

## **Web Site Designing: Is Anyone Watching?**

### ***A Discussion of the FTC – Dot Com Disclosures***

**By Henry N. Meier, Jr., Esq.**  
*Of Counsel, CorpLaw Associates LLC*

#### **Introduction**

The Internet has become the medium to get one's message out to the world. Many companies are successful in utilizing Web sites for business. To make an attractive Web site requires coordinated efforts from the company and a skilled Web site designer, among many others. The well designed Web site can attract an abundance of e-Commerce traffic, bringing additional revenues and success for the company.

Are there any limits to information that can be placed on an e-Commerce Web site? Does anyone watch or monitor Web site contents and the e-Commerce traffic thereby generated? This article highlights some guidelines used to keep those sites honest and some legal parameters regarding information display. This article will not discuss the legal relationships between the company - the "owner" of the Web site, the Web site developer, and any other entity which may share efforts in bringing the Web site live, although responsibilities for compliance with the concepts below should be clearly defined in an agreement(s) between all parties involved.

#### **Limitations on Web Site Content**

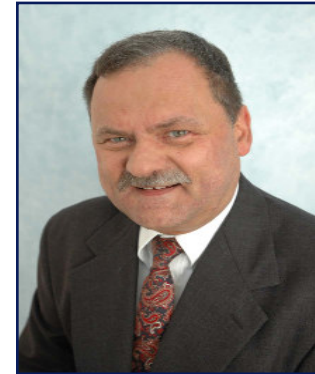
Anyone can place any information on the Internet in a Web site. However, there are legal and non-legal limitations on this right, including Intellectual Property rights. The Federal Trade Commission (FTC) "monitors" Web site contents. The FTC's jurisdiction in preventing unfair or deceptive practices is based on Section 5 of the FTC Act, 15 U.S.C. §45 (a). The FTC views the advent of the Internet, and deceptive practices that accompany its use, as "old wine in new bottles". Many preexisting scams merely proliferated on the Internet. The FTC monitors Web sites not only for outright fraud, but also to prevent deceptive practices which could provide an unfair competitive advantage. In addition, many states have "Little FTC" legislation, which permits versions of the FTC Act to be enforced by the local State Attorney General. This article will focus on a major activity undertaken by the FTC to reduce the incidence of Internet deception and fraud.

#### **Dot Com Disclosures**

In addition to recent activities in monitoring privacy issues in relation to the Internet, FTC adopted many rules and guides. The purpose of these rules and guides is to prevent deceptive advertising. FTC has taken the position that since Web sites function as advertisements, rules for "written" advertising should apply equally to Web site displays. To provide advertisers and Web designers with some guidance, FTC adopted a guide for Web sites. This guide is titled, "Dot Com Disclosures", the "Guide". It is available online at:

<http://www.ftc.gov/bcp/online/pubs/buspubs/dotcom/index.html> .

The purpose of the Guide is to, "... ensure that products and services are described truthfully in online ads and that consumers get what they pay for." The document is a useful tool for Web site development. The Guide is not a new "rule", as such, but is rather an adaptation of previous FTC



Henry is Of Counsel to CorpLaw Associates LLC. He has over 20 years of experience in IP, corporate transactional, and e-commerce law. He can be reached at [henry@corplaw.com](mailto:henry@corplaw.com) or at 847.784.1300. The firm's web site is [www.corplaw.com](http://www.corplaw.com).

rules that prevent misleading or deceptive print advertising. The Guide explains how FTC rules and guides are to be adapted to today's Web site technologies and online displays. It provides many .html examples of how to comply with FTC rules.

To understand what the Guide attempts to accomplish, a brief analysis of FTC terminology is needed. For example, in print media, FTC recognizes that many advertising claims are made. To prevent these advertisements from misleading consumers, FTC requires that some accompanying disclosures must be made. Thus, FTC requires that qualifying disclosures to advertising claims must be clear and conspicuous, such as placing a disclosure near the claim in the ad. The Guide demonstrates application of this concept, and others, to an online setting.

For example, if a cellular phone plan is described on a Web site as costing, "Only \$19.95 per month," other material terms must be displayed. Thus, if this rate is available only with a 24 or 36 month contract, and if significant cancellation charges apply, these material terms must be displayed. However, FTC recognizes that not all significant information can be displayed on the same screen. Therefore, FTC allows an advertiser to provide a link next to the advertised rate. This link can lead to another page describing the qualifying terms that apply to this rate, or to a page with key terms of the service agreement, or a summary of key terms.

The Guide also provides guidance in displaying this link. Here is where the .html examples are most helpful. FTC requires the link to be in close proximity to the claim, such as the rate. The language on the link should direct a consumer to click on the link. Therefore, use of an asterisk or star may not be sufficient; some language on the link may be required. Language used in the link must be easily understood, such as, "For Warranty Information, [Click Here](#)". Likewise, language in the qualifying statement in the click through must be understandable.

All of these concepts are clearly explained in the Guide. In addition, examples help in visualizing the explanations in an online context. Can the link appear below the visible portion of the first screen that loads on a browser? Must browser limitations and characteristics be considered? If a claim is repeated in a lengthy Web site, must the disclosure (link) be repeated? What rules apply to banner ads? The Guide addresses these issues.

Finally, keep in mind that the FTC will proceed against any advertiser responsible for making deceptive or misleading claims. FTC will also hold ad agencies to the same standards. Likewise, FTC has expressed its intention to use this approach to proceed against a Web site owner, or even a developer under appropriate circumstances. Web site developers can no longer "hide". If any claim seems outlandish, the developer should ask for substantiation before writing the claim into the Web site.

## **Conclusion**

The Dot Com Disclosures guide is a helpful resource for any company with a Web site. It gives clear guidance on ways to steer clear of the FTC's radar. In addition, many states are becoming active in monitoring Web sites to preventing deception of local consumers. It is easier to build compliance with the concepts in the Guide now, rather than to be questioned after your Web site is taken down!

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