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Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Room H-113 (Annex I)
Washington, DC 20580

Re: Dot Com Disclosures, File No. P 114506

CMP.LY, INC., submits these comments in response to the Federal Trade Commission (the "Commission") staff request for advice and input regarding revising its guidance to Businesses about Disclosures in Online Advertising (the "Dot Com Disclosures") originally issued in 2000. The Commission has requested respondents to provide insight regarding "how online advertisers make claims and disclosures" as well as respond to specific questions for which it seeks guidance. CMP.LY seeks to address both requests in this comment.

CMP.LY offers third parties a number of purpose-built regulatory compliance solutions including the ability to create and document required disclosures in short form across social media, internet and text advertisements, as outlined below. The solutions include free tools for individual bloggers and influencers, as well as paid commercial tools for advertisers to document and monitor disclosure policies and activities.

Advertisers face significant challenges complying with disclosure requirements, including providing the fine print and context in messages which flow between individual social media platforms in a manner which can be easily documented and monitored. CMP.LY provides advertisers the ability to communicate directly with their consumers on social networks, and other short form communications, while including required disclosures, providing documentation, audit trails and automated monitoring for compliance with a given disclosure policy.

Given the rapid adoption of social platforms, as well as the increasing trend toward communication platforms with character constraints, open syndication of content to multiple platforms, reliance on advertising revenue models, and, in particular, advertising, marketing and sponsorship efforts which are meant to integrate seamlessly into social networks and intended to spread virally within those networks, we believe that it is vital that the Commission issue clear guidance with respect to the continued importance and use of disclosures.

Therefore, CMP.LY urges the Commission to revisit the Dot Com Disclosures. Further, we believe that a workshop would benefit both the Commission and the industry, providing an opportunity to explore the tools and methods in use today, and to better

understand the challenges and opportunities to come in the future. We see a growing importance for disclosures as sponsored content and marketing messages become more seamlessly integrated with influencer profiles and individual messages, Tweets and updates.

The Importance of Disclosures in Communications Today

In the years since the Commission published the Dot Com Disclosures, the Internet has evolved far beyond an ecosystem where people visit web pages and receive electronic mail to obtain information about products and services. In 2000, less than half of Americans were online and at the time the only way to access the Internet was through a computer terminal. In 2011, consumers across the US and around the world have instant broadband access to the Internet, and not only through computer terminals but built into portable devices such as smartphones, tablets, netbooks and notebooks.

Disclosures must be relevant, clear and conspicuous within the context of these new channels of communication and the devices that we use to access them. The artificial limitations of social communication platforms, like the number of characters that may be used, as well as the screen size and capabilities of portable devices present certain challenges for disclosures to be clearly visible or, in some cases, to be included in messages at all.

Openness and transparency are of even greater importance when such content is integrated with social channels, or transmitted to mobile devices using geo-location information. The Commission should not limit the requirements that advertisers and marketers make required disclosures merely as a result of limitations of third party platforms. Restrictions on space, the design of certain social media tools or the size of a given advertisement space should not, on their own, exempt advertisers from disclosure requirements on those platforms.

In addition to the Commission, we have seen other regulators in the US and abroad look at disclosure requirements in social media in the context of advertising and marketing consumer goods, financial services, healthcare products, political campaigns and more. In each of these areas, the challenges have been similar and the need for disclosures has been significant.

Without clear standards for disclosures and established best practices, we will continue to see confusion and a wide variety in the approaches to compliance with disclosure requirements. The commission has the opportunity to provide clear guidance for existing and future tools, in light of the significant changes that have occurred since 2000 and in context of today's social web.

Evolution of the Internet, Social and Mobile Communication

When the Dot Com Disclosures were issued in 2000 approximately forty percent (40%) of homes in America had Internet access, only ten percent (10%) of which was high speed connection through either Cable or Digital Subscriber Lines (“DSL”).¹ In 2010, seventy one percent (71%) of homes in America had Internet access of which sixty eight percent (68%) connected through high-speed broadband.

