion accessory for any occasion.

The hyperlink incorporates part of the required disclosure -- that diamond weights are not exact -- and indicates the information (about weight ranges) that the link leads to. The label notifies consumers about the type and importance of the information accessible by this link.

Ex.
6

FTC FASHION JEWELRY



[Diamond Weights are Not Exact](#)
[Click here for Weight Ranges.](#)

3/4 Ct. Diamond Earrings



Retail Price - \$1365.00

★ Our Low Price - \$ 975.00

Item#: GRTDEAL

Shipping Weight: 0.1 Lbs.

[add to cart](#)

Classic diamond solitaire earrings. Our sparkling round-cut diamonds are colorless and have only slight inclusions. Straight from the FTC's Washington DC diamond mines. Set in a stylish six-prong setting of 14 karat gold. The perfect fashion accessory for that special occasion.

Click-through page

FTC FASHION JEWELRY



JEWELRY INFORMATION

Diamonds

Diamond weights are stated in "carats." A carat is equal to 200 milligrams (or 1/5 gram). A carat is divided into 100 points. Therefore, a .25 carat diamond may be referred to as a 25-point diamond.

Diamond weights may not be exact. For us to offer you these low FTC prices, we sell our diamonds in size ranges. The following chart shows the range of weight for each size diamond.

1/10 ct. can range from .09 to .11 carat

1/8 ct. can be .11 to .13 carat

1/7 ct. can be .13 to .15 carat

1/6 ct. can be .15 to .17 carat

1/5 ct. can be .18 to .22 carat

1/4 ct. can be .21 to .29 carat

1/3 ct. can be .30 to .36 carat

1/2 ct. can be .45 to .59 carat

5/8 ct. can be .59 to .67 carat

3/4 ct. can be .70 to .84 carat

7/8 ct. can be .85 to .95 carat

1 ct. can be .95 to 1.10 carat

1 1/4 ct. can be 1.20 to 1.29 carat

1 1/2 ct. can be 1.45 to 1.55 carat

1 3/4 ct. can be 1.70 to 1.82 carat

2 ct can be 1.95 to 2.05 carat

This ad must disclose that the diamond weights are not exact and that a 3/4 carat diamond may weigh between .70 and .84 carats. Underlining the "3/4 carat" may indicate that it is a hyperlink, but it does not identify the relevance of the information it leads to. Consumers may expect to find additional information about "carats" or diamond weights generally, but not necessarily qualifying information.

Ex.
7

FTC FASHION JEWELRY



3/4 Ct. Diamond Earrings



Retail Price - \$1365.00

* Our Low Price - \$ 975.00

Item#: GRTDEAL

Shipping Weight: 0.1 Lbs.

[add to cart](#)

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Click-through page

FTC FASHION JEWELRY



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2 ct can be 1.95 to 2.05 carat

This ad must disclose that DJ Blackhand was paid for his endorsement. The name "DJ Blackhand" is underlined to indicate that it is a hyperlink. Consumers may have different understandings about what this link leads to -- for example, biographical information about DJ or his picture -- and may see no reason to click on the link.




Quick DDRIP


Stop the Waiting - Get in the Game

[Home](#) [How QD Works](#) [What Customers Say](#) [Experts](#) [Privacy Policy](#)

Hi-speed Internet can now reach *YOUR* door.




Quick DDRIP
Download
Decode
Record
Instant Play



ORDER NOW

Make the Internet FUN again.



Quick DDRIP is the REVOLUTIONARY device that easily hooks up to your home computer and phone line.



Quick DDRIP uses a special processing chip, and proprietary compression, decoding and caching techniques, to manipulate and speed up data transmissions.

"QD's superior real-time performance enhances the gaming experience for all levels of players. After I installed QD, it didn't take long for me to win my first Wrath of Thor national championship - and I'm still #1 this year. Whether you've got a 486 or a Pentium, QD can improve your "see-and-react" abilities. Soon you'll be winning all your matches."

