



August 2, 2022

Federal Trade Commission
Ms. April Tabor
Office of the Secretary
400 7th St. SW, 5th Floor, Suite 5610
Washington, DC 20024

Dear Ms. Tabor,

On behalf of the Center for Data Innovation (datainnovation.org), we are pleased to submit this response to the Federal Trade Commission's (FTC) request for comments on how to prevent deception in digital advertising through the modernization of the agency's business guidance titled ".com Disclosures: How to Make Effective Disclosures in Digital Advertising."¹

The Center for Data Innovation is the leading think tank studying the intersection of data, technology, and public policy. With staff in Washington, D.C., and Brussels, the Center formulates and promotes pragmatic public policies designed to maximize the benefits of data-driven innovation in the public and private sectors. It educates policymakers and the public about the opportunities and challenges associated with data, as well as important data-related technology trends. The Center is a part of the nonprofit, nonpartisan Information Technology and Innovation Foundation.

SUMMARY

The FTC Act's prohibition on "unfair or deceptive acts or practices" broadly covers advertising claims, marketing and promotional activities, and sales practices in general, including in online advertising. Accordingly, the Commission has brought countless law enforcement actions to stop fraud and deception online and works to educate businesses about their legal obligations and consumers about their rights.

Yet, deceptive advertising continues to proliferate online, including on social media platforms, consumer review websites, and in emerging spaces like the metaverse. To protect consumers from deception in online advertising, the FTC should modernize its business guidance, ".com Disclosures: How to Make Effective Disclosures in Digital Advertising (.Com Disclosures)," to address new advertising practices, while maintaining a focus on effective disclosure and impactful updates that promote innovation and utilize the most promising technological solutions. The FTC first issued the .Com Disclosures in March 2013 to outline practices for making clear and conspicuous disclosures in online advertising.

¹ Federal Trade Commission, "FTC Looks to Modernize Its Guidance on Preventing Digital Deception," news release, June 3, 2022, <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-looks-modernize-its-guidance-preventing-digital-deception>.



In response to the FTC's questions, we offer five main takeaways:

1. The FTC should revise the .Com Disclosure document to account for new features on social media, such as co-authored posts or platform-specific features that indicate something is sponsored content. In addition, the FTC should **establish an ongoing partnership with social media platforms to create voluntary best practices for disclosure that incorporate platform innovations**. This will allow quick response to new and emerging technologies and features on social media, and the overall evolution of social media advertising.
2. The revised guidance should address the unique disclosure needs of influencers on social media. The guidance should **expand on the definition of material connections and require disclosure whenever a featured product was provided for free**.
3. A new section should be added to the revised guidance that specifically addresses disclosure in children's advertising. Disclosure requirements should be based on leading research and generally require that disclosure language is **age-appropriate and understandable, prominent and striking in appearance, and conspicuously located**.
4. Since AR/VR technology and the metaverse are novel, unique advertising practices and issues have not yet developed. AR/VR advertising just presents advertising in a new format. To promote disclosure in these spaces, the revised guidance **should explicitly state that online advertising disclosure requirements found in the revised .Com Disclosures apply to metaverse advertising**.
5. The revised guidance should include a new section that outlines the ways in which consumer reviews affect the sale of a product or influence consumers' purchasing decisions. **The FTC should revise the guidance to direct reviewers to disclose when they have a material connection with an advertiser, as well as the extent of disclosure required**.

Please find our responses to the relevant questions in the document below.

Sincerely,

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What issues raised by current or emerging online technologies, activities, or features, such as sponsored and promoted advertising on social media platforms...should be addressed in a revised guidance document? Why and how should they be addressed?

The primary issue the FTC should address in its revised guidance is the rapidly evolving nature of social media and social media advertising. Social media platforms regularly add new features to remain relevant to users, and social media advertising likewise is constantly in flux to hold an audience's attention.² Innovations on social media include joint posting where two users can share a post together and are both listed as the posting user; platform-generated advertising banners and labels that influencers can enable and superimpose onto content to indicate that it is advertising; and artificial intelligence (AI) that monitors content and can flag violations to a platform's terms of service.³ The FTC should provide guidance on how advertisers should use these types of features, when available, in responsible disclosures.