In 2000 access to the Internet over mobile devices was non-existent while in 2010 the Pew Internet and American Life Project found that one in four Americans regularly access the Internet over their “smartphones”²

Similarly in 2000 text messaging using Short Message Service over mobile telephony networks was rare. According to the CTIA 14.4 Million texts were transmitted monthly. However, in 2010 nearly 188 million texts per month were transmitted with an estimated 2.2 Trillion texts transmitted annually.³

In 2000 social networking was still primarily done in person. As the first online social networks launched, relationships and connections online brought users together with friends, family and business contacts. Since then, social networks have fundamentally changed the ways in which communications occur on the Internet. Online social networks enable content to be shared and syndicated across devices, platforms and channels seamlessly and without requiring any technological expertise of users.

It is important to note that the World Wide Web has been available to the public for 20 years this month (since August 6, 1991). In those 20 years we have seen dramatic changes occur in communication overall and in our methods of interacting, learning and influencing each other. We have seen a marked increase in these changes in recent months and the pace of innovation is unprecedented in recorded human history.

¹ “Falling Through The Net: Toward Digital Inclusion” October 2000 US Department of Commerce, National Telecommunications & Information Administration, Economic and Statistics Administration retrieved on July 31, 2011 from <http://search.ntia.doc.gov/pdf/ftn00.pdf>

² <http://www.pewinternet.org/Reports/2011/Smartphones/Summary.aspx>

³ http://www.ctia.org/consumer_info/service/index.cfm/AID/10323

Emerging Platforms are Increasingly Influential in News and Politics

Social networking has fundamentally changed the manner in which people communicate. Innovations in social networking focus on real-time, mobile and interactive communication, much of which is in short-form. The rapid and widespread adoption of social media is unprecedented in American history.

Facebook and Twitter are only two of the platforms in the social media space. The recent announcement of Google+ has resulted unprecedented growth of a new player in the social media space. While it took both Twitter and Facebook more than two years to reach the milestone of 10 million users, Google+ has been reported to have passed that milestone in a mere 16 days from public launch and then to have doubled that number again in the following 8 days.⁵ Not one of these platforms existed in 2000 and we continue to see new platforms and technologies developed on an ongoing basis.

Consider the following growth figures for just Twitter and Facebook:

Twitter	Facebook
Nov 2004 - Did not exist	Nov 2004 - Fewer than 1 Million users on a closed platform
Nov 2008 - approximately 4 Million users	Nov 2008- approximately 120 Million Users
May 2011 - approximately 300 Million users	May 2011- approximately 750 Million Users

While Twitter and Facebook were both active in 2008, neither had been widely adopted for more than personal use. In the past three years, the role of Twitter and Facebook in politics has drastically expanded. In the United States candidates and political organizations are flocking to the platforms: Candidates from both parties have recently announced their candidacies for President on social networks, Newt Gingrich on Twitter and Barack Obama on Twitter and Facebook. Based on current trends, it is clear that social media will play a prominent role in 2012 elections and beyond.

In addition, social media platforms are breaking news stories in real time in a manner mainstream media cannot due to the users direct interaction with the platform, and each other. For example the first reports of the attack against Osama Bin Laden were made on Twitter's platform. Furthermore, in recent months, social media platforms have played a significant role in political uprisings in the Middle East, in particular in Egypt and Libya.

⁵ <http://goo.gl/S7rNf>

Emerging Platforms are Increasingly Influential in Marketing and Advertising

Advertisers are also embracing social marketing channels to connect directly with consumers in novel ways. Marketing messages within social networks and applications are more deeply integrated into social networks and designed to be both more targeted and less intrusive than traditional ad units. The ability to encounter marketing out of context in social media channels in many ways increases the importance of meaningful disclosures.

