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# NATIVE ADVERTISING

**New Federal Trade Commission guidelines clarify how publishers should present commissioned or produced content that is not editorial in nature, namely native advertising. The guidelines seek to ensure that even novice users can identify advertorial content prior to engaging.**

## BACKGROUND

### Native Advertising Guidelines

The Federal Trade Commission has released new guidelines clarifying how brands and publishers should identify native advertising, or content that is intentionally commercial but seeks to match the form and function of editorialized content.<sup>1,2</sup> The FTC puts it this way: “People browsing the web, using social media, or watching videos have a right to know if they’re seeing editorial content or an ad.”<sup>3</sup> The new guidelines make the FTC’s case for the types of content that should be presented with additional declarations.

### New Approach

The new FTC guidelines require that prior to consumption, media (e.g., text, photos, illustrations, or video content) is clearly and prominently identified as commercial and not editorial in nature.

Furthermore, publishers should take every precaution to avoid ambiguous language and identify advertorial content in all potential mediums and environments (e.g., an article viewed on a first-party website vs. an article shared to social media). This could mean requiring a differentiating background color, identifying audio and video content with custom advertorial banners, and even adding additional HTML code to advertorial content so that it is clearly distinguished in search content.<sup>4</sup> Any content that is commissioned or produced with advertorial intent must be labeled with “Ad,” “Advertisement,” “Paid Advertisement,” or “Sponsored Advertising Content.”<sup>5</sup>

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<sup>1</sup> <https://www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses>

<sup>2</sup>

[https://www.ftc.gov/system/files/documents/public\\_statements/896923/151222deceptiveenforcement\\_t.pdf](https://www.ftc.gov/system/files/documents/public_statements/896923/151222deceptiveenforcement_t.pdf)

<sup>3</sup> <https://www.ftc.gov/news-events/press-releases/2015/12/ftc-issues-enforcement-policy-statement-addressing-native>

<sup>4</sup> Supra note 1, pg. 2: “Advertisements or promotional messages are deceptive if they convey to consumers expressly or by implication that they’re independent, impartial, or from a source other than the sponsoring advertiser - in other words, that they’re something other than ads.”

<sup>5</sup> FTC lays out some strict standards on language that could be considered ambiguous include “Promoted” or “Promoted Stores”, but also include phrases like “Presented by [X]”, “Brought to you by [X]”, “Promoted by [X]”, and “Sponsored by [X].” Supra note 1, pg. 10





As a rule of thumb, the guidelines seeks to ensure even a novice user can readily and reliably identify commercial content, and that the content's format, position or prominence do not deceive the user into believing that the content is editorial.

## GUIDELINES & ANALYSIS:

### What you need to know

The guidelines, by way of example, walk through numerous scenarios where publishers and brands might present advertorial content to users. The FTC says it will consider the “net impression” the ad conveys to readers. Meaning the ad will be evaluated in full, both form and function, across multiple publishing environments. Each publishing environment may require specific or additional declarations of the content's advertorial nature.



Figure 1: Compliant ad content on Instagram (example 3)

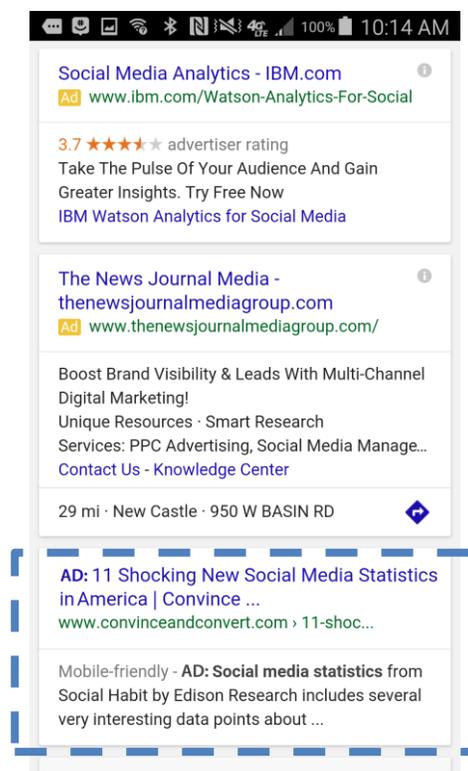


Figure 2: Compliant ad content in organic search results (example 17)

Many of the guideline examples are straightforward (e.g., a travel company declaring advertorial intent when they provide a publisher with a photo for an article “20 Beautiful Vacation Getaways.”). But, three examples give a nuanced approach to media consumed within multiple environments; these examples are worthy of a closer look.



Example 8 considers the practice of promoting favorable editorialized content.<sup>6</sup> Suppose a reputable news site gives a favorable review to a product or service offered by a company. The company then offers to pay for prominent placement of the article on the news site. This example might also include the use of organic placements on third-party social media sites.<sup>7</sup> In this example, while the editorial is not advertising, the prominent placement of the editorial will require disclosure. Here, the FTC is concerned that prominent placement might insinuate independent endorsement by the editor, thereby assigning the content significant weight. This perception is misleading, and consequently will require additional disclosures. Following New York Magazine’s lead from the example above, figure 1, this paid placement will require an additional advertorial disclosure.