In addition, the FTC should recognize the need for it to provide quicker advice on best practices for disclosure in the future. To account for how future changes can factor into social media disclosure and reduce digital deception, the FTC **should establish an ongoing partnership with social media platforms to create voluntary best practices for disclosure that incorporate platform innovations.** Stakeholders should develop these best practices using evidence and insights from social media platforms on effective disclosure. The FTC should also solicit feedback from social media platforms on the implementation and effectiveness of these best practices at least every two years to determine if improvements could be made to encourage more effective advertising practices.

Periodic review with stakeholder input will keep best practices current without disrupting innovations in social media advertising and promote compliance with practical and platform-relevant examples of proper disclosure. This partnership will also empower social media platforms to encourage effective disclosure of sponsored content and introduce new features to improve online advertising disclosure and identify advertising content.

² Arielle Padres, "All Social Media Giants Are Becoming the Same," *Wired*, November 30, 2022, <https://www.wired.com/story/social-media-giants-look-the-same-tiktok-twitter-instagram/>.

³ Gemma Ryles, "TikTok now uses AI for user violations – here's what it means for you," *Trusted Reviews*, July 28, 2021, <https://www.trustedreviews.com/news/tiktok-now-uses-ai-for-user-violations-heres-what-it-means-for-you-4154531>.



What specific types of online disclosures, if any, raise unique issues that should be addressed in a revised guidance document separately from a discussion of general disclosure requirements?

Influencer advertising—a form of endorsement advertising that uses popular online social media celebrities, or influencers, to promote and market products to the influencer’s social media followers—raises unique issues for disclosure that should be addressed in separate guidance.⁴ In the practice, influencers will create and post advertising content that closely resembles, in form or content, the non-advertising content posted on a platform.⁵ But without disclosure, or with improper disclosure, it can be very difficult for consumers to identify a social media influencer’s advertising posts compared to non-advertising posts. The FTC has previously released a summary for disclosure for social media influencers, based on the standards of the Endorsement Guides.⁶ The FTC should review and update guidance considering advancements and changes in influencer advertising practices.

As influencer advertising grows, new practices such as product seeding have developed.⁷ Product seeding is the practice of sending unsolicited products to influencers in the hopes that they will organically promote the product, without a formal contract or payment by the sponsoring company.⁸ But the Endorsement Guides and 2019 disclosure summary do not clearly state the obligations of influencers in product seeding and fail to adequately define “material relationships” outside of contracted employment. Revised guidance should **expand on the definition of material connections and require disclosure any time a featured product was provided free of charge**, regardless of whether the sponsoring company solicited the review or the resulting content.

Should the guidance document address issues unique to specific audiences or demographics in seeing, hearing, or comprehending disclosures? If so, how should the guidance be modified?

The guidance should treat digital advertising aimed at children differently than digital advertising aimed at adults because children are at a reduced capacity to understand and digest advertising

⁴ Becca Trate, “Updating FTC Endorsement Guides Will Improve Advertising Disclosure on Social Media,” *Center for Data Innovation*, July 29, 2022, <https://datainnovation.org/2022/07/updated-ftc-endorsement-guides-will-improve-advertising-disclosure-on-social-media/>

⁵ Bartosz W. Wojdowski, et al., “Native advertising: Engagement, deception, and implications for theory,” in *The New Advertising: Branding, Content and Consumers Relationships in a Data-Driven Social Media Era*, edited by R. Brown, V.K. Jones, and B.M. Wang (Santa Barbara, CA: Praeger/ABC Clío, 2016), 203-236.

⁶ Federal Trade Commission (FTC), “Disclosures 101 for Social Media Influencers”, (Washington, DC: Federal Trade Commission, November 2019), https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf and “Guides Concerning the Use of Endorsements and Testimonials in Advertising.” *Federal Trade Commission*, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>.

⁷ Werner Geysler, “The State of Influencer Marketing 2022: Benchmark Report” (industry report, published March 2, 2022).

