



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, DC 20580

**Prepared Remarks of Chairman Joseph Simons<sup>1</sup>**  
**Keynote Address**  
**2019 ANA Advertising Law & Public Policy Conference**  
**March 20, 2019**

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**I. Introduction**

Thank you for inviting me here today. I have been in office as Chairman for a little over ten months—but as you may know, my history with the FTC includes two prior stints with the Bureau of Competition and many years in practice as a competition lawyer. As Chairman, however, I have really enjoyed delving into the agency’s consumer protection mission, including the advertising issues. In addition, I am constantly reminded of why the FTC’s dual competition and consumer protection mission makes sense. To that end, I will begin my remarks today by sharing my perspective on the value of truthful advertising in promoting competitive markets.

I will next emphasize the FTC’s important role in monitoring national advertising of legitimate products. In short, I believe the FTC must continue to police national advertisers who use deception to sell legitimate products and services. In other words, I do not think the FTC should focus only on fraud; our deception authority is an important tool to protect consumers more broadly.

Finally, I will turn to privacy—specifically, the privacy implications of the increasingly common practice of targeted advertising. In today’s crowded marketplace, advertisers are

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<sup>1</sup> These remarks reflect my own views. They do not necessarily reflect the views of the Commission or any other individual Commissioner.

collecting and analyzing more data from and about consumers, in the hopes of targeting their advertising most effectively. As the primary cops on the beat when it comes to privacy enforcement, we do as much as possible within the scope of our current authority. We try to ensure that targeted advertising practices are consistent with companies' privacy promises, and that these practice do not impose unwarranted harms that consumers cannot avoid.

## **II. Value of Advertising in Our Economy and How Advertising Is Increasingly Becoming More Targeted**

The value of advertising—let me begin with a big-picture observation that will make intuitive sense to all of you as consumers: advertising plays a central role in a competitive, market-based economy. We often talk about this when we describe the FTC's dual mission. On the competition side, we promote a range of choices for consumers in the marketplace, as determined by vigorous and fair competition. On the consumer protection side, we ensure that consumers have access to truthful, non-deceptive information to guide their choices among various products and services. Those two sets of goals reinforce each other.

The Supreme Court has explained that commercial advertising is “indispensable” to helping consumers make “intelligent and well informed” decisions about how to allocate their resources.<sup>2</sup> Truthful and substantiated advertising also enables advertisers to compete on a level playing field, based on the merits and unique features of their products and services. But when advertising is deceptive, markets do not function as well. False or misleading claims undermine and skew consumer choice, and may create an unfair competitive advantage over a product or service that is marketed truthfully.

All of these effects are magnified in an era where more and more advertising competes for consumers' attention, during every waking hour. The amount of online and social media

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<sup>2</sup> *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 765 (1976).

advertising on our smartphones and tablets has officially surpassed TV, radio, and print ads.<sup>3</sup> And to further complicate matters, this growth is being driven by more and more sophisticated data collection. These kinds of consumer data not only fuel a wide range of products and services, but also enable companies to target their ads to consumers most likely to be interested in them.

### **III. The FTC Should Bring National Advertising Cases Involving Legitimate Products**

Let me turn now to enforcement. The FTC, of course, is very effective at fighting fraud, and we bring many law enforcement actions involving products and services that are of no value.<sup>4</sup> However, the FTC must continue to be more than an agency that protects consumers from worthless or harmful products.

To preserve the integrity of the marketplace—to ensure that consumers are able to make choices based on accurate information, and to ensure that fair competition continues to thrive—we must also bring cases that address deceptive claims involving legitimate products and services. We have a long history of bringing law enforcement actions against national advertisers, including household names like Kraft,<sup>5</sup> Nestlé,<sup>6</sup> Dannon,<sup>7</sup> Kellogg,<sup>8</sup> L’Oreal,<sup>9</sup>

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<sup>3</sup> Hamza Shaban, *Digital Advertising to Surpass Print and TV for the First Time, Report Says*, THE WASHINGTON POST (Feb. 20, 2019), <https://www.washingtonpost.com/technology/2019/02/20/digital-advertising-surpass-print-tv-first-time-report-says/>.

<sup>4</sup> See, e.g., *FTC v. Jason Cardiff*, No. ED 18-cv-02104 (C.D. Cal. filed Oct. 24, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3117-x190001/jason-cardiff-redwood-scientific-technologies-inc>.

<sup>5</sup> *Kraft, Inc.*, 114 F.T.C. 40 (1990), *aff’d*, 970 F.2d 311 (7th Cir. 1992).

<sup>6</sup> *Nestlé Healthcare Nutrition, Inc.*, No. C-4312 (Jan. 11, 2011), <https://www.ftc.gov/enforcement/cases-proceedings/092-3087/nestle-healthcare-nutrition-inc>.

<sup>7</sup> *Dannon Co.*, No. C-4343, (Feb. 4, 2011), <https://www.ftc.gov/enforcement/cases-proceedings/0823158/dannon-company-inc>.

