



# FTC Issues New Guidance Addressing Mobile and Social Media Advertising

March 15, 2013

The Federal Trade Commission (“FTC”) has released new guidance for mobile and other online advertisers that explains how to make disclosures clear and conspicuous to avoid deception. Although the FTC does not have authority over banks and credit unions, this guidance is still useful for financial institutions because banking regulators may look to the guidance in reviewing mobile and online advertisements under the unfair or deceptive acts and practices (UDAP) prohibition applicable to those financial institutions.

The new guidance is contained in the FTC’s publication called *.com Disclosures: How to Make Effective Disclosures in Digital Advertising*. This publication updates previous guidance issued by the FTC in 2000, which guides advertisers on how to effectively communicate their disclosures so that they are clear and conspicuous.

The new guidance recognizes the increased use of smartphones and social media sites, and provides information for advertisers on how to approach disclosures in the face of this evolving technology. It cautions advertisers to take account of the various devices and platforms consumers may use to view advertisements and any corresponding disclosures, and states that the disclosures should be conspicuous on all platforms that may be used to view the advertisement. If the disclosure cannot be made clearly and conspicuously on a certain platform, then that particular platform should not be used.

Among other things, the new guidance:

- Advises that proximity of the disclosure to the advertisement increases the likelihood that the consumer will see it, and thus provides advice on how to position the disclosure close to the language it accompanies;
- Identifies various potential issues when advertising on smartphones, such as the possibility of significant vertical and horizontal scrolling in order to see the advertisement;
- Urges advertisers to consider empirical research which discusses where consumers are most likely to look on a screen;
- Discusses the use of hyperlinks and cautions advertisers to consider how hyperlinks will work on various platforms;
- Suggests that advertisers avoid the use of highly advanced technology in making a disclosure because such technology does not work on all platforms (i.e., a disclosure using Adobe Flash Player will not show on a smartphone);
- Warns about the use of popups on social media sites, as some computers automatically block popups; and
- Provides guidance on how to include a disclosure in a space-constrained advertisement, such as an advertisement on a smartphone.

The new guidance also contains mock advertisements to illustrate these updated principles.

If you have any questions regarding the new guidance, please feel free to contact Joseph D. Simon at [516-357-3710](tel:516-357-3710) or via email at [jsimon@cullenanddykman.com](mailto:jsimon@cullenanddykman.com).

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