



Consumer Protection/FTC ADVISORY ■

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FTC Seeking Comments to Update “.com Disclosures” Guidance

By [Kathleen Benway](#) and [Alan Pryor](#)

First published in May 2000, the Federal Trade Commission’s “Dot Com Disclosures: Information about Online Advertising” was one of the FTC’s first attempts to address how it and advertisers should approach consumer protection issues in the Internet Age. With the reality that [“dot commerce is the new Main Street,”](#) the May 2000 guidance sought to provide advertisers direction about whether consumer protections laws apply to online activities (hint: they do) and what advertisers should keep in mind when making claims in Internet advertisements. The FTC’s May 2000 guidance emphasized that advertisers must make clear, conspicuous, and effective disclosures, regardless of media in which they appear.

Over a decade later, in March 2013, the FTC updated its guidance “to reflect the dramatic changes in the online world” and published the [“.com Disclosures: How to Make Effective Disclosures in Digital Advertising.”](#) (“2013 .com Disclosures”) The 2013 .com Disclosures highlighted that the familiar FTC guideposts apply to online ads: (1) advertising must be truthful and not misleading; (2) advertisers must have evidence substantiating their claims; and (3) advertisements cannot be unfair.

But *how* these guideposts apply to online ads could change depending how the ads are presented, particularly as they relate to disclosures, so the 2013 .com Disclosures provided a non-exhaustive list of guidance to better ensure that disclosures in internet ads are effectively communicated to consumers. For instance, advertisers must still ensure that any disclosures clear and conspicuous, keeping in mind whether: (a) the disclosure is prominent, in close proximity to the claim, and unavoidable; and (b) additional steps are necessary to make an effective disclosure, such as reducing other distractions in the ad, repeating the disclosure, and ensuring audio and visual disclosures adequately communicate necessary information. The .com Disclosures also noted that, in certain circumstances, hyperlinking an ad to a disclosure could be adequate, but only if: (a) the link is obvious and in close proximity to the triggering claim; (b) the link’s label appropriately conveys the importance, nature, and relevance of the linked disclosure; (c) the link takes consumers directly to a clear and conspicuous disclosure; and (d) advertisers monitor to ensure that hyperlinked disclosures are actually used.

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The FTC warned that the guidelines were not intended to provide a safe harbor from liability or to cover every possible example or issue associated with online advertising disclosures.

The FTC's New Request for Comments on its .com Guidance

Now that the 2013 .com Disclosures passed their ninth birthday, the FTC has signaled that they are due for another refresh. In a [June 3, 2022 press release](#), the FTC announced that it is seeking public comment to modernize the .com Disclosures. The FTC states that its business guidance should help “honest businesses treat consumers fairly, rather than being used as a shield by firms looking to deceive” and that some companies are wrongly using the .com Disclosures guidelines to justify misleading practices or practices that expose consumers to financial fraud, intrusive surveillance, and other harms (i.e., “unfair” practices).

Notably, the FTC’s press release specifically cited “burying disclosures behind hyperlinks” and the increased use of “dark patterns” (technology that operates to coerce users into taking actions without full, conscious knowledge of the ramifications of the action they are taking) as two examples of practices that are FTC enforcement priorities.

The FTC is seeking public comment on a range of issues that the public, law enforcement partners, and consumers believe should be addressed, including:

- Sponsored and promoted advertising on social media.
- Advertising embedded in games and virtual reality.
- Microtargeted advertisements.
- Dark patterns and manipulative user interface designs.
- Online disclosures that require consumers to navigate multiple webpages.
- Whether additional guidance is necessary to address: (a) advertising on mobile devices; (b) multi-party selling arrangements involved in online commerce and affiliate marketing arrangements; and (c) the use of hyperlinks.

Comments are due August 2, 2022.

Key Takeaways

Digital advertising appears to be a top enforcement priority for the Commission, and this request for comments to update the 2013 .com Disclosures is just one of a number of initiatives that the FTC is currently undertaking to police the digital advertising space. Recently, the FTC issued its [Notice of Penalty Offenses concerning endorsements proposed to strengthen its Endorsement Guides](#). In addition, the FTC has grown increasingly active regarding “dark patterns,” and to strengthen its policing efforts against them, the FTC issued an [“Enforcement Policy Statement Regarding Negative Option Marketing”](#) (which the FTC has referred to in press releases as its “click to cancel policy statement”) and [implemented changes to streamline consumer protection investigations](#). We expect that the FTC will maintain this level of activity in the digital advertising space for the foreseeable future.

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Kathleen Benway
202.239.3034
kathleen.benway@alston.com

Kelly Connolly Barnaby
202.239.3687
kelly.barnaby@alston.com

Alexander G. Brown
404.881.7943
alex.brown@alston.com

Kristine McAlister Brown
404.881.7584
kristy.brown@alston.com

Patrick Eagan-Van Meter
704.444.1447
patrick.eagan-vanmeter@alston.com

Joseph H. Hunt
202.239.3278
404.881.7811
jody.hunt@alston.com

Robert H. Poole II
404.881.4547
robert.poole@alston.com

Alan F. Pryor
404.881.7852
alan.pryor@alston.com

T.C. Spencer Pryor
404.881.7978
spence.pryor@alston.com

John C. Redding
704.444.1070
john.redding@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

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ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
 BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86.10.85927500
 BRUSSELS: Rue Guimard 9 et Rue du Commerce 87 ■ 3rd Floor ■ 1000 Brussels ■ Brussels, 1000, BE ■ +32.2.550.3700 ■ Fax: +32.2.550.3719
 CHARLOTTE: One South at The Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
 DALLAS: Chase Tower ■ 2200 Ross Avenue ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
 FORT WORTH: Bank of America Tower ■ 301 Commerce ■ Suite 3635 ■ Fort Worth, Texas, USA, 76102 ■ 214.922.3400 ■ Fax: 214.922.3899
 LONDON: 4th Floor ■ Octagon Point, St. Paul's ■ 5 Cheapside ■ London, EC2V 6AA, UK ■ +44.0.20.3823.2225
 LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
 NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
 RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260
 SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
 SILICON VALLEY: 1950 University Avenue ■ Suite 430 ■ East Palo Alto, California, USA 94303 ■ 650.838.2000 ■ Fax: 650.838.2001
 WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333