<sup>8</sup> *Kellogg Co.*, No. C-4262 (July 31, 2009), order modified (June 3, 2010), <https://www.ftc.gov/enforcement/cases-proceedings/082-3145/kellogg-company-matter>.

<sup>9</sup> *L’Oreal USA*, No. C-4489 (Sept. 26, 2014), <https://www.ftc.gov/enforcement/cases-proceedings/122-3016/loreal-usa-matter>.

Sony,<sup>10</sup> Nissan,<sup>11</sup> and Mars Petcare.<sup>12</sup> For example, we challenged claims that POM Wonderful dietary supplements and beverages treat, prevent, or reduce the risk of serious diseases.<sup>13</sup>

Outside of the health sphere, we alleged that Lord & Taylor failed to properly disclose paid native advertising and social media endorsements for its products.<sup>14</sup> And we sued Volkswagen for deceptive environmental claims about its vehicles, resulting in multi-billion dollar settlements.<sup>15</sup> Let me emphasize going forward that we will not shy away from investigating national advertising, and we will proceed in federal court as warranted.

#### **IV. The FTC Is Rethinking Its Approach to Remedies**

This leads to my next point: remedies. As many of you heard from Andrew Smith at last September's National Advertising Division Annual Conference, the FTC is actively rethinking its approach to remedies—not only to deter future violations, but also to provide meaningful relief to consumers that have been harmed.<sup>16</sup> I have directed our staff to critically examine whether we are using every remedy available as effectively as possible to vigorously enforce our consumer protection laws. For example, staff is currently exploring how we can use our civil penalty authority more effectively, the circumstances under which we should hold corporate officers accountable, and when notice to consumer victims would be most effective.

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<sup>10</sup> *Sony Computer Entm't Am. LLC*, No. C-4514 (Dec. 2, 2014), <https://www.ftc.gov/enforcement/cases-proceedings/122-3252/sony-computer-entertainment-america-llc-matter>.

<sup>11</sup> *Nissan N. Am., Inc.*, No. C-4454 (May 9, 2014), <https://www.ftc.gov/enforcement/cases-proceedings/122-3010/nissan-north-america-inc-matter>.

<sup>12</sup> *Mars Petcare US Inc.*, No. C-4599 (Dec. 13, 2016), <https://www.ftc.gov/enforcement/cases-proceedings/152-3229/mars-petcare-us-inc>.

<sup>13</sup> *POM Wonderful, LLC*, 115 F.T.C. 1 (Jan. 16, 2013), *aff'd*, 777 F.3d 478 (Jan. 30, 2015).

<sup>14</sup> *Lord & Taylor, LLC*, No. C-4576 (May 23, 2016), <https://www.ftc.gov/enforcement/cases-proceedings/152-3181/lord-taylor-llc-matter>.

<sup>15</sup> *FTC v. Volkswagen Grp. of Am., Inc.*, No. 3:15-md-02672-CRB (Mar. 29, 2016), <https://www.ftc.gov/enforcement/cases-proceedings/162-3006/volkswagen-group-america-inc>.

<sup>16</sup> Andrew Smith, National Advertising Division 2018 Annual Conference Keynote Remarks (Sept. 24, 2018), <https://www.ftc.gov/public-statements/2018/09/remarks-andrew-smith-national-advertising-division-2018-annual-conference>.

My interest in more effective remedies extends to national advertising enforcement, as well. Case in point: even when a well-known brand offers a product of value to consumers, if that firm engages in deceptive advertising, you can bet that we will consider seeking monetary relief. Volkswagen provides a good example. Buying products that have less impact on the environment is important to many consumers. The FTC alleged that Volkswagen falsely advertised its cars as “Clean Diesel” vehicles after rigging them to perform as advertised only during emissions testing. In 2016 and 2017, a federal judge approved two stipulated orders for total monetary relief exceeding \$11 billion, most of which was returned directly to consumers. The underlying product sold was legitimate—it was a functioning car, after all—but it was deceptively advertised as eco-friendly.

The Volkswagen case involved flagrant violations of the FTC Act. But I do not mean to imply that a national advertiser’s conduct needs to rise to this level to warrant monetary relief. In fact, we have sought monetary relief in national advertising cases with less egregious fact patterns.<sup>17</sup> While there may be many situations where a simple cease and desist order would be sufficient, the FTC will not hesitate to pursue monetary relief from national advertisers when appropriate.

