

FTC Clarifies Standard for Clear and Conspicuous Disclosures

December 1, 2014

In late September 2014, the FTC announced its “Operation Full Disclosure” initiative, during which the agency sent warning letters to more than 60 companies addressing how the companies made disclosures in their respective ads. Our blog entry about Operation Full Disclosure is available [here](#). The warning letters generally recommended that, among other things, disclosures be in a font size that is easy to read and at least as large as other fonts the advertiser uses to convey the claim. That recommendation appeared to be a departure from the “flexible performance standard” for disclosures traditionally embraced by the Commission under the FTC Act.

In response to a question raised during a December 1, 2014, American Bar Association webinar devoted to what advertisers need to know about making disclosures, however, the Commission clarified that, in fact, a disclosure made in print smaller than the size of the corresponding claim could be “clear and conspicuous.” In other words, using the same size font as the claim may be one way to make a disclosure clear and conspicuous, but it is not the only way. The traditional FTC flexible performance standard still applies.