However, if the company were to pay the publisher to buy ads against this post on social media, since social media platforms have their own standardized and identifiable practices for identifying advertorial posts, the FTC guidelines would not require an additional declaration.

Example 16 looks at a scenario in which a company commissions or produces video content to be shared by a social media influencer on her owned channel(s).<sup>8,9</sup> The guidelines consider the commissioned content as clearly promotional and are not concerned with a viewer’s ability to discern that the content of the video is an advertisement; however, the guidelines are concerned with the lack of advertorial declaration on the video prior to engaging with or watching the content. The FTC argues that the advertorial nature of the content should be clearly and prominently disclosed before a consumer views the material. Moreover, it is likely that a declaration will be required in both text (e.g., within the video headline) and on the video itself (e.g., either on the video thumbnail or as a prominent disclosure within the video).<sup>10</sup>

The final example considers how people find content online and what disclosures might be necessary within search engines. Example 17 focuses on the presentation of organic search results within popular search engines. The FTC claims, “The advertiser should ensure that any link or other visual elements, for example, webpage snippets, images, or graphics, intended to appear in non-paid search results effectively disclose its commercial nature.”<sup>11</sup> Here, the concern is a user may expect, based on typical use, a search engine to return a mix of search ads and organic results, but not commercial or advertorial contents within the organic search results within the search engine results page. The rationale in example 17 is similar to 16; the user should be able to distinguish advertorial content—be it text, images, or video—prior to engaging with or consuming the content.

## OUR PERSPECTIVE ON AUDIENCE REACTION AND OPPORTUNITIES

Consumer reaction to the new, more stringent FTC guidelines will be positive but quickly forgotten. Native advertising is endemic, and the simple declaration of “Ad” before advertorial

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<sup>6</sup> Supra note 1, pg. 5.

<sup>7</sup> Promoted content would likely not require additional declarations since users are accustomed to the appearance of promoted posts (e.g., “Sponsored”) on platforms such as Facebook, Twitter, Instagram, Pinterest, and Tumblr.

<sup>8</sup> Supra note 1, pg. 7.

<sup>9</sup> Example 3 considers a similar scenario where the commissioned content is a static image rather than video content. Supra note 1, pg. 3.

<sup>10</sup> Supra note 1, see examples 4 and 5.

<sup>11</sup> Supra note 1, pg. 7.



content does not present a significant burden to sound advertising and content strategies. However, the effect of these disclosures will vary across demographic group, ad formats, and group familiarity with the various content platforms.

Male millennials and other ad-block aficionados will likely have the most favorable reaction to the FTC guidelines. This group represents approximately 16% of the active adult internet users with only 1.6% of the group blocking ads on mobile devices.<sup>12</sup> “Ad blocking behavior on websites is a function of audience demographics. Websites that cater to young, technically savvy, or more male audiences are significantly worse affected.”<sup>13</sup> Consequently, depending on the target audience, pharmaceutical companies should closely monitor any native advertisements placed on websites curating content for young, tech savvy, male audiences (e.g., Facebook, Twitter, and education-rich news outlets).

For older internet users, the new ad denotation will likely have little to no effect. Older audiences give more credence to the curated spirit of their favorite publications rather than the individual ads within the publication. That is to say, older audiences may take notice that a piece of content is an ad, but unlike younger audiences, they are less likely to be dissuaded or choose not to engage with the content simply because it is an ad. For older audiences, trust in the editor or trust in the brand plays a more significant role. If there is trust in the publication, there is a greater willingness to engage with advertisements because the ad appears as a part of the overall publication.

Additionally, the new guidelines likely place a premium on celebrity content. (Internet) celebrity sponsorships are common and expected but still influential. Any lost impressions caused by ad-cautious consumers—those who refuse to click on anything with the word “Ad” at the beginning—can be made up through a mix of promotional and influencer strategies. People take interest in the causes and products that celebrities endorse insofar as they are funny, interesting, or identifiable. The FTC takes no stance of the prevalence of relationships between celebrities and business, but rather, simply wants to identify this content as commercial from the onset. However, this commercial expectation is implicit, and will not detract from the effectiveness of the celebrity endorsement.

## CONCLUSION

Transparency is at the core of the FTC’s guidelines, and these guidelines cut in different ways between publishers and brands looking to produce content. While these new guidelines require a few tactical additions, namely the ad banners, the spirit of the guidelines are no different from the spirit of a well organized creative campaign. Brands will still be tasked with the challenge of writing a catchy tag line or grabbing a user’s interest in the first seven seconds of a video. The FTC guidelines present an additional challenge for brands and content publishers already struggling, but not a significant roadblock for content producers doing well. At the end of the day, people will continue to interact with content and stores they find interesting, be it ads or editorials.

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<sup>12</sup> [http://downloads.pagefair.com/reports/2015\\_report-the\\_cost\\_of\\_ad\\_blocking.pdf](http://downloads.pagefair.com/reports/2015_report-the_cost_of_ad_blocking.pdf)

<sup>13</sup> *Idem.*, pg. 8.