

Navigating Native Advertising

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The FTC recently released two new guidance documents: [Enforcement Policy Statement on Deceptively Formatted Advertisements](#) and [Native Advertising: A Guide for Businesses](#). The Policy Statement seeks to address the broad area of “advertising and promotional messages integrated into and presented as non-commercial content.” The Business Guide more narrowly addresses native advertising, which the FTC defines as online content “that bears a similarity to the news, feature articles, product reviews, entertainment, and other material that surrounds it.”

The two new guidance documents are important developments as they provide a road map for how the FTC is likely to enforce in the area in the future. The following are a few key takeaways.

- In determining whether an advertisement is misleading as to its nature or source, the FTC will consider the overall net impression of the ad from the perspective of a reasonable member of the target audience. Factors the FTC will consider include “the similarity of [the ad’s] written, spoken, or visual style to non-advertising content offered on the publisher’s site” and “expectations based on consumers’ prior experience” with the particular medium.
- If an ad is likely to deceive as to its nature or source, the FTC expects clear and conspicuous disclosures clarifying the nature or source of the ad.
- According to the FTC, disclosures in native advertising must often appear at the outset, before a consumer clicks on a link leading to the ad.
- The FTC is unlikely to consider headings, such as “More Content for You” and “From Around the Web,” to be sufficient disclosures.
- The FTC recognizes that not every ad that appears in a format similar to surrounding content is likely to deceive. The FTC provides the following example: “[I]f a natively formatted ad with an image of a particular sports car and the headline ‘Come and Drive [X] today’ were inserted into the news stream of a publisher site, that ad likely would be identifiable as an ad to consumers, even though it was presented in the same visual manner as news stories in the stream.”

Our recent [Advisory](#) provides analysis of the new guidance documents.