-- [D.J. Blackhand](#)

Quick DDRIP Gives You Unparalleled Internet Performance

- NO DELAY waiting for images to load -- Graphics-intensive Web pages load FAST!
- SPEEDY file downloads -- even huge files download in a fraction of the time it takes you now! Try it with your next online video purchase!
- ENHANCED streaming audio and video quality for live Web events!
- UNBELIEVABLY FAST "action" in online games!
- FAST DELIVERY of graphics for FANTASTIC virtual reality experiences!

Enjoy The Best Entertainment - All From Home



WATCH A FULL-LENGTH MOVIE ONLINE!

No more waiting in line for a ticket or for the rental. Find your favorite pay-per-view movies on the Web - and let QD do the rest. With QD, streaming pay-per-view movies start playing instantaneously -- **Quick DDRIP's** built in decoder sees to that!



Pay-Per-View Movie Releases



CONCERT IN A CAN! Buy a VIRTUAL TICKET

and go on a LIVE WEB CONCERT TOUR with the best musicians without ever leaving your home! *And you won't believe the difference in audio and video quality over existing technology!* Whether you are a movie buff or an audiophile, **Quick DDRIP** is technology made for you.



Live Concert Webcasters

[Home](#)

[How QD Works](#)

[What Customers Say](#)

[Experts](#)

[Privacy Policy](#)

Some images are from "Corel Gallery Magic 200,000" by Corel Corporation

Click-through page				
Quick DDRIP				
Stop the Waiting - Get in the Game				
Home	How QD Works	What Customers Say	Experts	Privacy Policy



**Important Information About D.J. Blackhand's
Endorsement of Quick DDRIP**

QuickDDRIP, Inc. has paid D.J. Blackhand for his endorsement.

Because many of the experiences described in the testimonials may not be typical of what consumers generally will experience with the product, a disclosure regarding this fact is needed. The hyperlink, "Disclaimer" does not indicate that the testimonial claims are qualified and does not indicate what consumers can expect to learn by clicking on it.

Ex.
9

Quick DDRIP
Stop the Waiting - Get in the Game

Home How QD Works What Customers Say Experts Privacy Policy

SEE WHAT OUR SATISFIED CUSTOMERS HAVE TO SAY ABOUT QUICK DDRIP

"This product is AWESOME!!!!!!!!!!!!!! I like the Internet again. Speeds are up by 90-95%. Now, I'm downloading from the Web in much less than 1/16 the time, which is important in my line of work. The install was flawless and now, so are my downloads. Thanks **Quick DDRIP!**"



– AlphaGeek, Silicon Alley ;^)

"My elderly father has had trouble reading ever since cataract surgery two years ago. I've tried sending him books on tape, but it was always a cumbersome process and I was never sure if he'd like my selections. We tried downloading audio books from the Internet, but the process took FOREVER. Last month I sent him the **Quick DDRIP** and he's never been happier. He has instant (well, about 10 to 15 minutes as opposed to an hour or more before) access to digital quality sound recordings of all his favorites, and new releases too. Now Mom is threatening to move his LazyBoy to the PC."



-- Evelyn M., concerned daughter in Detroit, MI

"WOW! With **Quick DDRIP** I can watch any pay-per-view movie anytime I want and the quality is great. When I tried to watch a pay-per-view movie streamed over the Internet before, I experienced lost or delayed movie frames. No more. Now it's just like watching my own personal screening. And whatever movie I choose starts playing in seconds. The convenience and quality can't be beat."