⁸ Selina Sargent, “Influencer Gifting and Product Seeding – How to get it right,” *Upfluence*, April 12, 2022, <https://www.upfluence.com/influencer-marketing/influencer-gifting-product-seeding-how-to-get-it-right>.



content. Children, especially young children, do not understand what “a sponsorship is and how it works,” nor do they understand who creates these messages, pays for them, or why.⁹ In fact, research indicates that children have no concept of advertising before age four or five.¹⁰ As they age, children begin to understand the ad is designed to sell a product, and are able to describe the “selling intent” by around nine, but children do not develop an understanding of the “persuasion intent” until much later.¹¹ Research indicates that even children older than 12 struggle to distinguish between an ad and non-sponsored content, especially when advertisers employ digital marketing techniques to hide this fact.¹² Fortunately, research indicates that “disclosures can enhance the transparency...among children aged 8–12, and disclosures serve as an important tool to empower children in their understanding of the commercial nature of such videos.”¹³

The FTC also understands and accepts the need to view and protect children from advertising materials due to their reduced capacity for understanding. The Commission adopted the conclusion that misleading and deceptive advertising claims aimed at children tend to unfairly exploit a consumer group unqualified by age or experience to anticipate or appreciate the possibility that representations may be exaggerated or untrue.¹⁴

In light of this, the FTC should add a new section to the .Com Disclosures guidance that specifically outlines disclosure requirements in online advertising aimed at children. Relying on leading research on disclosure efficacy for children, the guidance should require that the **language in the disclosure is age-appropriate and common; the colors, font, and shape of the disclosure’s design are prominent and striking; and the disclosure is in a central and conspicuous position** (for example, at the top of a website page, prominently featured along the sides of a website page, or in a banner within the content).¹⁵

Outside of revising the .Com Disclosures guidance, the Commission should study social media and influencer advertising that is aimed at children. Child advocacy groups have identified a

⁹ Reinhard Grohs, Udo Wagner, and Regina Steiner, “An Investigation of Children’s Ability to Identify Sponsors and Understand Sponsorship Intentions,” *Psychology & Marketing* 29, vol. 11 (2012), 907, 914. DOI: 10.1002/mar.20573.

¹⁰ Ibid.

¹¹ Owen B.J. Carter et al., “Children’s understanding of the selling versus persuasive intent of junk food advertising: implications for regulation,” *Social Science & Medicine* 72, vol. 6 (2011) :962-8. DOI: 10.1016/j.socscimed.2011.01.018.

¹² Agnes Nairn, “Changing the Rules of the Game: Implicit Persuasion and Interactive Children’s Marketing,” (NPLAN/BMSG Meeting Memo 2, 2009), <http://www.digitalads.org/how-youre-targeted/publications/changing-rulesgame-implicit-persuasion-and-interactive-children’s>.

¹³ Sophie C. Boerman and Eva A. van Reijmersdal, “Disclosing Influencer Marketing on Youtube to Children: The Moderating Role of Para-Social Relationship,” *Frontiers in Psychology* 10, (January 2020). DOI: 10.3389/fpsyg.2019.03042.

¹⁴ *Ideal Toy*, 64 F.T.C.. 297, 310 (1964)

¹⁵ Steffi De Jans et al., “This is Advertising! Children’s View on Advertising Disclosures,” *Journal of Advertising* (2018). <https://bitescience.com/articles/this-is-advertising-childrens-view-on-advertising-disclosures>.



large amount of influencer marketing that is directed at children, and often undisclosed, that would not be allowed on children’s television (due to regulations against “host-selling,” or using stars of a television program in commercials airing during that program).¹⁶ Given that children are a uniquely vulnerable group, the FTC should engage with social media platforms that explicitly cater to children, such as YouTube Kids, to determine the scope of this issue and if advertising disclosures sufficiently serve children.

Should the guidance document address issues that have arisen with respect to advertising that appears in virtual reality or the metaverse, and, if so, how should those issues be addressed?