The unprecedented growth of digital communication has fundamentally changed the way in which companies market and advertise their goods and services. According to a recent survey, 72 percent (72%) of companies in the United States have a social media marketing strategy.⁶ Social networks have enabled users to connect and share information, and have emerged as sources of news, influence and advertising that leverage the power of “Word of Mouth Marketing” in ways that could not have been imagined just a few years ago.⁷

Social networks have, in a few short years, emerged as a leading media channel. In addition to Word of Mouth efforts, leading social networks have become the dominant player in display advertising as well. According to ComScore, in the first quarter of 2011, Facebook led all online publishers in number of display ad impressions accounting for 346 billion impressions. This was nearly double the number that Facebook delivered in the first quarter of 2010 and accounted for 31.2% (nearly one-third) of all display ad impressions served by online publishers overall in the quarter.⁸

Social networks and communications have proven highly effective for advertisers who rely increasingly on social media to connect with consumers and influencers.⁹ This has proven particularly challenging in the context of advertising and marketing initiatives where disclosure requirements for endorsements and testimonials or other terms and fine print are required. The Commission has revised the Guides for Testimonials and Endorsements as a result of these changes to include social media and Internet channels specifically.

Across social media channels (blogs, web sites, platforms and apps) advertisers have been finding ways to leverage the users who are most influential in the demographic audiences that they are looking to reach. By reaching out to these influencers, directly and indirectly, advertisers are engaging influential advocates with goods, services and payments, to review and promote their products, contests and special offers. Much of the concern raised in the revised guides was with regard to sponsored and incentivized content that is promoted in this manner.

⁶ <http://www.kingfishmedia.com/Portals/51063/pdf/kfm-social-media-usage-2010.pdf>

⁷ <http://pewresearch.org/pubs/2025/social-impact-social-networking-sites-technology-facebook-twitter-linkedin-myspace>

⁸ http://www.comscore.com/Press_Events/Press_Releases/2011/5/U.S._Online_Display_Advertising_Market_Delivers_1.1_Trillion_Impressions_in_Q1_2011

⁹ https://www.borrellassociates.com/reports?page=shop.product_details&flypage=garden_flypage.tpl&product_id=885&category_id=6

Both Twitter and Facebook allow companies to directly market to consumers in a variety of ways. Facebook offers companies pages on its platform for free on which they can connect directly with consumers. Additionally, Facebook sells advertising space to companies that may appear in a variety of sponsored forms. Twitter offers a similar two-tiered system for companies to communicate with its users. Companies may communicate with followers through a Twitter account, or they may pay Twitter sponsorship fees to promote campaigns, brands or individual messages. Plans for the release of Google+ for advertisers are about to be released and other platforms are sure to follow.

Today, Standard Ads make up the majority of ads on the Facebook platform, but Facebook continues to innovate to incorporate advertising and sponsorship of messaging into the fabric of the user experience. While marketers have found standard ads on the platform to be incredibly effective, the types of advertising that are available on Facebook are constantly evolving.

The Facebook “Like” button and Google+1 features have been incorporated not only into the interactive experience on their respective web sites, but also across third-party sites as a means to further engage and leverage the power of social networks to influence increasingly large groups within social groups. Currently, for a user with a material connection, there is no provision to indicate that connection within the related posts, news feeds that contain the message that the user “likes” the brand or in third party sites where the message is syndicated.

Similarly, both Facebook and Twitter offer corporate users the ability to pay to promote certain messages and profiles within the platform and within a user’s network in a prominent position. In addition, a number of third parties offer sponsored Tweets with opportunities to leverage the networks of celebrities and other influencers. These messages are sometimes sponsored through companies acting as agents for Twitter influencers. Most of these require Tweets to be sent through a proprietary dashboard and they rely on a number of ad hoc disclosure solutions including hashtags and [ad] or {spon}.

Companies are also beginning to bypass the Internet to communicate directly with consumers through the use of Apps or mobile applications. An App is a dedicated program that resides on smartphones, tablets, mobile devices and/or computers that are able to connect with the Internet directly without the use of a web browser. With increased adoption of smartphones and tablets, consumers are increasingly reading, watching and sharing content within App environments. Within Apps, there are a number of questions that are raised with regard to small screen sizes, access by minors, privacy and location that are all likely to increase with importance in correlation with mass-market adoption and continued development of these technologies.