-- Joe H., Movie Buff in Dubuque, IA

"**Quick DDRIP** is amazing! I converted the home video of my son's birth to a digital file and sent it via email to all the relatives. Almost all of them had problems downloading the attached video file. But my Mom has a QD unit. Thanks to QD, she was able to download the whole 9 hours of my son's delivery in less than a half hour, and then watch it just as if she was there. And we've got more video files on the way - baby's first smile, his first bath, his first visit from grandma, his first trip to the doctor, his first bottle from daddy,"

Disclaimer

-- Sam and Nancy, new parents in Tallahassee, FL

"Where can I invest? I've been sold since I saw a demonstration at the INTERNET NOW Conference. I bought one as soon as they came out and it more than lives up to the hype. No more problems with stop and start video feeds and I've never been "disconnected" from the Internet during a live event because of slow transmission speeds. Heck, I've never been disconnected during a download of a movie for that matter - which may be because movies download 8 times faster with **Quick DDRIP** than they did before."

Disclaimer

-- Hugo P, Las Vegas, NV

"WHAT A CONCEPT! I've seen a lot of computer products, software and hardware in my day and the **Quick DDRIP** really delivers. I frequently listen to Blues radio stations on the Internet and have always had problems with fidelity and distortion. Not any more -- with QD's higher speeds, I get hi-fidelity, Dolby-quality sound at analog prices. And it's so fast and reliable!"

Disclaimer

-- Skip J., audiophile, St Louis, MO

"**Quick DDRIP** is a life saver - its real time access to football games on the Internet is incredible. No more of those irritating jerky delays when I'm watching my favorite games (you know, where the missing frame is the part showing the completion of the pass) - and the picture is sharp enough to tell if the running back's foot was out of bounds when he caught that long pass (no instant replay needed!!) And the best part is I'm no longer limited to watching East Coast games broadcast on TV - but can keep up with the Big 12. (GO WILDCATS!!)"

Disclaimer


-- Jerry W., transplanted K-State fan, Baltimore, MD

"**Quick DDRIP** outperforms the other equipment on the market. I listen to a lot of high fidelity symphonic recordings and I must say that Quick DDRIP really lives up to its reputation. I can download performances of the Berlin Symphony Orchestra off the Internet in just a few minutes and the sound quality is unbeatable. Without Quick DDRIP, I just didn't have the patience to wait for the entire symphony to download. Now there's a whole new world of music for me to explore!"

Disclaimer

-- Curt D., music lover in Mobile, AL

Click-through page				
Quick DDRIP				
Stop the Waiting - Get in the Game				
Home	How QD Works	What Customers Say	Experts	Privacy Policy



Important Information About Quick DDRIP's Performance

Speed Improvements and Audio/Video Quality will vary depending on your individual computer equipment and phone line conditions. You should not expect to achieve results as good as those described in the testimonials.

Although this hyperlink indicates that more information is available, it does not indicate the importance of this information or the fact that it is related to the diamond weight. Consumers may believe, for example, that this link takes them to shipping and ordering information, rather than information about the diamond's weight.

Ex.
10

FTC FASHION JEWELRY



[Click here for more details
on the jewelry item you are purchasing.](#)

3/4 Ct. Diamond Earrings



Retail Price - \$1365.00

★ Our Low Price - \$ 975.00

Item#: GRTDEAL

Shipping Weight: 0.1 Lbs.

[add to cart](#)

Classic diamond solitaire earrings. Our sparkling round-cut diamonds are colorless and have only slight inclusions. Straight from the FTC's Washington DC diamond mines. Set in a stylish six-prong setting of 14 karat gold. The perfect fashion accessory for that special occasion.

Click-through page

FTC FASHION JEWELRY



JEWELRY INFORMATION

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3/4 ct. can be .70 to .84 carat

7/8 ct. can be .85 to .95 carat

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1 3/4 ct. can be 1.70 to 1.82 carat



2 ct can be 1.95 to 2.05 carat

This ad must disclose that DJ Blackhand was paid for his endorsement. The asterisk next to DJ's name does not suggest the importance and relevance of information that the link leads to. Because many consumers may easily miss the asterisk hyperlink, it is not clear and conspicuous.

