

NAD Addresses Hyperlinked Disclosures

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May 31, 2023

When a disclosure is necessary to prevent an ad from being misleading, the disclosure must be presented in a “clear and conspicuous” manner. Exactly what that means depends a lot on the context, but one question we get regularly is whether disclosures can be presented through a hyperlink. In a recent decision involving ads for meal kit company, NAD looked at FTC guidance and considered just how much of a disclosure can appear on a separate page.

The company advertised that consumers could “get 16 free meals with your purchase + free shipping.” A link invited consumers to “learn more.” If a consumer were to click on that link, she’d find a detailed disclosure explaining the material terms of the offer. That disclosure included a lot of information and ran for 194 words. That may be too long to include in some ads, so it raises the question of whether presenting it through a link is sufficient.

NAD started by looking at the FTC’s [.com Disclosure guidelines](#). Among other things, those guidelines state that “disclosures that are an integral part of a claim or inseparable from it should not be communicated through a hyperlink.” However, the FTC also acknowledges that “hyperlinks can provide a useful means to access disclosures that are not integral to the triggering claim,” provided that the link is obvious, near the claim, and conveys the nature of the information on the landing page.

In the past, NAD has held that “hyperlinks may not adequately alert consumers to the nature of the material limitations associated with the continuity plan that are material to purchasing decisions.” In this case, NAD parsed through the 194-word disclosure and determined that some terms were so integral to the claim that they should “be clearly and conspicuously disclosed in close proximity to the free claims.” Other terms could be provided via a link.

Advertisers will have to go through an exercise of parsing through their own offer terms to divide those terms that are “an integral part of a claim or inseparable from it” from those that are “not integral to the triggering claim.” The former should generally be included near the claim, while the latter may be provided through a link. Unfortunately, there often isn’t a clear answer to this problem and companies will often have to make difficult decisions.

Last June, the FTC announced that it was [looking for input](#) on ways to modernize the .com Disclosure guidelines, including by providing new guidance on the use of hyperlinks. The updated guidance may provide some answers. However, based on the tone of the press release – which among other things, complains that some companies are “burying disclosures behind hyperlinks” – it’s likely that not everyone will like those answers.