As social media and networking platforms mature, additional novel forms of advertising will surely emerge. Disclosures and disclaimers will be even more important as these

messages become shorter, are more seamlessly integrated into social conversations, and appear less like traditional advertising. Across advertising channels, including traditional ads, advertiser disclosures are key to a complete understanding of context and are vital to maintain open and transparent communications. Without disclosures, we run a significant risk of confusion and/or obfuscation of the source of content within social media networks and a strong likelihood that important material connections between the promoters of such content and the original source will be hidden from public view.

Ad Hoc Disclosure Methods and Technological Feasibility for Standard Disclosures in Social Media

In the 20 months since the revised Guides for Endorsements and Testimonials took effect, there has been confusion in the marketplace with regard to the adequacy of disclosures, best practices and responsibilities for each participant in a given marketing effort. Often, advertisers rely on agencies to provide guidance and methods for disclosures and agencies rely on influencers to include, write and manage disclosure statements. As a result, there is no consistency among disclosures or practices across advertisers, campaigns and platforms.

Hashtags are commonly used in social media channels (in particular in Twitter) where individual messages can be filtered in search based upon the inclusion of a hash mark (#) immediately followed by a word used for further qualification or classification. For example, in general terms a hashtag such as #FTC could be used to identify messages of relevance to the Federal Trade Commission, enabling users to follow conversations or monitor communications on that particular topic. In the FTC disclosure context specifically, #AD (for advertising content), #SPON (for sponsored content) and #ENDORSE (for endorsements) have been used to make simple disclosure statements in short form.

Hashtags can be a simple method for an individual user to make a disclosure in an individual tweet. In the context of an advertiser campaign or within a larger organization Hashtags provide little, if any, tracking or documentation of messages for compliance. It can be virtually impossible for an advertiser, or their agency, to monitor for the omission of a given hashtag. Within campaigns where thousands of messages are generated by multiple influencers, affiliates or employees a manual audit of each post would be required to monitor for the brand mention, the inclusion of a particular user in a given campaign and the inclusion of the given hashtag in each post.

The core challenge to the use of hashtags as a method for disclosures is that hashtags are not meant to be disclosures. Hashtags are used as a method of searching and cataloging Tweets. The use of hashtags does not provide any clear context to the consumer who clicks on them. Clicking on a #SPON within Twitter would bring the user to a search page of other sponsored posts mentioning #SPON, but no description or explanation of why a particular disclosure was required can be found on this page or elsewhere. Furthermore, outside of Twitter, or when content gets syndicated to other

platforms, the hashtag loses its relevance and no longer serves as a link to search related posts.

Hashtags that are generally used for disclosures are generic in nature and are not unique to the individual program or user. They cannot be distinguished from all of the other posts that use a generic tag. As a result, an advertiser who wants to track, monitor and document a given program faces a significant challenge in understanding which posts are relevant to a given program and which of the mentions were generated by an influencer with a material connection. Furthermore, the omission of a hashtag by a given influencer is only detected by a manual search of each influencer's individual feeds.

In addition to hashtags many advertisers and agencies rely on individual influencers to write their own disclosures. This has proven challenging to influencers who, without legal training or advice, are left to their own devices to write relevant and meaningful disclosures. Without a standard framework, disclosures are increasingly hard to track as large programs reach a critical mass or scale, especially when syndicated across multiple communication channels.

The Importance of Standards in Disclosure

With a wide variety of disclosure needs and the use of emerging platforms with unique limitations and structures, it is important that standards of disclosure be developed to ensure accountability and consistency in compliance. If a cross-platform campaign uses hashtags in Twitter, hyperlinks in Facebook, and individual written disclosures in HTML applications, the result is difficult to track and monitor, inconsistent for reporting and documentation and likely to be very confusing to the end-user consumer.

Technological Feasibility for Advanced Disclosures in Social Media

Compliance with the FTC disclosure requirements is possible even in short-form communication without complexity or inconvenience to the advertiser or the consumer. With advanced and standardized coding frameworks, compliance reporting can be automated, documented and create an audit trail of all required activities.

CMP.LY introduced a more structured, standardized solution not long after the issuance of the updated FTC endorsement guidelines that can be used in just this manner. More recently, CMP.LY has announced the development of solutions addressing disclosure requirements for regulated industries including financial services (under SEC and FINRA) and healthcare/pharma (under FDA).