Ex.
11

Quick DDRIP

Stop the Waiting - Get in the Game

Home	How QD Works	What Customers Say	Experts	Privacy Policy
<p>Hi-speed Internet can now reach <i>YOUR</i> door.</p> 	<p>Quick DDRIP</p> <p><i>Download</i> <i>Decode</i> <i>Record</i> <i>Instant Play</i></p>  <p>ORDER NOW</p>	<p>Make the Internet FUN again.</p> 		

Quick DDRIP is the REVOLUTIONARY device that easily hooks up to your home computer and phone line.



Quick DDRIP uses a special processing chip, and proprietary compression, decoding and caching techniques, to manipulate and speed up data transmissions.

"QD's superior real-time performance enhances the gaming experience for all levels of players. After I installed QD, it didn't take long for me to win my first Wrath of Thor national championship - and I'm still #1 this year. Whether you've got a 486 or a Pentium, QD can improve your "see-and-react" abilities. Soon you'll be winning all your matches."

-- D.J. Blackhand*

Quick DDRIP Gives You Unparalleled Internet Performance

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- SPEEDY file downloads -- even huge files download in a fraction of the time it takes you now! Try it with your next online video purchase!
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- UNBELIEVABLY FAST "action" in online games!
- FAST DELIVERY of graphics for FANTASTIC virtual reality experiences!

Enjoy The Best Entertainment - All From Home



WATCH A FULL-LENGTH MOVIE ONLINE!

No more waiting in line for a ticket or for the rental. Find your favorite pay-per-view movies on the Web - and let QD do the rest. With QD, streaming pay-per-view movies start playing instantaneously -- **Quick DDRIP's** built in decoder sees to that!



Pay-Per-View Movie Releases



CONCERT IN A CAN! Buy a VIRTUAL TICKET and go on a LIVE WEB CONCERT TOUR with the best musicians without ever leaving your home! *And you won't believe the difference in audio and video quality over existing technology!* Whether you are a movie buff or an audiophile, **Quick DDRIP** is technology made for you.



Live Concert Webcasters

Click-through page				
Quick DDRIP				
Stop the Waiting - Get in the Game				
Home	How QD Works	What Customers Say	Experts	Privacy Policy



**Important Information About D.J. Blackhand's
Endorsement of Quick DDRIP**

QuickDDRIP, Inc. has paid D.J. Blackhand for his endorsement.

This ad must disclose that DJ Blackhand was paid for his endorsement. It is not clear that the red star next to DJ's name is a hyperlink. It is also confusing because the same type of star is used on another part of the page solely as a graphic.

Ex. 12

Quick DDRIP

Stop the Waiting - Get in the Game

Home

How QD Works

What Customers Say

Experts

Privacy Policy

Hi-speed
Internet can
now reach
YOUR door.



Quick DDRIP

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Record
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ORDER NOW

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-- D.J. Blackhand ★

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Live Concert Webcasters

[Home](#)

[How QD Works](#)

[What Customers Say](#)

[Experts](#)

[Privacy Policy](#)

Some images are from "Corel Gallery Magic 200,000" by Corel Corporation

Click-through page				
Quick DDRIP				
Stop the Waiting - Get in the Game				
Home	How QD Works	What Customers Say	Experts	Privacy Policy



**Important Information About D.J. Blackhand's
Endorsement of Quick DDRIP**

QuickDDRIP, Inc. has paid D.J. Blackhand for his endorsement.

The descriptive hyperlink in this ad is placed adjacent to the 3/4 carat diamond weight claim. This helps to ensure that consumers notice the link and relate it to the testimonial.

Ex.
13

FTC FASHION JEWELRY



[Diamond Weights are Not Exact](#)
[Click here for Weight Ranges.](#)

3/4 Ct. Diamond Earrings



Retail Price - \$1365.00

* Our Low Price - \$ 975.00

Item#: GRTDEAL

Shipping Weight: 0.1 Lbs.

[add to cart](#)

Classic diamond solitaire earrings. Our sparkling round-cut diamonds are colorless and have only slight inclusions. Straight from the FTC's Washington DC diamond mines. Set in a stylish six-prong setting of 14 karat gold. The perfect fashion accessory for that special occasion.

