

Before the
FEDERAL TRADE COMMISSION
Washington, DC 20530

In the Matter of the)
)
Trade Regulation Rule Concerning Deceptive) 16 CFR Part 410
Advertising as to Sizes of Viewable Pictures Shown) Picture Tube Rule Review
by Television Receiving Sets) File No. P174200
)
)

**COMMENTS OF THE
CONSUMER TECHNOLOGY ASSOCIATION**

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The Consumer Technology Association (“CTA”)¹ is pleased to respond to the Federal Trade Commission’s (“FTC” or “Commission”) Advance Notice of Proposed Rulemaking and Request for Public Comment (“ANPR”) on the Trade Regulation Rule Concerning Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets (“Picture Tube Rule” or “Rule”).² CTA’s members have a strong interest in providing accurate representations of picture sizes and other key attributes of television sets; however, the Picture Tube Rule is based on outdated assessments of the technical issues and consumer perceptions surrounding screen size measurement. Accordingly, for the reasons discussed in these comments, CTA respectfully recommends that the Commission repeal the Rule and address deceptive conduct

¹ Consumer Technology Association (CTA)TM is the trade association representing the \$321 billion U.S. consumer technology industry, which supports more than 15 million U.S. jobs. More than 2,200 companies – 80 percent are small businesses and startups; others are among the world’s best known brands – enjoy the benefits of CTA membership including policy advocacy, market research, technical education, industry promotion, standards development and the fostering of business and strategic relationships. CTA also owns and produces CES[®] – the world’s gathering place for all who thrive on the business of consumer technologies. Profits from CES are reinvested into CTA’s industry services.

² 82 Fed. Reg. 29,256 (June 28, 2017).

concerns related to picture size measurement, if any, through enforcement of Section 5’s general prohibition on unfair or deceptive acts and practices.³

I. INTRODUCTION AND BACKGROUND

CTA commends the FTC’s review of the Picture Tube Rule as part of its commitment to periodically review all of the regulations and guides that the agency administers. As Acting Chairman Ohlhausen noted in announcing the FTC’s review of the Rule, “[r]egulations can be important tools in protecting consumers, but when they are outdated, excessive, or unnecessary, they can create significant burdens on the U.S. economy, with little benefit.”⁴ CTA members invest heavily not only in innovative products that make consumers’ lives more enjoyable and productive, but also in ensuring that their production and advertising of these products complies with applicable laws.

Televisions provide a striking example of how consumers benefit from a competitive, innovation-driven marketplace. Over the last 20 years, television sets have gone from cathode ray tube-based behemoths to slender, high-definition screens that hang on walls or fit unobtrusively into bookshelves or furniture. Screen sizes and picture resolution have increased while prices have dropped. Most televisions today are capable of connecting to a wide variety of video and audio input devices. And, as televisions have become Internet-connected, they offer consumers with even greater viewing choices and convenience. Competition to provide these features, and to develop new features, is intense.

³ 15 U.S.C. § 45(a).

⁴ FTC, FTC Announces Regulatory Reform Measures Ranging from TVs and Textiles to Energy Labels and Email (June 22, 2017), <https://www.ftc.gov/news-events/press-releases/2017/06/ftc-announces-regulatory-reform-measures-ranging-tvs-textiles> (quoting Acting Chairman Ohlhausen).

In the highly competitive and innovation-driven television manufacturing environment, earning and keeping consumers' trust is paramount. This trust depends, in part, on providing consumers with relevant, accurate, and easily understandable information about their television purchases. While shopping for televisions, consumers can easily compare features and reviews. The ease of these comparisons provides a strong incentive for manufacturers to ensure that they clearly state picture sizes – and all other attributes – accurately and in clear, understandable terms. Unsurprisingly, industry practices have converged on a widespread norm for disclosing picture tube size – a clearly and conspicuously disclosed diagonal measurement that is permitted under the current Rule.⁵ This practice is informative to consumers, facilitates comparisons among different products, and is likely to persist without the Picture Tube Rule.

Television manufacturers take seriously compliance with all applicable laws, including the Picture Tube Rule. Based on the information available to CTA, compliance with the Rule is widespread. However, the only unqualified single-dimension statement of picture size that the Rule permits is the *horizontal* dimension.⁶ Consequently, the default under the Rule is at odds with consumers' understanding and the industry's truthful, non-misleading representations. Given these general industry practices, case-by-case enforcement under the FTC's Section 5 authority is a much more apt tool than a general rule to address any isolated instances of deception or unfairness. Repealing the Rule would provide the FTC with an opportunity to reduce burdens on business without diminishing consumer protections.

