

Search & Regulated Industries

Retail Industry Focus

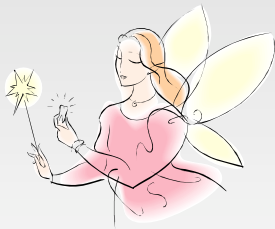
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Myths!



On the Internet I can say anything I want, no one will care!



No government entity monitors websites!



I'm in retail – there's no regulations for Online Stores!

What the FTC Regulates in Online Advertising

- Business Opportunities
- Credit & Financial Issues
- Dietary Supplements
- Energy & Appliances
- Environmental Claims
- Eye-Care Surgery
- Food Advertising
- Free Products
- Jewelry
- 900 Numbers
- Made in the USA
- Mail & Telephone Orders



- Multi-Level Marketing
- Negative Option Offers
- Telemarketing
- Testimonials & Endorsements
- Tobacco
- Vocational & Distance School Educations
- Warranties & Guarantees
- Weight-Loss Products
- Wool & Textile Products



Closer Look at Retail Industries

- Credit & Financial Issues
- Dietary Supplements
- Electronic Appliances
- Food Advertising
- Free Products
- Jewelry
- Testimonials & Endorsements
- Tobacco
- Weight-Loss Products
- Wool & Textile Products
- Made in the USA



Retail Industries & FTC Rules

Credit & Financial Issues

- Retail websites offering their own credit payments, credit card, financial services, etc. must adhere to the FTC's rules & guidelines:
 - The Truth in Lending Act
 - The Fair Credit Billing Act
 - The Fair Credit Reporting Act
 - The Equal Credit Opportunity Act
 - The Electronic Fund Transfer Act
 - The Consumer Leasing Act



Dietary Supplements

- Websites selling Dietary Supplements (i.e. vitamins) fall under heavy scrutiny from the FTC
- All Claims must be substantiated. The FTC considers the following when verifying claims:
 - Specific Level of Support
 - The Amount & Type of Evidence
 - The Quality of the Evidence
 - The Totality of the Evidence
 - The Relevance of the Evidence
- Other Issues Monitored by the FTC
 - Claims based on Consumer Testimonials and Expert Endorsements
 - Claims based on Traditional Use
 - Use of the DSHEA Disclaimer in Advertising
 - Third Party Literature



Retail Industries & FTC Rules

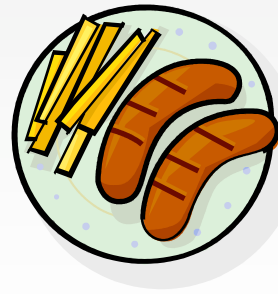
Electronic Appliances

- Energy efficiency ratings/energy guide information for:
 - Refrigerators, freezers, dishwashers, washers, water heaters, furnaces, boilers, central air conditioners, room air conditioners, heat pumps, pool heaters
- Online dealers are required to provide:
 - estimated annual energy consumption: refrigerators, freezers, dishwashers, washers & water heaters
 - energy efficiency rating: air conditioners, heat pumps, furnaces, boilers & pool heaters
 - range of estimated annual energy consumption, or energy efficiency ratings, of comparable appliances.
- Televisions must display the actual viewing size of the screen
 - LCD, DLP, High Def, etc., must all measure by the horizontal dimension of the actual viewing area



Food Advertising

- Nutrient Content Claims
- Nutrient Content Claim Disclosures
- Health Claims
 - Standard for Substantiation of Health Claims
 - Health Claims for Foods That Contain a Nutrient at a Level That Increases the Risk of a Disease
 - Nutrient/Substance Levels Sufficient to Ensure Meaningful Health Benefits
 - Minimum Nutritional Value for Foods Bearing Health Claims
 - Relevance of Dietary Factors to Claimed Health Benefits



Retail Industries & FTC Rules

Jewelry

- General Jewelry
 - Misuse of terms: hand-made, corrosion proof, rust proof, vermeil, platinum, iridium, palladium, etc.
 - Misrepresentation as to gold content, silver content, pewter content
 - Misrepresentation of weight & total weight
- Diamonds, Gems & Pearls
 - Definition & misuse of diamond, gem, pearl, etc.
 - Disclosure of treatments to diamonds, gemstones & pearls
 - Misuse of terms: blue white, brilliant, full cut, real, genuine, precious, flawless, ruby, sapphire, emerald, topaz, birthstone, gemstone, etc.
 - Misuse of terms such as cultured pearl, seed pearl, Oriental pearl, synthetic, & regional designations, etc.
 - Misrepresentation as to cultured pearls.



Tobacco

- Restrictions include
 - banning all outdoor and Internet tobacco advertising;
 - excluding human or cartoon figures from all tobacco advertising;
 - limiting tobacco ads to black-and-white text when they appear in publications with a significant underage readership;
 - banning the use of the name or logo of a tobacco brand on non-tobacco merchandise;
 - prohibiting the use of any non-tobacco brand name as a brand name for a tobacco product
- Labeling
 - Warning labels should be displayed on pages advertising tobacco products
 - Surgeon General's Warnings
 - Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.
 - Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.
 - Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.
 - Cigarette Smoke Contains Carbon Monoxide.