Due to the novelty of augmented reality and virtual reality (AR/VR), unique advertising practices in the metaverse have not yet fully developed.

In many cases, AR/VR advertisements change the ad format when compared to two-dimensional online advertising, but they do not reinvent the advertising content in a way that would require specific guidance. For example, in two-dimensional advertising content, users may download a branded mobile app whereas in a AR/VR advertising content, the users are “placed in the product,” such as in a branded virtual world or a branded AR/VR application. For example, the fast-food restaurant Wendy’s created the “Wendyverse,” a branded VR experience in Meta’s Horizon Worlds platform to promote its stores.¹⁷ Though the format is different, these two types of advertising are functionally the same experience because in both cases users must actively opt-in to see the content, and the branded aspect serves as a disclosure. Consumers can reasonably determine that what they are seeing is advertising when they agree to access the branded features.

In the future, depending on how metaverse platforms develop, practices common on two-dimensional online advertising, such as text-based disclosures, may be insufficient or inappropriate for advertising on AR/VR platforms. But until advertising content in AR/VR and metaverse becomes functionally different than other online advertising, there is no need to establish metaverse-specific guidance. Instead, the FTC **should explicitly state in the revised .Com Disclosures guidance that online advertising disclosure requirements apply to metaverse advertising.**

As technology and advertising grow in this space, the FTC should monitor advertising practices in AR/VR spaces with input from stakeholders to address any new issues that arise and are not covered by the revised .Com Disclosures. If, in the future, the FTC deems the guidance

¹⁶ Campaign for a Commercial-Free Childhood, Center for Digital Democracy and Public Citizen, Complaint, *Request for Investigation, and Request for Policy Guidance on the Deceptive Practice of Influencer Marketing Directed to Children*, 11-12, (October 21, 2016), <https://fairplayforkids.org/wp-content/uploads/archive/FTCInfluencerComplaint.pdf> and “Promoting to Children: Issues related to Children’s Marketing,” *Colbalt Law*, accessed July 23, 2022, <http://cobaltlaw.com/wp-content/uploads/issues-in-kids-mktg.pdf>.

¹⁷ “Wendy’s unveils ‘Wendyverse’ restaurant within Meta’s Horizon Worlds,” *The Drum*, March 30, 2022, <https://www.thedrum.com/news/2022/03/30/wendy-s-unveils-wendyverse-within-meta-s-horizon-worlds>.



insufficient in light of new technological advances, advertising practices, or user behavior, it should then consider developing specific guidance that addresses these problems.

What additional issues or principles relating to online advertising should be addressed in the guidance document?

The FTC should update the .Com Disclosures to specifically address the need for disclosures in consumer reviews. Companies can pay individuals to review their goods or services in a public fashion. Such agreements can take the form of a one-time payment, revenue or equity sharing, free or discounted products, or licensed endorsement deals in exchange for promoting the good or service in a review.¹⁸ Currently, the FTC regulates these reviews if they are written or conducted in a manner that makes others think the reviewer's opinion is their own and freely given.¹⁹

The revised guidance should include a new section that outlines the ways in which consumer reviews, regardless of where they appear (for example, on a personal blog, on social media, or on a product listing), affect the sale of a product or influence consumers' purchasing decisions. The FTC should revise the guidance to direct reviewers to disclose when they have a material connection with an advertiser, as well as the extent of disclosure required. Further, the FTC should include instructions on the style or content of the disclosure that considers the varying nature of online platforms. For example, the FTC should offer instructions on the placement and language of disclosures on Instagram and TikTok that take into account the shorter nature of written captions or hashtags on the platform, users' ability to tag others in posts, users' option to turn off comments on their posts, and users' inability to include links in captions or comments.

¹⁸ "6 Types of Compensation for Celebrity Endorsement Deals." *Celebrity and Influencer Marketing Blog*, 4 May 2016, <https://blog.bookingagentinfo.com/6-types-of-compensation-for-celebrity-endorsement-deals/>.

¹⁹ "Guides Concerning the Use of Endorsements and Testimonials in Advertising." *Federal Trade Commission*, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>.