

# Digital Content Next

Legal and Legislative Committee  
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## Agenda

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- Review of FTC Native Advertising Guidelines
- Potential Class Action Suit re ADA Compliance

# FTC Released Guidelines for Native Advertising on Dec 22

- Not law or regulations
- Will serve as guide for businesses to avoid FTC enforcement action

### Native Advertising Definition:

“content that bears a similarity to the news, feature articles, product reviews, entertainment, and other material that surrounds it online”

### Basic Principles of Guidelines:

- Transparency – “an ad or promotional message shouldn’t suggest or imply....that it is anything other than ad.”
- Some native ads are clearly commercial. Others may need a disclosure.
- Disclosure must be clear and prominent
  - FTC refers to “.com Disclosures: How to Make Effective Disclosures in Digital Advertising”

### How will FTC enforce?

- FTC will consider the “net impression” of the ad
  - What the ad says AND the format
- Are consumers misled about source?
  - Does not need to be a majority of consumers

### FTC Cites 17 Theoretical Examples:

- Ads running in publisher's stream of content
  - Key factors: overall appearance, similarity to non-advertising content, and ability to distinguish
- Ads running on Advertiser site
  - Note: disclosure may also be needed on Advertiser's site
- Content Recommendation Widgets
  - Similarity to non-advertising content might trigger disclosure requirement ("from around the web" and "more content for you" are not adequate)
  - Editorial content disseminated as advertisement must be labeled accordingly and claims truthful and substantiated

### FTC Cites 17 Theoretical Examples (cont'd):

- Product Integration
  - Product placement and endorsement rules apply online (games, video, etc)
- Ads on Social Media or in Email
  - Disclosure required if not obviously from an advertiser
  - Disclosure should also be included in the content
- Ads in Non-Paid Search Results
  - Links to native advertising content should disclose commercial nature



# General Principles for Disclosures

(from .com Disclosures: How to Make Effective Disclosures in Digital Advertising)

- Clear and unambiguous language
- Close as possible to the native ad
- In font and color that is easy to read
- In a shade that stands out
- For video, on the screen long enough to be noticed, read and understood
- For audio, at a cadence that's easy to follow and understand

### Specific Considerations for Disclosures

- Main page of the publisher where consumers will notice and easily identify the ad
- In front of or above the headline of the ad
- If an image or graphic, disclosure might need to appear directly on focal point
- Must remain when republished by others
- On arriving at click to/tap into page, disclosure should be where consumer will look first
- In multi-media ad, disclosure should be delivered before ad
- Should stand out so consumers can read or hear
- Must be understandable

### Other Key Points:

- FTC will enforce against any and all participants in deceptive ad content (publisher, advertiser, ad agency, ad networks, etc)
  - Could be increased liability for publishers as publishers typically set the format
- “Promoted by X” and “Sponsored by X” may be appropriate for content funded or underwritten by an advertiser – but NOT for content created or influenced by the advertiser

### Publishers Starting to Receive Letters

- Cite non-compliance with ADA because W3C standard has not been adopted