Click-through page

FTC FASHION JEWELRY



JEWELRY INFORMATION

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1 3/4 ct. can be 1.70 to 1.82 carat

2 ct can be 1.95 to 2.05 carat

This hyperlink may be easily missed by consumers because it is separated from the 3/4 carat claim and because it appears below blank space that suggests that there is no further information to view.

Ex.
14

FTC FASHION JEWELRY



3/4 Ct. Diamond Earrings



Retail Price - \$1365.00

* Our Low Price - \$ 975.00

Item#: GRTDEAL

Shipping Weight: 0.1 Lbs.

[add to cart](#)

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The disclosure on the click-through page -- concerning DJ Blackhand's endorsement -- is included in the middle of unrelated text and large amounts of graphics. It is not obvious to a consumer who clicked to this page where the disclosure is and its relevance.

Ex. 15

Quick DDRIP

Stop the Waiting - Get in the Game

[Home](#) [How QD Works](#) [What Customers Say](#) [Experts](#) [Privacy Policy](#)

<p>Hi-speed Internet can now reach <i>YOUR</i> door.</p> 	<p>Quick DDRIP <i>Download</i> <i>Decode</i> <i>Record</i> <i>Instant Play</i></p>  <p>ORDER NOW</p>	<p>Make the Internet FUN again.</p> 
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--D.J. Blackhand

[Paid Endorsement](#)

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Live Concert Webcasters

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[What Customers Say](#)

[Experts](#)

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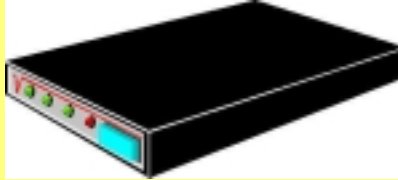
Some images are from "Corel Gallery Magic 200,000" by Corel Corporation

Click-through page

Quick DDRIP

Stop the Waiting - Get in the Game

[Home](#) [How QD Works](#) [What Customers Say](#) [Experts](#) [Privacy Policy](#)



Priced at just



\$129.95



+ Shipping and Handling
(\$9.95, 2 days shipping, \$.4.95 for 5 days shipping)



HOT HOT HOT!!!

Over 40,000 satisfied customers - and the numbers keep growing!

* D.J. Blackhand has been involved in the gaming world since he was 12 years old. After purchasing Quick DDRIP, he rapidly ascended the Wrath of Thor tournament levels to become the intergalactic champion several years running. D.J. loves all kinds of games and plays several hours daily. His interests also include playing with his Briard dog, Thunder, and running on the beach. QuickDDRIP, Inc. has paid D.J. Blackhand for his endorsement.



Reviewers in ***Web Surfer Pro***, ***Families Online***, and ***Moviemag.com*** are unanimous in their praise of QD:



"Easy setup, good performance, reasonable price - what more could you want?" ***Moviemag.com*** [Click here to read review](#)

"Quick DDRIP is truly revolutionary. It will turn the PC into the Family Entertainment Center" ***Families Online*** (February 21, 1999) [Click here to read review](#)

"A great alternative to waiting for hi-speed phone or cable Internet services to reach your neighborhood."
Web Surfer Pro (March 1999) [Click here to read review](#)

The hyperlink on this page takes consumers to the top of the click-through page. The disclosure about diamond weights is provided in the middle of the page and consumers must scroll down to find this information. The hyperlink should bring consumers directly to the disclosure.

Ex.
16

FTC FASHION JEWELRY



[Diamond Weights are Not Exact](#)
[Click here for Weight Ranges.](#)

3/4 Ct. Diamond Earrings



Retail Price - \$1365.00

★ Our Low Price - \$ 975.00

Item#: GRTDEAL

Shipping Weight: 0.1 Lbs.

[add to cart](#)

Classic diamond solitaire earrings. Our sparkling round-cut diamonds are colorless and have only slight inclusions. Straight from the FTC's Washington DC diamond mines. Set in a stylish six-prong setting of 14 karat gold. The perfect fashion accessory for that special occasion.

