

**A Rose By Any Other Name . . . Would Probably Violate the FTC Act:
Shakespeare, the FTC, and Advertising
Remarks of FTC Chairwoman Edith Ramirez
Before the American Advertising Federation
April 17, 2013
Washington, DC**

It is a pleasure to be here today to talk about the FTC's approach to advertising; how we are adapting to our increasingly digital world; green marketing; and the efforts to develop a

At the FTC, our work to promote truthful advertising and protect consumer privacy dovetails with your mission to promote the spotless reputations of your clients and your own firms. We aim to provide consumers with the information they need to make informed decisions about their purchases and exercise control over their personal data. It is self-evident that this is good for consumers. But it also benefits honest competitors, well-functioning markets, and commercial growth. Honesty and transparency are essential to maintaining a positive brand. Sooner or later, deceptive and opaque practices damage a firm's most important asset – its reputation. And from that, a business may never recover, no matter how clever its ad copy or eye-catching its graphics.

Further, deceptive practices do more than harm the spotless reputation of the offending company. Consumers may lose faith in an entire industry or sales medium if advertising frequently misleads or companies hide information about their products or business practices. By encouraging businesses to be above-board in their advertising and privacy practices, the FTC promotes the consumer trust and confidence that are essential to a thriving, growing marketplace.

We do this proactively and devote substantial resources to educating businesses on how to comply with the law and on best practices that may go beyond what the law requires. This year, the FTC has turned its focus to the mobile environment.

It has been aptly said that “the future of mobile is the future of everything.”¹ Today, there are twice as many mobile devices sold as personal computers.² Spending on mobile

¹ Dan Frommer, “*The Future of Mobile is the Future of Everything*,” BUSINESS INSIDER, June 6, 2011, available at <http://www.businessinsider.com/future-of-mobile-experts-2011-6?op=1>.

² Henry Blodget & Alex Cocotas, *The Future of Mobile*, BUSINESS INSIDER, Mar. 27, 2013, available at <http://www.businessinsider.com/the-future-of-mobile-slide-deck-2013-3?op=1>.

Soon after the FTC issued its report on mobile privacy disclosures, we updated our Dot Com Disclosures, which provide guidance on how to reveal key information in digital advertising.⁷ The original Dot Com Disclosures were released in 2000 – back when we were just grateful that our phones were cordless and “facebook” referred to the printed guide to your freshman class. It was time for a refresh.

The new guidance makes clear that consumer protection laws apply to ads on a PC, a mobile phone, Twitter, or a social network in the same way those laws apply to ads in print, radio, or TV. As before, our guidance comes down to common sense. If you were a consumer, what would it take for you to notice and understand a disclaimer? Would you click through multiple links just to find information?

If information is needed to prevent an ad from being deceptive, the information must be included, and it must be clear and conspicuous. This applies to the small screen of a mobile device or the 140 characters in a tweet. If a platform does not let you make a clear and conspicuous disclosure when one is required, then the platform should not be used. Period.

When disclosures can be made, they should be “as close as possible” to the claims they qualify – not relegated to the “terms of use” and other contractual agreements. When practical, advertisers should incorporate qualifying information into the underlying claim rather than having a separate disclosure. The screen design should alert consumers that there is more information available, and advertisers should consider how the page will display on different devices.

the environment. Because it's highly unlikely that a marketer can substantiate such an expansive claim, the revised guides caution against painting a product green with a broad brush. Rather, advertisers should use clear and prominent language that limits the claim to a specific benefit or benefits that can be understood and backed up. And they shouldn't imply that any specific benefit is significant if it is, in fact, minor.

We also found that, if a certification or seal of approval used in an ad does not convey the basis for the recognition, either through the name or some other means, consumers will believe the product offers a general environmental benefit. Again, our research showed that it is very improbable that marketers can substantiate such broad claims. So advertisers should avoid environmental certifications or seals that are not clear about the basis for the certification.

The updated Green Guides also address the brave new world (another term coined by Shakespeare, by the way – this time in *The Tempest*) of renewable energy claims. Our research showed that advertisers need to be careful in touting that a product or package was “made with renewable energy.” Such claims can be misleading unless the main processes used to make the product or package were powered with either renewable energy or non-renewable energy backed by renewable energy certificates. Otherwise, marketers should clearly specify the percentage of renewable energy that powered the manufacture of the product or package.

The FTC recently lodged complaints against Neiman Marcus and two other retailers that demonstrate what a brave new world the realm of green advertising truly is.⁹ We charged these companies with violating the Fur Products Labeling Act, legislation passed in 1951, when consumers wanted to make sure that the fur coats they were shelling out for were more mink

⁹ See FTC Press Release, *Retailers Agree to Settle FTC Charges They Marketed Real Fur Products as Fake Fur*, Mar. 19, 2013, available at <http://www.ftc.gov/opa/2013/03/neiman.shtm>.

In late 2010, when the FTC first called for Do Not Track, consumers had very few tools for controlling online tracking. There was no effective counterweight to the growing pressure on marketers to collect and analyze more and more consumer data. We therefore advocated the creation of a persistent Do Not Track mechanism that would apply across industry to all types of tracking; be easy to find and use; be effective and enforceable; and allow consumers to stop the collection of nearly all behavioral data gathered across sites and not just the serving of targeted ads.¹⁴

Our call for Do Not Track set off a burst of activity. All major browsers now permit their users to send out an instruction not to track them across websites, and major online publishers like Twitter and the Associated Press have welcomed this development.¹⁵ The Digital Advertising Alliance has widely deployed an icon-based opt-out system and last year at the White House promised to honor browser-based opt-outs.¹⁶ Microsoft has turned the Do Not Track setting on by default in Internet Explorer 10.¹⁷ Apple has implemented a “Limit Ad

¹⁴ See, e.g., Fed. Trade Comm’n, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* 52-55 (Mar. 26, 2012), available at

Tracking” feature for its mobile devices.¹⁸ And Mozilla has recently begun to test blocking third-party cookies by default.¹⁹

I am pleased that so many have responded to the FTC’s call for greater consumer control over online tracking. But consumers still await an effective and functioning Do Not Track system, which is now long overdue

discomfort is not a foundation for sustained growth. More likely, it is an invitation to Congress and other policymakers in the U.S. and abroad to