We have developed a universally standardized and simple solution, which provides detailed and documented disclosures in the space constrained environments of Twitter, Facebook, Fourquare, SMS Text and other social media platforms, and is an emerging standard for the disclosure of any required information or fine print related to content.

Across the multiple applications for CMP.LY technology, a CMP.LY link or icon always indicates, and is directly linked to, a complete disclosure or inclusion of legal language.

While the issue of disclosure in short-form seems at first to be a complex problem to solve, with the proper framework in place such statements are easily included in the body of content and can provide for tracking and reporting to ensure compliance. In addition, our solution employs a linking structure that enables a clear and prominent disclosure to be documented and displayed to the user whenever the CMP.LY disclosure link is clicked.

Iconic Compliance, our solution, uses a standardized coding framework enables influencers to include a concise short-form disclosure that is readable on its face in the body of their content and links directly to a complete disclosure and, in certain cases, content with a clear disclosure associated with that content. These iconic disclosures can be represented as a coded URL, or a standardized visual icon badge, which is uniquely identified and can be monitored for compliance reporting.

Within character-limited platforms and ads, a simple coded URL provides a universally identifiable notice to indicate that a relationship or required disclosure of a certain type exists. It also provides clear, documented and trackable methods for including disclosures clearly and conspicuously, making sure to clearly highlight full text of disclosures - even in environments of 140 characters or fewer. This codified link can be displayed clearly and prominently with the content that is the subject of the post and in relatively few characters (10-15% of overall message content in the 140 or 160 character platforms) while providing clear and conspicuous disclosure.

Aside from shortening the length of a given link to content, CMP.LY codes carry specific meanings. Unlike standard URL shorteners, which are generic in nature and may refer to any form of content, CMP.LY URLs always refer a user to content that includes some form of legal disclaimer or disclosure. Furthermore, CMP.LY codes indicate to a user, before clicking the link, that disclosure or legal language applies, in addition to the type of disclosure that is referenced, by a standardized framework of designated numbers and letters.

We recently added the ability to frame a given page of content and ensure that the disclosure is prominently displayed on-screen whenever the user follows a CMP.LY link to a designated page of content. Those reading the communication can then click through the link to view a page that includes a full disclosure along with the full content from any source (including Facebook pages, web sites, blogs, social media profiles or pages).

Visual icon badges are also used to indicate disclosures and add context to a particular disclosure. These icons are embedded as visual elements in a page, using our URL coding system to uniquely identify users, programs and policies from monitoring and reporting functions. These badges are immediately recognizable and highly visible, with contrasting colors, clear text and readable and coded representations of the disclosure type that pertains to that use. The badges can be used and displayed in any

environment that displays images (blogs, web sites, apps) and we hope to integrate them into text-based environments in the future.

Addressing the Commission's Questions

1) What issues have been raised by online technologies or Internet activities or features that have emerged since the business guide was issued (e.g., mobile marketing, including screen size) that should be addressed in a revised guidance document?

Internet tools, devices and platforms have changed drastically since 2000. Increasingly, these channels of communication are social and mobile in nature. Portable Internet connected devices (smartphones, tablets and even notebook computers) were limited in capacity, connectivity and availability (if at all) when the Dot Com Disclosures were last defined. Web sites were designed primarily for browsing on desktop screens. Social platforms that dominate our communications today (Twitter, Facebook, Skype) did not even exist. Mobile platforms were limited to phone and SMS with the earliest of Blackberry services coming to market as pager devices with grayscale screens, no web browser and limited email only functionality (combined Blackberry devices with both phone and email were not announced until 2001). iTunes, the App economy and certainly the iPhone with mobile broadband connectivity were still years in the future. Blogs, which emerged from web logs and bulletin boards, were chat-based communities with limited sharing and syndication.