## **V. The FTC’s Approach to Targeted Advertising**

Finally, let me circle back to the topic of targeted advertising, which I understand is of great interest to this audience. As I alluded to earlier, these days, consumer data powers

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<sup>17</sup> See, e.g., *FTC v. Walgreen Co.*, No. 1:10-cv-01813 (Mar. 23, 2010), <https://www.ftc.gov/enforcement/cases-proceedings/092-3134/walgreen-co-also-dba-walgreens>; *FTC v. CVS Pharmacy, Inc.*, No. CA-09-420 (Sept. 8, 2009), <https://www.ftc.gov/enforcement/cases-proceedings/072-3237/cvs-pharmacy-inc-et-al>; *FTC v. Rite-Aid Corp.*, No. 1:09-cv-0133-JEJ (July 13, 2009), <https://www.ftc.gov/enforcement/cases-proceedings/072-3236/rite-aid-corporation>; *FTC v. Airborne Health, Inc.*, No. cv-08-05300 (Aug. 14, 2008), <https://www.ftc.gov/enforcement/cases-proceedings/072-3183/airborne-health-inc>; *FTC v. Rexall Sundown, Inc.*, No. 00-7016-CIV-MARTINEZ (Mar. 11, 2003), <https://www.ftc.gov/enforcement/cases-proceedings/x000101/rexall-sundown-inc>.

everything from social media to connected cars to smart homes. Traffic apps collect location information to route commuters around traffic jams. Smart TVs collect viewing history to recommend movies of likely interest. Wearable health monitors collect heart rate data to inform patient care and activity levels. And, as you well know, large-scale data collection also makes possible innovative and cost-effective advertising. When advertisers are able to pitch ads straight to the relevant audience, that is a potential win-win situation for companies and consumers.

But this rich data ecosystem—which can greatly benefit consumers—also has the potential to raise serious privacy concerns. Consumers may not understand or appreciate what data about them is being collected, how it is being used and shared, and whether and how they can exercise control over that information. Further compounding this lack of understanding is the fact that many of the companies at the heart of this ecosystem operate behind the scenes and without much consumer awareness.

It is important to address this situation so that consumers and companies reap the benefits of data collection, but consumers are not sidelined or out of control. Let me talk about three fundamental principles of consumer protection that are relevant here.

The first principle: Tell the *full* truth. It might be tempting to downplay data sharing or play up the effectiveness of privacy controls, but a company that wants to stay on the right side of the FTC Act should resist those temptations. The Commission's case against digital advertising company Turn, Inc. is a good example. Turn allegedly directed people to tools that would purportedly opt them out of tracking, but those tools were ineffective in many cases. The

FTC's response to the half-truths in Turn's privacy policy? A complaint alleging two counts of deception in violation of the FTC Act.<sup>18</sup>

Let's turn to the second principle, which can help address concerns about *how* you are using consumer data: When making business decisions, focus on consumer outcomes. The FTC's Big Data Report provides an example of how this balance might go awry. While big data may be relatively new, there are laws already on the books that may apply when it comes to issues of discrimination or exclusion, including the Fair Credit Reporting Act and the Equal Credit Opportunity Act. Data analytics can provide great benefits, but if a company used them for discriminatory purposes, for example, it could face an FTC action.<sup>19</sup>

Finally, the third principle: Know who you are doing business with. Consider, for example, the FTC's action against mobile advertising company InMobi, which provided application developers with software development kits ("SDKs") to track consumers. According to the FTC, those SDKs tracked the location of hundreds of millions of consumers, including children, without their consent and contrary to their location settings. The FTC alleged that InMobi violated the FTC Act and the Children's Online Privacy Protection Act.<sup>20</sup>

These three principles are not new. To the contrary, they have been the mainstays of dozens of enforcement actions we have brought over the years to protect the privacy of consumers' information. In April, as part of our series of *Hearings on Competition and Consumer Protection in the 21st Century*, we will be holding a hearing on privacy to discuss

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<sup>18</sup> *Turn, Inc.*, No. C-4612 (Apr. 21, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/152-3099/turn-inc-matter>.

<sup>19</sup> FTC Report, *Big Data: A Tool for Inclusion or Exclusion? Understanding the Issues*, at 23 (Jan. 2016), <https://www.ftc.gov/reports/big-data-tool-inclusion-or-exclusion-understanding-issues-ftc-report>.

<sup>20</sup> *U.S. v. InMobi Pte Ltd.*, No. 3:16-cv-3474 (N.D. Cal. filed June 22, 2016), <https://www.ftc.gov/enforcement/cases-proceedings/152-3203/inmobi-pte-ltd>.

these issues further.<sup>21</sup> The Commission is still in learning mode from these hearings, which have covered topics like big data and artificial intelligence, but a few things are clear already: The principles I have just mentioned are timeless and should provide the framework for any collection or use of consumers' data.

## **VI. Conclusion**

In closing, I want to emphasize how seriously the FTC takes its role in policing national advertising and in addressing issues such as targeted advertising. The FTC has been the cop on the beat for many decades. Going forward, you can expect the FTC to continue its vigorous enforcement of consumer protection and competition laws, and to utilize its remedies to maximum effect. Thank you for the opportunity to share my views with you. I am happy to take questions.

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<sup>21</sup> FTC Hearing #13, *The FTC's Approach to Consumer Privacy* (Apr. 9-10, 2019), <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-competition-consumer-protection-21st-century-february-2019>.