Click-through page

FTC FASHION JEWELRY



JEWELRY INFORMATION

Colored Gemstones

Pearls

Diamonds

Colored Gemstones

Colored gemstones may be treated to enhance their color or durability. These treatments may not be permanent and the effects of some treatments may lessen or change over time

You need to take special care of treated gemstones. Do not use ultrasonic cleaners or harsh solvents to clean your gemstone. Also, do not expose your gemstone to sudden, extreme changes in temperature.

Our gemstone rings are available in the standard sizes, 5 through 8. For an additional charge of \$2, you may order rings in other sizes. Please contact a customer service representative to place this special order.

Pearls

Natural or real pearls are made by oysters and other mollusks. Cultured pearls also are grown by mollusks, but with human intervention; that is, an irritant introduced into the shells causes a pearl to grow. Imitation pearls are man-made with glass, plastic, or organic materials. Because natural pearls are very rare, most pearls used in jewelry are either cultured or imitation pearls.

To clean your pearls, simply wipe them with a soft, dry cloth. You should not use any commercial cleaners for your pearls.

Diamonds

Diamond weights are stated in "carats." A carat is equal to 200 milligrams (or 1/5 gram). A carat is divided into 100 points. Therefore, a .25 carat diamond may be referred to as a

25-point diamond.

Diamond weights may not be exact. For us to offer you these low FTC prices, we sell our diamonds in size ranges. The following chart shows the range of weight for each size diamond.

1/10 ct. can range from .09 to .11 carat

1/8 ct. can be .11 to .13 carat

1/7 ct. can be .13 to .15 carat

1/6 ct. can be .15 to .17 carat

1/5 ct. can be .18 to .22 carat

1/4 ct. can be .21 to .29 carat

1/3 ct. can be .30 to .36 carat

1/2 ct. can be .45 to .59 carat

5/8 ct. can be .59 to .67 carat

3/4 ct. can be .70 to .84 carat

7/8 ct. can be .85 to .95 carat

1 ct. can be .95 to 1.10 carat

1 1/4 ct. can be 1.20 to 1.29 carat

1 1/2 ct. can be 1.45 to 1.55 carat

1 3/4 ct. can be 1.70 to 1.82 carat

2 ct can be 1.95 to 2.05 carat

This disclosure appears as scrolling text when viewed with one browser, Microsoft Explorer, but it may not appear when viewed with another browser, Netscape.

Ex. 17

Quick DDRIP

Stop the Waiting - Get in the Game

[Home](#) [How QD Works](#) [What Customers Say](#) [Experts](#) [Privacy Policy](#)

**Hi-speed
Internet can
now reach
YOUR door.**



Quick DDRIP
*Download
Decode
Record
Instant Play*



ORDER NOW

**Make the Internet
FUN again.**



Quick DDRIP is the REVOLUTIONARY device that easily hooks up to your home computer and phone line.



Quick DDRIP uses a special processing chip, and proprietary compression, decoding and caching techniques, to manipulate and speed up data transmissions.

QD's superior real-time performance enhances the gaming experience for all levels of players. After I installed QD, it didn't take long for me to win my first Wrath of Thor national championship - and I'm still #1 this year. Whether you've got a 486 or a Pentium, QD can improve your "see-and-react" abilities. Soon you'll be winning all your matches."

--D.J. Blackhand

QuickDDRIP, Inc.
has paid D.J.
Blackhand for his
endorsement.

Quick DDRIP Gives You Unparalleled Internet Performance

- NO DELAY waiting for images to load -- Graphics-intensive Web pages load FAST!
- SPEEDY file downloads -- even huge files download in a fraction of the time it takes you now! Try it with your next online video purchase!
- ENHANCED streaming audio and video quality for live Web events!
- UNBELIEVABLY FAST "action" in online games!
- FAST DELIVERY of graphics for FANTASTIC virtual reality experiences!