⁵ See 16 C.F.R. § 410.1 (2017) (“If the indicated size is other than the horizontal dimension of the actual viewable picture area such size designation shall be accompanied by a statement, in close connection and conjunction therewith, clearly and conspicuously showing the manner of measurement.”). Unless otherwise noted, these comments refer to the version of the Rule that the FTC confirmed in 2006. See 71 Fed. Reg. 34,247 (June 14, 2006).

⁶ See 16 C.F.R. § 410.1.

II. THE PICTURE TUBE RULE IS NOT NECESSARY TO PROTECT CONSUMERS FROM DECEPTION.

A. *TELEVISION MANUFACTURERS STATE PICTURE SIZE THROUGH CLEARLY AND CONSPICUOUSLY DISCLOSED MEASUREMENT OF THE DIAGONAL SCREEN DIMENSION.*

As noted in the ANPR, the Picture Tube Rule has served two goals: (1) “to prevent deceptive claims regarding the televisions’ screen size” and (2) to “encourage uniformity in measurement, thereby aiding comparison shopping.”⁷ CTA fully supports both of these goals with respect to television sets today and in the future. Indeed, both goals have been achieved under the universal practice of television manufacturers, which is to disclose diagonal viewable picture size measurements. The Rule has little, if anything, to do with this result; rather, it is market forces and changes in technology that have led to the use of diagonal measurement and that make it highly likely this practice will continue in the future.

As its name suggests, the so-called Picture Tube Rule dates back to a time when televisions used cathode ray tubes (CRTs). When the Rule was first issued in 1966, technical limitations on the CRTs that were then in use to display televised images meant that the viewable picture size was noticeably less than the actual picture tube size. In addition, CRTs were enclosed in casings that left a rectangular opening around the tube, creating a further potential for a discrepancy between tube size and viewable picture size.⁸ This state of the technical art meant that there was a potential for consumers to be confused about what a picture size measurement

⁷ 82 Fed. Reg. 29,257 (June 28, 2017); *see also* Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets, 71 Fed. Reg. 34,247 (June 14, 2006).

⁸ *See* Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets, 31 Fed. Reg. 3342 (Mar. 2, 1966) (codified at 16 C.F.R. pt. 410) (noting that the “overall size of a picture tube as installed in a television includes measurements of the actual picture area of the tube plus the thickness of the tube walls which does not display a picture. Thus, the overall dimensions are invariably larger than the dimensions of the picture tube shown.”).

meant. In light of this history, the Rule understandably focuses on the potential for deception as to both *viewable* picture size and the picture size dimension that is advertised.⁹

Since the Rule was first issued in 1966¹⁰ and since the FTC's last review in 2006,¹¹ vast shifts in television technology have all but eliminated the technical issues that underlay the picture size discrepancies that the Rule addresses. Flat-screen televisions have replaced CRT-based televisions, and the viewable area of flat screens extends virtually to the edge of any casing that surrounds the display. Therefore, the only size or area that it makes sense to discuss in connection with a flat-screen television is the viewable area. Manufacturers generally do not include additional elements of the television set that could misrepresent the size of the viewable picture.

Moreover, as far as CTA is aware, manufacturers universally measure and advertise television viewable picture size as measured on the diagonal. In addition, as a general rule, manufacturers clearly and conspicuously disclose that the advertised dimension is the diagonal screen size. Thus, current practices satisfy the FTC's goal of providing consumers with a uniform method of measurement that does not convey misleading claims about picture size.

B. CONSUMERS ARE ACCUSTOMED TO INTERPRETING DIAGONAL SCREEN SIZE MEASUREMENTS ACROSS A WIDE RANGE OF DEVICES, MANY OF WHICH ARE NOT SUBJECT TO THE RULE.

In the years since the Commission's previous Rule review, flat screens have become ubiquitous in daily life. When the FTC last reviewed the Rule, flat-screen televisions were

⁹ See 16 CFR § 410.1 (requiring disclosure of "the actual size of the viewable picture area measured on a single plane basis").

¹⁰ See generally 31 Fed. Reg. 3342 (Mar. 3, 1966).

¹¹ See 71 Fed. Reg. 34,247 (June 14, 2006) (retaining the Rule without modification).

relatively new,¹² and touch-screen smartphones had yet to be introduced to the consumer market. Today, 80 percent of U.S. households report owning at least one smartphone,¹³ and tens of millions of Americans use tablets.¹⁴ Manufacturers describe screen sizes for these devices with diagonal measurements.