Since 2000, we have seen the development of smartphones that rival and exceed desktop and notebook offerings of 2000. These devices can provide worldwide Internet connectivity with integrated SMS, email and social offerings. The small screens, portable nature and social functions have enabled consumers to bring the social web with them wherever they go and advertisers have followed this trend closely. There are obvious challenges to the small screens and character limits of mobile and social tools (Twitter = 140 characters; SMS = 160 characters; Facebook = 420 characters & LinkedIn = 600 characters), in particular when it comes to making meaningful disclosures.

In addition to mobile screens, social media content is often aggregated in dashboards which sort, search and filter relevant information from social media streams. In these platforms, readers are often looking only at individual posts, out of context with feeds overall, or of the profiles and backgrounds which were designed to appear within profile views. On desktop, notebook, tablet or smartphone, disclosures and other information are not displayed alongside content for these users.

Social media has emerged as a powerful word of mouth marketing tool, with Twitter, RSS and Facebook enabling the promotion of those posts by fans, followers and influencers. LinkedIn is emerging as a key tool for B2B marketing. Apps have turned handheld smartphones and tablets into powerful, portable broadcasting and communications devices with instant access to the world stage.

The costs of developing tools, platforms and networks has dropped significantly and, as a result, we have seen the very nature of communications undergo a seismic shift that has influenced the ways in which even traditional news and broadcast outlets collect and report news and information.

Video has played a significant role in marketing within social media. Videos are easily embedded into content and are viewed within the context of a blog or individual web page, without any disclosures that were included on the original pages. Prominent video bloggers often create promotional videos featuring products for review and/or placement and, in the case of a seeded video, content can be syndicated to multiple sites as a part of a marketing effort.

Hashtags have been suggested for use as a disclosure method in Tweets and other short-form content. There are a number of issues inherent in this solution that pose significant challenges. Hashtags were devised to sort and filter related content but they do not offer any context. For example, if a consumer sees a given hashtag (for example #SPON) in a given Tweet and clicked on that hashtag, the user would be directed to a search page of all of the other sponsored posts, without any explanation of what #SPON means or of the material connection that #SPON is attempting to disclose. Furthermore, for an advertiser who is relying on a hashtag as a means of tracking disclosure in a sponsored post, the generic hashtag provides very limited tracking, cannot be easily distinguished from sponsored posts existing from other campaigns or advertisers and is virtually impossible to monitor for influencer omissions.

2) What issues raised by new technologies or Internet activities or features on the horizon should be addressed in a revised business guide?

The Internet, as we know it today, could not have been imagined in 2000. Technologies have emerged rapidly and there is a significant trend to enabling communications to spread across multiple platforms (for example a Tweet can be automatically syndicated to Twitter, Facebook, LinkedIn, Google+ and more, instantly upon sending).

Sponsorships and advertising programs are developed specifically to integrate seamlessly into these various platforms and to spread virally within the individual social networks of consumers and influencers as a part of conversations taking place on social networks. Smartphones and tablets have extended reach far beyond the desktop and geo-location services have enabled users to share not only what they are doing, but where and with whom.

The majority of new tools and technologies have been developed with cross-platform capabilities and portable devices in mind. Messages are short, syndicated and often provide little, in any, opportunity to include meaningful disclosures of connections, terms or context.

All of these technologies have developed alongside social broadcasting and behavioral targeting technologies, making the need for disclosures, privacy statements and other fine print in these new forms of media both more challenging and more meaningful.

With the rapid adoption of “social broadcasting” tools by marketers, we are seeing much broader implications of seemingly innocent actions such as friending, following, checking-in, trending or liking along with a dramatically increased likelihood of confusion on the part of consumers as to the origin or material connections behind individual posts. Tools such as the “Like” button and Google+1 are being embedded and propagated throughout the Internet as a means to broadcast and share preferences with others across social networks.

Promoted advertising content within social networks that is the result of paid advertising programs has been a focus of many of the leading social networks. Each network is handling these programs differently. Some platforms block third-party sponsorships and all operate without a standardized disclosure method that would work across platforms with syndicated content.

