

## **LEGAL ALERT: Federal Trade Commission DOT-COM Proceeding**

### **FTC asks for public comment on Internet advertising laws**

In the past decade, society has seen the explosive rise of mobile marketing, the “app” economy, use of “pop-up blockers,” online social networking, and more, none of which are addressed in the now decade-old Federal Trade Commission (FTC) guidelines regarding Internet advertising. The FTC is currently examining its guidelines and wants the public to comment on proposed revisions.

The proposed rules could dramatically affect your online presence. Advertisement is the lifeblood of many businesses and any changes to how online advertising is presented to potential customers can affect your bottom line due to the time, money and valuable resources you may have to spend changing your online advertising to satisfy new rules. Your comments to the FTC are critical in helping them modify the guidelines without drastically impacting your advertising efforts.

### **Make an impact on FTC guidelines by submitting your comments**

As of June 24, 2011, the FTC has received only eleven comments, all from individual consumers. Many of them complain of misleading ads for herbal supplements, pharmaceutical goods, and financial services. The comments wholly lack a well-argued response to the FTC’s questions, and are completely devoid of a response from the business community that these regulations target. It is vitally important your business take the opportunity to give your feedback to the FTC to direct them toward a better set of online advertiser guidelines and to avoid dramatic and, perhaps, significant impacts on the business community’s use of online advertising.

Consider these scenarios:

- What if the FTC requires that banner ads now display disclosures more prominently? This will reduce your advertising real estate and reduce the effectiveness of your advertising, which may require additional ads and advertising expenditures to make up the difference.
- What if the FTC makes new rules for smaller screens used on cell phones and hand-held devices?
- What if new technology or click-thru disclosures are required? This will require additional deployment and support of disclosures by your company or advertising provider, increasing the cost of advertising.
- How should the FTC address advertisements in e-readers?

These concerns, and more, are raised by the FTC's revision of the online advertising guidelines. Now is the time for you to affect the outcome of the revision, and direct the impact on your company's advertising dollars and on your company's bottom line.

Kirton & McConkie's Government & Utilities practice group is ready to help you with the substantive and procedural aspects of filing your comments with the FTC. Please contact David Shaw at (801) 426-2108 or [dshaw@kmclaw.com](mailto:dshaw@kmclaw.com) for further information. Consider submitting comments as soon as possible or risk losing this brief window of opportunity.

### **Provide your comments on these FTC questions**

The FTC wishes to update its guidelines, called the "Dot Com Disclosures" and has opened up a brief window of time for public comment. The FTC asks for comment on eleven specific 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?
- 2) What issues raised by new technologies or Internet activities or features on the horizon should be addressed in a revised business guide?
- 3) What issues raised by new laws or regulations should be addressed in a revised guidance document?
- 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"?
- 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"?
- 6) What specific types of online disclosures, if any, raise unique issues that should be considered separately from general disclosure requirements?
- 7) What guidance in the original "Dot Com Disclosures" document is outdated or unnecessary?
- 8) What guidance in "Dot Com Disclosures" should be clarified, expanded, strengthened, or limited?
- 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?
- 10) What additional issues or principles relating to online advertising should be addressed in the business guidance document?
- 11) What other changes, if any, should be made to "Dot Com Disclosures"?

## **Background**

In May 2000, the FTC issued some guidelines to online advertisers regarding how the FTC planned to apply consumer protection laws to Internet ads. For example, the FTC stated it would apply existing consumer protection laws to the Internet and that any information required under those laws to prevent an ad from being misleading must be clearly and conspicuously presented in the advertisement.

The FTC noted it would use various factors to determine whether such required disclosures were clearly and conspicuously presented, including: the placement of the disclosure in relation to the claim, the prominence of the disclosure, whether other parts of the ad distract attention from the disclosure, whether the disclosure needs to be repeated, whether audio disclosures are adequately presented, and whether the disclosure uses understandable language.

Since the publication of the FTC's May 2000 guidelines, the FTC has attempted to enforce consumer protection laws under these guidelines with varying effectiveness; however, since 2000, the online world has changed dramatically.

## **Get assistance submitting impactful comments**

To ensure your comments are as impactful as possible, please contact David Shaw at (801) 426-2108 or [dshaw@kmclaw.com](mailto:dshaw@kmclaw.com) **by Friday, July 29, 2011**, for assistance submitting your comments to the Federal Trade Commission by the mandatory deadline of **August 10, 2011**.