

COVINGTON

FTC Studies Effectiveness of Disclosures in Contexts of Search Engines and Native Ads

January 8, 2018

Advertising and Consumer Law

In late December, the Federal Trade Commission (“FTC”) released a Staff Report titled [Blurred Lines: An Exploration of Consumers’ Advertising Recognition in the Contexts of Search Engines and Native Advertising](#). This Report is the most recent sign of the FTC’s continuing interest in native advertising and effective online disclosures. This study builds upon the FTC’s [Enforcement Policy Statement](#) addressing “Native” Advertising and [Native Advertising: A Guide for Businesses](#), as well as recent enforcement cases (e.g., [Tarr](#) and [Lord & Taylor](#)).

The Report summarizes testing FTC staff conducted in 2014-2015 regarding consumer recognition of search and native ads. The staff tested ad recognition on Google Desktop and Mobile; Bing Desktop and Mobile; Gear Patrol Desktop; Time Mobile; Yahoo! Desktop; and Chicago Tribune Mobile. The study compared 48 participants’ reactions to actual ads (native and search) as they appeared on these sites, comparing them to reactions of other participants to nearly identical version of same sites with enhanced ad disclosures. As a general matter, the study determined that enhanced ad disclosures -- in the form of distinctive labeling, borders and colors; larger, bold fonts; text and color contrasts; and label placement -- resulted in greater recognition of ads.

Notably, the study did not test individual disclosure modifications for statistical significance or control for confounding factors. It relied upon the study administrators’ subjective judgments of whether or not a participant recognized an ad as an ad. The staff Report states, however, that the aggregated effects of the disclosure modifications were substantial and statistically significant. In this regard, the staff urges use of the same disclosure modifications the FTC has suggested previously, but also recognizes the need for more research in this area.

If you have any questions concerning the material discussed in this client advisory, please contact the following members of our Advertising and Consumer Law practice:

[Yaron Dori](#)
[John Graubert](#)
[Lindsey Tonsager](#)
[Laura Kim](#)

+1 202 662 5444
+1 202 662 5938
+1 415 591 7061
+1 202 662 5333

ydori@cov.com
jgraubert@cov.com
ltonsager@cov.com
lkim@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.