

Commissioner Julie Brill  
National Association of Advertisers  
October 1, 2012

Thank you so much for that kind introduction. It is wonderful being back in one of my favorite cities in the world—I graduated from NYU law school and worked in the city for two years after that. I'd probably still be here had it not been for that guy I was interested in who was crazy about Vermont. The guy I married. The guy who is my better half.

And though I make my home to this day in beautiful Randolph, Vermont—where the leaf peeping is spectacular this year—most of you are probably more interested in what I do in Washington D.C., where I have served as a

But regardless of its cause today, this new focus on facts is a development that our founding fathers would applaud. They believed firmly that an educated electorate was a precondition of a functioning democracy. Thomas Jefferson said: “Whenever the people are well-informed, they can be trusted with their own government; that, whenever things get so far wrong as to attract their notice, they may be relied on to set them right.”

Facts are the grease that keeps the engines of our electoral process humming—and that’s not the only mom-and-apple-pie American institution that runs on honesty and transparency. Our free market also cannot function unless we ensure that consumers are armed with solid information about the products they procure.

...And I know just the agency for the job.

The FTC’s mission is no less than to protect the nation’s consumers as they navigate the marketplace and to protect competition as it shapes the economy. To a great extent, we do that by making sure that consumers are well informed—through educational materials and outreach that inform buyers of their rights and options; through guidance to industry on best practices across a large swath of the economy; and through enforcement actions that make certain sellers tell the truth about their products and services.

With the advent of the Internet age, advertising is changing quickly—delivering pitches that are more extensive, more targeted, and more available than ever before. Yet the fundamental goal is the same as it always was: to sell a product or a service. And the FTC’s interest in advertising is the same as it has always been: to make sure ads are providing consumers with the information they need to make meaningful choices about the goods and services they want to buy.

Our work in this area runs the gamut—from an exercise machine that claims to firm up abs—no exercise required—to a pair of shoes that promises simply slipping them on gets you a butt by Kardashian; from a huckster promising improbably easy money, to companies that give their own products glowing reviews but forget to mention that the endorsements come from a very interested party.

But today, I want to start with one of our more ambitious efforts in the advertising area: our “Green Guides,” which help companies understand how to appropriately characterize the environmental impact of their products. I’m pleased to announce that, later today, after two years of extensive work, the Commission will issue its final update to the Green Guides.

The Green Guides are designed to advise marketers about how to make truthful and substantiated claims when promoting the environmentally positive attributes of their products and services.

When the Commission last revised these guides in 1998, green marketing was in its infancy. Now, however, you can’t watch television or go to the grocery store without seeing advertising claims for products that are “eco-friendly” or “green.” I took 30 seconds to search

the Internet for green products and immediately found an “eco-chic” website offering everything from recycled “chip and dip” holders to vegan iPad cases.

As we embarked on updating the guides, one thing we found in our research is that we are a nation that sees the glass as half full. When we see general claims that a product benefits the environment—with words such as “eco-friendly” or “environmentally sound” on its label—we attribute a plethora of specific benefits to the product inside: we believe it is made from recycled materials, recyclable itself, biodegradable, non-toxic, and more.

Of course, very few products ring all those bells. So, in our revisions to the Green Guides, we caution marketers not to make unqualified general claims. We also provide guidance on how to adequately qualify claims about general environmental benefits.

As Kermit the Frog has said on more than one occasion, “It’s not easy being green.” So at the FTC, we want to make sure that companies that do make the effort get the credit.

Our revisions also address claims that we didn’t address in the original Guides from 14 years ago, because these claims are new to the marketplace: renewable energy, renewable materials, and carbon offset claims.

Another area covered by the new guidelines is certifications and seals of approval. Using the name, logo or a seal of approval of a third-party may very well be an endorsement, which should meet the criteria for endorsements provided in the agency’s Endorsement Guides.

Endorsements are a concern for the entire rainbow of advertising claims, not just the green ones. Most everyone here has probably already heard about writer RJ Elroy posting pseudonymous reviews on Amazon lauding his own books, in prose more purple than his famous thrillers, and slamming the works of others – a practice so commonplace it has a name, “sock puppeting.” Lucky for the FTC, since the Elroy revelation, the socks are flying, and Amazon authors are turning each other in left and right. That is not so common in other industries.

Improper endorsements added to the troubles of Spokeo, a data broker that compiles and sells detailed information profiles on millions of consumers. The company agreed to pay the Commission \$800,000 to settle charges that it marketed profiles to companies in the human resources, background screening, and recruiting industries without taking steps to protect consumers required under the Fair Credit Reporting Act.<sup>1</sup>

On top of that, the Commission alleged that Spokeo deceptively posted endorsements of their service on news and technology websites and blogs. These endorsement were portrayed as independent when in fact, they were created by Spokeo's own employees.