Employees, affiliates and influencers are increasingly encouraged to use these tools to market a brand with these and other new tools. In light of the updated Endorsement and Testimonial Guidelines, the Commission should address the level of endorsement that a small action broadcast out to a social network can have when a material connection or incentive exists. In particular, many of the tools that have been developed provide no means of effectively communicating a disclosure of a material connection, when such a connection exists.

With the recent trend towards group buying activity and the promotion of group offers in social media, individual users are incentivized to promote and share offers with other members of their network in order to participate in a special offer. Currently, such incentives may not be clearly disclosed within those communications.

In addition, contests, promotions, sweepstakes, coupons and special offers have been more prominently featured in social media communications, often without clear indication of rules, endorsements, connections or terms associated with those offers. The social nature of these platforms makes it increasingly difficult for consumers to know which messages are commercial in nature and to determine the context, terms and/or origins of a particular message within social networks.

3) What issues raised by new laws or regulations should be addressed in a revised guidance document?

The Commission issued a significant update to the Endorsement and Testimonial Guidelines in late 2009. There were a number of examples listed in both the

updated guidelines and in the subsequent Frequently Asked Questions that have been updated as well. There was initially a lot of confusion about the practical application of the guides and a number of recommendations were made for the use of Ad Hoc disclosure tools in individual posts. Primarily, these included the use of hashtags and other Ad Hoc methods of disclosure. These have proven incredibly challenging for use by advertisers, since the framework lacks standards, is not trackable or identifiable by individual program or influencer, and cannot be easily monitored for either inclusion of a hashtag or, more importantly, for exclusion or omission of a hashtag in the context of an individual program.

Hashtags were not intended to be used as disclosures and, in fact, function poorly as disclosures from both a technical and user perspective. If a user clicks on a hashtag link within Twitter, they are brought to a search of that hashtag term, often displaying a number of other sponsored posts, the vast majority of which are in no way related to the original post they viewed. There is no further explanation or context given to the disclosure based upon a hashtag, adding to potential confusion for the end user. Perhaps most importantly, while hashtags may do an adequate job of indicating that a disclosure should be present in limited character environments (in particular in Twitter), they fail entirely in communicating any detail at all about the nature of that disclosure.

Beyond short-form content, disclosure has been a challenge for both advertisers and influencers. Often, advertisers and their agencies rely on influencers to write their own disclosures, with no standardization or consistency to ensure that disclosures are readable, sufficient or included in individual posts.

Additionally, there has been a lot of focus on other types of disclosures and legal language in social media channels. For uses in the marketing of contests, promotions, sweepstakes, financial services products, pharmaceutical, biotech and medical devices, among others, there are additional needs for disclosures, fine print, safety warnings and disclaimers that all must be documented and trackable in social media channels. Many of these uses require additional documentation and reporting, all of which can be easily addressed within a standardized framework.

4) What research or other information regarding the online marketplace, online advertising techniques, or consumer online behavior should the staff consider in revising "Dot Com Disclosures"?

We highly recommend that the Commission consider marketplace research on the shifts from print and mainstream media platforms to digital platforms. Some resources include:

RSW/US Survey of Clients for Advertising Agencies

(<http://www.rswus.com/survey/2011-survey-clients-look-ahead-at-agencies>)

Pew Internet & American Life Project Social Networking Sites and Our Lives
(<http://www.pewinternet.org/Reports/2011/Technology-and-social-networks.aspx>)

5) What research or other information regarding the effectiveness of disclosures – and, in particular, online disclosures – should the staff consider in revising “Dot Com Disclosures”?

The Pew Internet & American Life Project has paid particular attention to the role trust plays on the Internet. Significantly, in its survey on Social Networking Sites and Our Lives, Pew found that Internet users tend to be more trusting of other people than those who do not use the Internet.
(<http://www.pewinternet.org/Reports/2011/Technology-and-social-networks.aspx>)

6) What specific types of online disclosures, if any, raise unique issues that should be considered separately from general disclosure requirements?

The ability to encounter marketing messages out of context challenges the ability for advertisers and marketers to make disclosures but in many ways increases the need for them. The “seamless web” presents a unique challenge to traditional disclosure requirements and disclosures themselves. Visitors to one site may encounter content from another without leaving a given environment. An endorsement made on one network to a few friends, may spread across the Internet at a click of a few buttons.

