

Advertising and Marketing on the Internet: Rules of the Road

(From The Department of Commerce)

The Internet is connecting advertisers and marketers to customers from Boston to Bali with text, interactive graphics, video, and audio. If you're thinking about advertising on the Internet, remember that many of the same rules that apply to other forms of advertising apply to electronic marketing. These rules and guidelines protect businesses and consumers and help maintain the credibility of the Internet as an advertising medium. [The Federal Trade Commission](#) (FTC) has prepared this guide to give you an overview of some of the laws it enforces.

- Advertising must tell the truth and not mislead consumers.
- In addition, claims must be substantiated.

General Offers and Claims Products and Services

The Federal Trade Commission Act allows the FTC to act in the interest of all consumers to prevent deceptive and unfair acts or practices. In interpreting Section 5 of the Act, the Commission has determined that a representation, omission, or practice is deceptive if it is likely to:

- mislead consumers or
- affect consumers' behavior or decisions about the product or service.

In addition, an act or practice is unfair if the injury it causes, or is likely to cause, is:

- substantial,
- not outweighed by other benefits, and
- not reasonably avoidable.

The FTC Act prohibits unfair or deceptive advertising in any medium. That is, advertising must tell the truth and not mislead consumers. A claim can be misleading if relevant information is left out or if the claim implies something that's not true. For example, a lease advertisement for an automobile that promotes "\$0 Down" may be misleading if significant and undisclosed charges are due at lease signing.

In addition, claims must be **substantiated**, especially when they concern health, safety, or performance. The type of evidence may depend on the product, the claims, and what experts believe necessary. If your ad specifies a certain level of support for a claim - "tests show X" - you must have at least that level of support.

Sellers are responsible for claims they make about their products and services. Third parties - such as advertising agencies, website designers, and catalog marketers - also may be liable for making or disseminating deceptive representations if they participate in the preparation or distribution of the advertising, or know about the deceptive claims.

- **Advertising agencies or website designers** are responsible for reviewing the information used to substantiate ad claims. They may not simply rely on an advertiser's assurance that the claims are substantiated. In determining whether an ad agency should be held liable, the FTC looks at the extent of the agency's participation in the preparation of the challenged ad and whether the agency knew or should have known that the ad included false or deceptive claims.
- To protect themselves, **catalog marketers** should ask for material to back up claims rather than repeat what the manufacturer says about the product. If the manufacturer doesn't come forward with proof or turns over proof that looks questionable, the catalog marketer should see a yellow caution light and proceed appropriately, especially when it comes to extravagant performance claims, health or weight loss promises, or earnings guarantees. In writing ad copy, catalogers should stick to claims that can be supported. Most important, catalog marketers should trust their instincts when a product sounds too good to be true.

Other points to consider:

Disclaimers and **disclosures** must be clear and conspicuous. That is, consumers must be able to notice, read or hear, and understand the information. Still, a disclaimer or disclosure alone usually is not enough to remedy a false or deceptive claim.

- **Demonstrations** must show how the product will perform under normal use.
- **Refunds** must be made to dissatisfied consumers if you promised to make them.
- **Advertising directed to children** raises special issues. That's because children may have greater difficulty evaluating advertising claims and understanding the nature of the information you provide. Sellers should take special care not to misrepresent a product or its performance when advertising to children. The Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus has published specific guidelines for children's advertising that you may find helpful.

[Dot Com Disclosures: Information About Online Advertising](#), an FTC staff paper, provides additional information for online advertisers. The paper discusses the factors used to evaluate the clarity and conspicuousness of required disclosures in online ads. It also discusses how certain FTC rules and guides that use terms like "writing" or "printed" apply to Internet activities and how technologies such as e-mail may be used to comply with certain rules and guides.

Protecting Consumers' Privacy Online

The Internet provides unprecedented opportunities for the collection and sharing of information from and about consumers, but studies show that consumers have very strong concerns about the security and confidentiality of their personal information in the online marketplace. Many consumers also report being wary of engaging in online commerce, in part because they fear that their personal information can be misused.

These consumer concerns present an opportunity for you to build on consumer trust by implementing effective voluntary industry-wide practices to protect consumers' information privacy. The FTC has held a number of workshops for industry, consumer groups, and privacy advocates to explore industry guidelines to protect consumers' privacy online.

In June 1998, the FTC issued [Online Privacy: A Report to Congress](#). The Report noted that while over 85 percent of all websites collected personal information from consumers, only 14 percent of the sites in the FTC's random sample of commercial websites provided any notice to consumers of the personal information they collect or how they use it. In May 2000, the FTC issued a follow-up report, [Privacy Online: Fair Information Practices in the Electronic Marketplace \(PDF file\)](#). While the 2000 survey showed significant improvement in the percent of websites that post at least some privacy disclosures, only 20 percent of the random sample sites were found to have implemented four fair information practices: notice, choice, access, and security. Even when the survey looked at the percentage of sites implementing the two critical practices of notice and choice, only 41 percent of the random sample provided such privacy disclosures. You can access the FTC's privacy report at <http://www.ftc.gov/>.

The [Children's Online Privacy Protection Act \(COPPA\)](#) and the FTC's implementing Rule took effect April 21, 2000. Commercial websites directed to children under 13 years old or general audience sites that have actual knowledge that they are collecting information from a child must obtain parental permission before collecting such information.

The FTC also launched a special site at <http://www.ftc.gov/kidzprivacy> to help children, parents, and site operators understand the provisions of COPPA and how the law will affect them.