Enjoy The Best Entertainment - All From Home



WATCH A FULL-LENGTH MOVIE ONLINE!

No more waiting in line for a ticket or for the rental. Find your favorite pay-per-view movies on the Web - and let QD do the rest. With QD, streaming pay-per-view movies start playing instantaneously -- **Quick DDRIP's** built in decoder sees to that!



Pay-Per-View Movie Releases



CONCERT IN A CAN! Buy a VIRTUAL TICKET and go on a LIVE WEB CONCERT TOUR with the best musicians without ever leaving your home! *And you won't believe the difference in audio and video quality over existing technology!* Whether you are a movie buff or an audiophile, **Quick DDRIP** is technology made for you.



Live Concert Webcasters

[Home](#)

[How QD Works](#)

[What Customers Say](#)

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Quick DDRIP

Stop the Waiting - Get in the Game

Home How QD Works What Customers Say Experts Privacy Policy

SEE WHAT OUR SATISFIED CUSTOMERS HAVE TO SAY ABOUT QUICK DDRIP

"This product is AWESOME!!!!!!!!!!!!!! I like the Internet again. Speeds are up by 90-95%. Now, I'm downloading from the Web in much less than 1/16 the time, which is important in my line of work. The install was flawless and now, so are my downloads. Thanks **Quick DDRIP!**"

– AlphaGeek, Silicon Alley ;^)

"My elderly father has had trouble reading ever since cataract surgery two years ago. I've tried sending him books on tape, but it was always a cumbersome process and I was never sure if he'd like my selections. We tried downloading audio books from the Internet, but the process took FOREVER. Last month I sent him the **Quick DDRIP** and he's never been happier. He has instant (well, about 10 to 15 minutes as opposed to an hour or more before) access to digital quality sound recordings of all his favorites, and new releases too. Now Mom is threatening to move his LazyBoy to the PC."

-- Evelyn M., concerned daughter in Detroit, MI

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-- Joe H., Movie Buff in Dubuque, IA

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-- Sam and Nancy, new parents in Tallahassee, FL

"Where can I invest? I've been sold since I saw a demonstration at the INTERNET NOW Conference. I bought one as soon as they came out and it more than lives up to the hype. No more problems with stop and start video feeds and I've never been "disconnected" from the Internet during a live event because of slow transmission speeds. Heck, I've never been disconnected during a download of a movie for that matter - which may be because movies download 8 times faster with **Quick**

DDRIP than they did before."

-- Hugo P, Las Vegas, NV

"WHAT A CONCEPT! I've seen a lot of computer products, software and hardware in my day and the **Quick DDRIP** really delivers. I frequently listen to Blues radio stations on the Internet and have always had problems with fidelity and distortion. Not any more -- with QD's higher speeds, I get hi-fidelity, Dolby-quality sound at analog prices. And it's so fast and reliable!"

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-- Curt D., music lover in Mobile, AL

Ex.
18

Quick DDRIP

**Stop the Waiting -
Get in the Game**

**Important Information
About
Quick DDRIP's
Performance**

**Speed Improvements and
Audio/Video Quality will vary
depending on your individual
computer equipment and phone
line conditions. You should not
expect to achieve results as good
as those described.**

The pop-up screen that contains the disclosure appears when you first access this page. If you click on another portion of the page, the pop-up window minimizes and disappears from the display area. The pop-up screen may not reappear if you re-access this page. Consumers may miss the disclosure, especially if they do not understand how to display a minimized pop-up window (by clicking on its button at the bottom of the screen).

Ex.
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Quick DDRIP

Stop the Waiting - Get in the Game

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[What Customers Say](#)

[Experts](#)

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SEE WHAT OUR SATISFIED CUSTOMERS HAVE TO SAY ABOUT QUICK DDRIP

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-- Curt D., music lover in Mobile, AL

QuickDDRIP - POP-UP

Important Information About Quick DDRIP's Performance:

Speed Improvements and Audio/Video Quality will vary depending on your individual computer equipment and phone line conditions. You should not expect to achieve results as good as those described in the testimonials.