Smartphone and tablet screen size measurements further entrench consumers' understanding that the screen sizes they see advertised are diagonal. When the FTC adopted the Rule five decades ago, it chose the horizontal dimension of viewable picture size as the default on the basis that this choice was consistent with how consumers think of "the sizes of rectangular shaped objects."¹⁵ During the most recent review of the Rule, the FTC maintained that this frame of reference was still relevant.¹⁶ Circumstances have changed dramatically in the last 51 years. Over the past decade, hundreds of millions of American consumers have purchased devices with screens measured on the diagonal. Moreover, since consumers purchase smartphones more frequently than televisions, many consumers have had repeated experience with comparing devices' screen sizes as part of their purchasing decisions. As a result, the FTC's original perspective, which focused on the measurement of rectangular objects, is no

¹² See 71 Fed. Reg. 34,247, 34,248 (June 14, 2006) (including flat panel televisions as an element of the "technological change with the closest nexus to the Rule").

¹³ CTA, 19th Annual Consumer Technology Ownership and Market Potential Study, (April 2017).

¹⁴ See Statista, Tablet Shipments in North America from 2013 to 2018 (in Million Units), <https://www.statista.com/statistics/294242/tablet-shipments-in-north-america/> (last visited Aug. 18, 2017) (reporting North American tablet shipments of 74.7 million in 2016).

¹⁵ See 31 Fed. Reg. 3342 (Mar. 3, 1966) (stating in original 16 C.F.R. § 410.2(d): "The consuming public customarily thinks of sizes of rectangular shaped objects in terms of the length and width of such objects").

¹⁶ See 71 Fed. Reg. 34, 247, 34,249 (summarizing the FTC's original rationale based on measurement of rectangular objects).

longer relevant. Instead, the touchstone should be consumers' assessment of screen size as part of their purchases of televisions, smartphones, tablets, and other electronic devices.

Device manufacturers have consistently used diagonal measurement across these different types of devices. Smartphones and tablets rapidly became highly successful – indeed, indispensable – technologies though they are not covered by the Picture Size Rule. Instead, the forces of competition and customer service have driven manufacturers to consistently and accurately describe screen sizes with diagonal measurements. There is no reason to believe that television manufacturers would do otherwise in the absence of the Picture Tube Rule.

C. RESCINDING THE RULE WILL NOT THREATEN THE BENEFITS OF UNIFORM SCREEN SIZE MEASUREMENTS.

The uniform use of diagonal screen size measurements for televisions and other devices that consumers use to watch video benefits both consumers and businesses. These benefits will increase as consumers watch more video on devices other than televisions. The amount of digital video that Americans watch through mobile devices, tablets, and other non-television devices doubled between 2012 and 2017 and now accounts for nearly one-third of the time that Americans spend watching video content.¹⁷ As discussed above, manufacturers use diagonal screen size measurements for all of these devices. With this technological shift well underway, the FTC should promote the utmost consistency in picture size measurements across these different technologies. Since television manufacturers disclose diagonal measurements under

¹⁷ Americans age 15 and over spend 2.7 hours (162 minutes) per day on average watching television. Bureau of Labor Statistics, American Time Use Survey Summary (June 27, 2017), <https://www.bls.gov/news.release/atus.nr0.htm>. It is estimated that American adults will spend 72 minutes per day on average watching digital video in 2017. See Statista, Average Daily Time Spent with Digital Video Content Among Adults in the United States from 2012 to 2017, by Device, <https://www.statista.com/statistics/420799/daily-digital-video-content-consumption-usa-device/> (last visited Aug. 18, 2017). Thus, approximately 31% of daily video viewing (72 of 234 minutes) will be on a device other than a television.

what is essentially an exception to the Rule, the Rule contributes little, if anything, to maintaining this consistency. Indeed, a manufacturer's use of the unqualified horizontal measurement that the Rule permits would likely confuse consumers, given the uniform and consistent use of diagonal measurements in the marketplace today.