For example, tools such as the Facebook Like button and Google +1 are embedded into web sites outside of Google and Facebook. When consumers click on these tools, they are sharing that information with other members of their networks on the platform. Often, these are seemingly insignificant actions that seem far removed from the traditional definition of an endorsement or testimonial. There are currently no provisions for a disclosure to be included for a user with a material connection within these platforms, or in third party sites where the message is later syndicated or broadcast.

Also, Re-Tweets and comments can also easily entangle those with material connections in endorsement situations.

7) What guidance in the original “Dot Com Disclosures” document is outdated or unnecessary?

Scrolling is less of an issue than in 2000. In fact, the more impactful problem is now a tendency towards extreme conciseness, rather than verbosity. Unlike in the past, when the length of posts and content prevented disclosures from being read, the brevity of today’s platforms presents as unique a challenge.

Repetition exists in a different context given short nature of tweets and syndication of content. Instead of requirements to repeat a disclosure in long posts, the brevity of messages and the likelihood of those messages being syndicated and out of context requires that disclosures be repeated in each individual post, where applicable. The potential for rapid propagation in a variety of contexts given the short nature of tweets and the manner in which they are syndicated makes it more important to avoid reliance on profile, background or occasional disclosures.

Individual posts require context and should be trackable to ensure disclosure, source and to avoid omission of disclosures.

8) What guidance in “Dot Com Disclosures” should be clarified, expanded, strengthened, or limited?

Spam in the context of social networks is a growing concern. Messages are easily syndicated and broadcast across multiple platforms. Sponsorship, integrated marketing, affiliate programs, promotions, contests and sweepstakes are increasingly leveraged for the promotion & viral distribution of sponsored content. This generates an enormous volume of content.

Distinguishing independently created and user-generated content from commercially created or encouraged content would be an important consideration.

9) What issues relating to disclosures have arisen from such multi-party selling arrangements in Internet commerce as (1) established online sellers providing a platform for other firms to market and sell their products online, (2) website operators being compensated for referring consumers to other Internet sites that offer products and services, and (3) other affiliate marketing arrangements?

Affiliate networks, referral programs, traffic generating links and search based commission programs have been a large concern. Incentivized and commissioned sales generate an enormous volume of traffic on the web. Although there are many responsible marketers in the affiliate space, incentives are high for affiliates to obfuscate the nature of their relationships and for advertisers and affiliate networks to look the other way when they do.

10) What additional issues or principles relating to online advertising should be addressed in the business guidance document?

The Commission should address the difference between genuine, independently provided, consumer endorsements of a product and those that advertisers and marketers may foster. Additionally the Commission should address the use of product placement online.

Prominence, presentation, placement, and proximity of disclosure needs to be addressed within the limitations and opportunities presented by the technologies of today, and tomorrow. The Commission should consider the various limitations of individual platforms and weigh the application of disclosure methods with application across those platforms, with a focus on disclosure that is meaningful and provides context regardless of the platform.

11) What other changes, if any, should be made to “Dot Com Disclosures”?

The Commission should retain the principles on which the Dot Com Disclosures were based, but expand them to address the evolving digital landscape and role social media and networking plays in consumer’s everyday lives.

We have tried to outline a number of concerns in this comment. We hope that the Commission will hold a workshop to bring key stakeholders together to discuss any updates or changes and we look forward to participating in and contributing to any public opportunity to comment.

Conclusion

We strongly urge the Commission to revisit the Dot Com Disclosures to address the issues that advertisers and marketers face in the evolving digital landscape and in social media and networking. We have been working on the forefront of these issues with a mission to help advertisers and influencers comply with disclosure requirements, document their efforts and provide clear and conspicuous methods to ensure that consumers are able to easily understand the context and connections behind the messages that they receive. We appreciate the opportunity to provide these comments to you and we would be happy to participate in workshops or answer any questions that you might have.

Sincerely,

/s/ Tom Chernaik

Tom Chernaik
CEO
CMPLY, Inc.