Retail Industries & FTC Rules

Weight-Loss, Diet Products

- Websites selling Weight Loss/Diet products fall under heavy scrutiny from the FTC
- All Claims must be substantiated.
- Red Flags the FTC looks for in advertising:
 - Cause weight loss of 2 pounds or more a week for a month or more without dieting or exercise
 - Cause substantial weight loss no matter what or how much the consumer eats
 - Cause permanent weight loss (even when the consumer stops using product)
 - Block the absorption of fat or calories to enable consumers to lose substantial weight
 - Safely enable consumers to lose more than three pounds per week for more than four weeks
 - Cause substantial weight loss for all users
 - Cause substantial weight loss by wearing it on the body or rubbing it into the skin
- Other Issues Monitored by the FTC
 - Claims based on Consumer Testimonials & Expert Endorsements
 - Claims based on Traditional Use
- FTC has a special website for consumers to understand deceptive and bogus weight-loss advertising:
<http://www.ftc.gov/redflag>



Wool & Textiles

- The Textile and Wool Acts requires advertisers to:
 - Include a fiber content statement.
 - disclose country of origin information in Internet ads that sell textile & wool products.
 - The description of each advertised item must include a statement that it was made in the U.S.A., imported or both.
 - Ads that say or imply anything about fiber content must disclose the generic fiber names in order of predominance by weight.



Additional Retail Issues

Free Items

- A product that's advertised as free if another is purchased "buy one, get one" indicates that the consumer will pay nothing for the one item and no more than the regular price for the other. Ads like these should describe all the terms and conditions of the free offer clearly and prominently.



Made in the USA

- A product has to be "all or virtually all made in the United States" for it to be advertised or labeled as "Made in the U.S.A."



Testimonials & Endorsements

- Testimonials and endorsements must reflect the typical experiences of consumers, unless the ad clearly and conspicuously states otherwise.
- A statement that not all consumers will get the same results is not enough to qualify a claim.
- Testimonials and endorsements can't be used to make a claim that the advertiser itself cannot substantiate.
- Connections between an endorser and the company that are unclear or unexpected to a customer also must be disclosed, whether they have to do with a financial arrangement for a favorable endorsement, a position with the company, or stock ownership.
- Expert endorsements must be based on appropriate tests or evaluations performed by people that have mastered the subject matter.



FTC Regulations



The same consumer protection laws that apply to commercial activities in other media apply to online advertising and commercial websites.

If you can't do it in print, on the radio or on television – then you can't do it online either!



The FTC Act's prohibition on 'unfair or deceptive acts or practices' encompasses Internet advertising, marketing and sales.

That means – paid advertising, shopping comparisons, banner ads, content, pop-up ads, etc.



Many FTC Commission rules and guides are not limited to any particular medium and therefore, apply to online activities.



Disclosures that are required to prevent an ad from being misleading, must be clear and conspicuous.

If you need disclosures – make sure they are easy for your viewers to find/access.



FTC rules & guides that use specific terms—"written," "writing," "printed" or "direct mail"—are adaptable to web pages & online advertising.

The FTC concludes that visual text on web pages and emails fall under these rules & guides



FTC rules & guides on "Direct mail" solicitations, are applicable to email.

The FTC considers email, just like direct mail – all rules & guides apply

Points Webmasters & Agencies Should Keep in Mind



Sellers are responsible for claims **they make** about their products and services.



Third parties such as **advertising agencies** or **website designers** also **may be liable** for making or disseminating deceptive representations *if they participate in the preparation or distribution of the advertising, or know about the deceptive claims.*



Advertising agencies or website designers **are responsible** for reviewing the information used to substantiate ad claims.



Advertising agencies or website designers **may not simply rely on an advertiser's assurance** that the claims are substantiated.



In determining whether an ad agency should be held liable, the FTC looks at the **extent of the agency's participation** in the preparation of the challenged ad, and whether the agency knew or should have known that the ad included false or deceptive claims.

When in Doubt?

- Consult the FTC's website
 - <http://www.ftc.gov>



- Consult legal counsel



Resources

- FTC's website: <http://www.ftc.gov>
- FTC Publications:
 - Rules of the Road: <http://ftc.gov/bcp/online/pubs/buspubs/ruleroad.pdf>
 - Dot Com Disclosure: <http://ftc.gov/bcp/online/pubs/buspubs/dotcom/index.pdf>
 - Business Advertising Guidance: <http://ftc.gov/bcp/guides/guides.htm>
 - Made in the USA Guidance: <http://www.ftc.gov/bcp/online/pubs/buspubs/madeusa.pdf>
 - Energy Efficiency Guidance: <http://www.ftc.gov/bcp/online/pubs/buspubs/onlappl.pdf>
 - Guidance for Jewelry: <http://www.ftc.gov/bcp/guides/jewel-gd.pdf>
 - Textiles, Wool & Apparel Issues: <http://www.ftc.gov/os/statutes/textilejump.htm>
 - Tobacco Guidance: <http://ftc.gov/bcp/menu-tobac.htm#bized>
 - Diet, Health and Fitness Guidance: <http://ftc.gov/bcp/menu-health.htm#bized>
 - Fair Packaging & Labeling Act: <http://ftc.gov/os/statutes/fplajump.html>
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