

Federal Trade Commission Policy Statement on Deceptively Formatted Advertisements

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On December 22, 2015, the **Federal Trade Commission (FTC)** published an “Enforcement Policy Statement on Deceptively Formatted Advertisements” (2015 Policy Statement) with unanimous support of the Commissioners.^[i] The Policy Statement applies to advertising and promotion of all goods and services, and it supplements prior FTC guidance that advertisers have relied on since the 1960s.^[ii] Given the FTC’s longstanding interest in alcohol beverage advertising by large and small suppliers, industry members should pay particular attention to the latest guidance on deception.

The 2015 Policy Statement focuses on so-called “native advertising” or “sponsored content,” which reasonable consumers may perceive to be “non-promotional content” such as news, articles, feature stories or educational information. The FTC provides an example of digital advertising content in a publication that is formatted in the same manner as the publication itself. The deception standard is summarized as follows:

Regardless of the medium in which an advertising or promotional message is disseminated, deception occurs when consumers acting reasonably under the circumstances are misled about its nature or source, and such misleading impression is likely to affect their decisions or conduct regarding the advertised product or the advertising.^[iii]

Extensive guidance is provided for advertisers to avoid consumer deception in online and digital placements using fairly straightforward disclosures or other means of distinguishing ad content from the publication in which the ad content appears. Recent enforcement actions are also discussed. The key to compliance and avoiding FTC enforcement actions is to clearly inform consumers that they are viewing or reading advertising content.

The FTC has also prepared further specific guidance with discussions of issues arising in all forms of media and examples of recommended disclosures and formatting. Guidance supplementing the 2015 Policy Statement is titled, “Native Advertising: A Guide for Businesses.”^[iv]

Over the last 15 years, several FTC special orders have been issued to beer, wine and spirits manufacturers requiring production of virtually all advertising content for a specified period (e.g., six months or a year). The FTC staff reviewed those materials thoroughly with a focus on (i) voluntary compliance with industry advertising codes and (ii) compliance with federal laws prohibiting deceptive and unfair advertising practices. The 2012 special orders issued to the top 14 beer, wine and spirits suppliers in the U.S. also requested privacy policies and terms and conditions of web sites and social media pages.^[v]

Four detailed reports on alcohol beverage advertising have been issued since 1999 summarizing the FTC's findings on alcohol beverage advertising. The 2014 report was one of the first widely publicized reviews of digital advertising practices by a consumer products industry.^[vi]

[i] Full statement is available [here](#)

[ii] See, e.g. *Statement in Regard to Advertisements That Appear in Feature Article Format*, FTC Release, (Nov. 28, 1967), 73 F.T.C. at 1307 and *FTC Statement on Deception*, 103 F.T.C. 174, 175 (1984) (appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)) ("Deception Policy Statement").

[iii] See, *2015 Policy Statement*, p. 2 and p. 10.

[iv] See the [FTC's Guidance to Native Advertising here](#)

[v] Cite 2012 Special Order April 12, 2012; press release and link to order available [here](#)

[vi] See [Alcohol Advertising, ad placement and self-regulating post here](#)