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<sup>1</sup> See *press release*, Spokeo to Pay \$800,000 to Settle FTC Charges Company Allegedly Marketed Information to Employers and Recruiters in Violation of FCRA (June 12, 2012),

Leaving out that detail—being a hired gun of the company whose product you’re endorsing—runs counter to the agency’s Endorsement Guides, which require disclosure of such an affiliation.

Skechers ran into endorsement problems in connection with the marketing of their toning shoes. The shoes that led to a 40 million dollar payment to the Commission—all of which will be refunded to consumers—to settle charges that the company deceived consumers by making unfounded claims.<sup>2</sup> Weight loss claims, claims about toning muscles, and even claims relating to cardiovascular health.

One of the Skechers ads that the Commission challenged included an endorsement from a chiropractor who recommended the product based on an “independent” clinical study that tested the shoes’ benefits compared to those provided by regular fitness shoes.

Let me tell you what consumers were not told: the chiropractor was married to a Skechers marketing executive, and Skechers paid the chiropractor to conduct the study. These are not small, inconsequential details. They should have been disclosed by the company.

And of course, we also challenged whether the study substantiated the claims made in the ad—that the sneakers produced the reported weight loss, and reduction in body fat. We believed that the study failed to prove wearing Skechers would lead to “improved body composition.”

Materially misleading claims have long been the agency’s bread and butter when it comes to monitoring advertising. Even in the age of the Internet, the TV infomercial remains a medium of choice for those “too good to be true” claims.

Claims that suck you in—and that you want to believe—as you’re watching that late night infomercial eating a bag of chips. Claims—like those that were made by the marketers of the Ab Circle Pro—an abdominal exercise device.

The marketers of this abdominal exercise device promised consumers that exercising on the device for just three minutes a day would cause them to lose 10 pounds in two weeks. And the device would “melt inches and pounds.” Consumers were charged \$200 to \$250 a pop for these weight loss devices—not an insignificant amount of money.

But the claims were unsubstantiated, and led to a settlement with the FTC that will return to consumers at least \$15 million, and possibly as much as \$25 million, depending on the number of purchasers that seek a refund.<sup>3</sup>B289unt of money. C thie FTCeseTc0

One recent case, involving our battle against the peddlers of “John Beck’s Free & Clear Real Estate System,” “John Alexander’s Real Estate Riches in 14 days,” and “Jeff Paul’s Shortcuts to Internet Millions” is particularly noteworthy. This August, after two years of litigation, a district court ordered the marketers to pay \$478 million for deceiving nearly one million consumers who purchased these business opportunity systems based on claims that they would earn millions.<sup>4</sup>

The court found that despite the marketers' money-making claims for these systems—which cost \$39.95 each—nearly all the consumers who bought them lost money.

In addition to the monetary payment, the court also imposed a lifetime ban on three of the defendants from the telemarketing and infomercial businesses. So as we fight over the remote with our spouses during those late night bouts of insomnia, we no longer need to worry about catching glimpses of these defendants’ infomercials.

Although, truthfully, I haven’t fought with anyone over a remote lately—maybe that will happen again when Downton Abbey’s third season begins, or more likely when the NBA season starts. (I’m a huge Heat fan, but my family shockingly favors the Celtics....)

I imagine that in many households, fighting over the remote might be a thing of the past. Instead, many families just sit around with Mom, Dad, Tommy and Janie all looking at their own smart phone.

Along with many of my colleagues at the FTC, I am spending a lot of time thinking about smartphones, and how we can best translate our long-standing consumer protection principles into the mobile space.

For example, clear and conspicuous disclosures have always been at the core of consumer protection. In the mobile space, because real estate is at a premium, effective disclosures face considerable challenges.

We have launched an initiative to figure out how to convey necessary disclosures to consumers. An important component of this initiative is our work to update our Dot.com guidance, designed to help businesses make effective online and mobile disclosures.

At our workshop this past May, we focused on how to make mobile disclosures short, effective, and accessible to consumers on small screens.<sup>5</sup>

We explored how icons and other signals might be part of the answer. We’ve learned that context is really critical. That is, it is just as important to consider when consumers are

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<sup>4</sup> See *press release*, At FTC's Request, U.S. Court Hands Down Record \$478 Million Judgment Against Marketers of Massive Get-Rich-Quick Infomercial Scams (Aug. 23, 2012), available at <http://www.ftc.gov/opa/2012/08/johnbeck.shtm>.

<sup>5</sup> FTC Workshop, *In Short Advertising & Privacy Disclosures in a Digital World*, available at <http://www.ftc.gov/bcp/workshops/inshort/index.shtml>.