Because many of the experiences described in the testimonials may not be typical of what consumers generally will experience with the product, a disclosure regarding this fact is needed. Consumers visiting this site might read the testimonials, reach a conclusion about the product based on them, click on and review numerous other pages on the site, and then finally decide to buy the product. They therefore might not relate a disclosure placed on the ordering page to the claims on the testimonial page.

Ex. 20



Quick DDRIP

Stop the Waiting - Get in the Game



Home	How QD Works	What Customers Say	Experts	Privacy Policy
----------------------	------------------------------	------------------------------------	-------------------------	--------------------------------

SEE WHAT OUR SATISFIED CUSTOMERS HAVE TO SAY ABOUT QUICK DDRIP

[Order Now](#)

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Click-through page

Quick DDRIP

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Please Note: Speed Improvements and Audio/Video Quality will vary depending on your individual computer equipment and phone line conditions. You should not expect to achieve results as good as those described in the testimonials.

Order Form

Name:	
Address:	
Address2:	
City:	
State:	
Zip Code:	
Telephone Home:	
Telephone Work:	
Quantity:	
Price:	\$
Tax:	
Total Price:	\$



The banner ad indicates that there are shipping and handling costs associated with receiving the "free" flowers. The actual costs are described on the click-through page.

Ex.
21



SANDY'S BOUQUET-OF-THE-MONTH CLUB

Sandy's Bouquet-of-the-Month Club delivers fresh, beautiful flowers every month right to your door. We believe that you'll like Sandy's Bouquet-of-the-Month Club so much that we're offering you the opportunity to receive one of our beautiful bouquets free. All you pay is \$5.95 shipping & handling (continental US only). Along with your bouquet, you'll receive information about how to enroll on-line or by phone in our Bouquet-of-the-Month Club. As a member you'll receive a fresh seasonal bouquet each month - for a low club fee of \$15.00 per month (plus shipping and handling).

If you'd like to receive a free trial bouquet, please fill out the information below. You will receive your free bouquet in 5 to 7 days.

[Privacy Policy](#)

NAME

EMAIL

TELEPHONE

 - -

ADDRESS

CITY

STATE

ZIP

[Submit](#)

[CLICK HERE TO ENTER SANDY'S FLOWER SHOP](#)

The disclosure in this ad is placed in blue text, which contrasts with the background and helps make it stand out.



Quick DDRIP

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SEE WHAT OUR SATISFIED CUSTOMERS HAVE TO SAY ABOUT QUICK DDRIP *

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Quick DDRIP

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The disclosure on this click-through page is buried in the middle of text and is surrounded by large graphics that may distract consumers' attention away from the disclosure.

Ex.
24

Quick DDRIP

Stop the Waiting - Get in the Game

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Priced at just



\$129.95



+ Shipping and Handling
(\$9.95, 2 days shipping, \$.4.95 for 5 days shipping)



HOT HOT HOT!!!

Over 40,000 satisfied customers - and the numbers keep growing!

* D.J. Blackhand has been involved in the gaming world since he was 12 years old. After purchasing Quick DDRIP, he rapidly ascended the Wrath of Thor tournament levels to become the intergalactic champion several years running. D.J. loves all kinds of games and plays several hours daily. His interests also include playing with his Briard dog, Thunder, and running on the beach. QuickDDRIP, Inc. has paid D.J. Blackhand for his endorsement.



Reviewers in **Web Surfer Pro**, **Families Online**, and **Moviemag.com** are unanimous in their praise of QD:



"Easy setup, good performance, reasonable price - what more could you want?" **Moviemag.com** [Click here to read review](#)

"Quick DDRIP is truly revolutionary. It will turn the PC into the Family Entertainment Center" **Families Online** (February 21, 1999) [Click here to read review](#)

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