As was the case when the FTC last reviewed the Rule, there are few direct costs associated with the Rule.¹⁸ However, the fact that compliance costs are modest is hardly a reason to maintain a Rule that is so strongly at odds with consumer understanding and industry practices. The FTC can most directly reduce costs to businesses, limit potential confusion to consumers, and maintain the benefits of truthful, accurate disclosures by repealing the Rule, rather than modifying it.¹⁹

III. IF THE COMMISSION RETAINS THE RULE, IT SHOULD NOT EXPAND THE RULE TO COVER ADDITIONAL PRACTICES OR DEVICES.

A. *THERE IS LITTLE BENEFIT IN MAKING DIAGONAL SINGLE-PLANE MEASUREMENT THE DEFAULT UNDER THE RULE.*

The practice of advertising diagonal picture sizes for televisions is deeply entrenched and has spread to smartphone and tablet screens. Businesses are likely to continue this practice in order to meet consumers' understanding, facilitate comparisons, and maintain consistency across

¹⁸ See Comments of the Consumer Electronics Association In the Matter of Picture Tube Rule Regulatory Review, FTC Matter No. P924214, at 3 (June 3, 2005) (stating that the costs of complying with the Rule are "small" and arise primarily from "additional printing in product literature or advertising").

¹⁹ CTA appreciates the FTC staff's advice that it would be unlikely to recommend enforcement action for small discrepancies between a "class" and "actual" measurement. See 82 Fed. Reg. 29,256, 29,258 (stating that FTC staff advised that it would be unlikely to recommend enforcement action for a discrepancy of up to one half-inch between the "class" size and actual picture size). This common-sense outlook reflects an appropriate balance between protecting consumers, reducing burdens on businesses, and conserving agency resources. The FTC can maintain all of these benefits while also repealing the Picture Tube Rule. For example, a statement from the Commission affirming staff's position would provide certainty to businesses but does not require the FTC to maintain an outdated, unnecessary regulation.

different types of devices. While changing the default screen measurement method to the diagonal dimension would be an improvement over the current Rule, a lower-burden and equally beneficial outcome would result from repealing the Rule.

B. RULE MODIFICATIONS TO ADDRESS CURVED SCREENS ARE UNWARRANTED.

There is no reason to treat curved screens differently from other types of televisions. An examination of the Rule’s language, which prohibits taking “into account the curvature of the tube,”²⁰ reveals that the Commission’s underlying concern is that taking the curvature of a *convex* picture tube into account may lead to a measurement that overstates the picture size. This concern is consistent with the Commission’s original rationale of prohibiting the advertisement of “overall dimensions that are invariably larger than the dimensions of the picture shown.”²¹ However, it is not a concern with today’s curved screens, even though they represent a tiny percentage of the U.S. TV and monitor market. Since these screens are *concave*, a measurement that ignores screen curvature actually understates the viewable picture size. Therefore, if the Commission retains the Rule, curved screens do not warrant different treatment from other screen types.

C. ASPECT RATIOS DO NOT AFFECT HOW MANUFACTURERS AND MARKETERS MEASURE AND PROMOTE THE VIEWABLE SCREEN SIZE OF TELEVISION SETS.

Aspect ratios do not affect how manufacturers describe viewable television screen size. Television aspect ratios are driven primarily by standards for broadcast television and associated common formats of video content. The 4:3 aspect ratio of the CRT televisions that were on the market prior to the introduction of flat screen televisions reflected the National Television

²⁰ 16 C.F.R. §410.1, Note 1.

²¹ 31 Fed. Reg. 3342.

System Committee (NTSC) standard that governed analog television broadcasts. A different standard – the Advanced Television Systems Committee (ATSC) standard for high-definition television (HDTV) – was adopted by the Federal Communications Commission in 1996 and specifies an aspect ratio of 16:9. Diagonal screen size measurements have remained useful, informative, and widespread despite changes in aspect ratios of television viewing screens.

Moreover, changes in video content aspect ratios – whether in broadcast, streaming, or recorded media – are well outside of the FTC’s control. Modifying the Rule to take aspect ratios into account cannot account for future developments in video formats. The better course is to allow the industry to maintain its current practice of clear and accurate diagonal measurements.

IV. CONCLUSION

Advertising diagonal screen size measurements is standard practice for television manufacturers and will continue in the absence of the Picture Tube Rule. Manufacturers embrace inclusion of such measurements, which allow consumers to easily make meaningful comparisons among different televisions before purchase by reinforcing the understandings that consumers have gained through their use of smartphones, tablets, and other flat-screen devices. Market forces have produced this uniformity and the resulting benefits for consumers. The uniformity of diagonal measurement, and the consumer understanding that has developed around it, make it highly likely that manufacturers will continue to use these picture size measurements. Rather than attempt to revise a rule that reflects bygone technology and solves a problem that no longer exists, the FTC should eliminate the Picture Tube Rule.

Respectfully submitted,

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