

[US] FTC Updates Guidance for Distinction of Paid from Natural Search Results

IRIS 2013-9:1/24

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On 24 June 2013, the consumer protection staff of the Federal Trade Commission (“FTC”) updated guidelines, which it established for search engine companies (“Companies”) to ensure that consumers can easily distinguish paid search results from natural search results.

The FTC issued its initial guidelines in 2002 in order to explain that “failing to clearly and prominently distinguish advertising from natural search results could be a deceptive practice” in violation of Section 5 of the Federal Trade Commission Act, which defines a deceptive act as “a material practice that misleads a significant minority of reasonable consumers.” The update was prompted by a consumer complaint that search engines are violating Section 5 by failing to disclose that advertisements are inserted into search engine result lists.

The FTC found that: “for the most part [...] many search engine companies do attempt some disclosure.” However, it also concluded that there has been a “decline in compliance with the letter’s guidance” since the 2002 guidelines because the current disclosures may not be sufficiently clear. The FTC therefore affirmed that the principles of the original guidance still apply. The advised industry players have to include visual cues, labels, or other techniques in order to effectively distinguish between advertisement results. The business of online searches also has to continue to evolve according to the guideline principles regardless of the precise form that search engines may take, now or in the future.

As in the 2002 guidelines, the FTC affirmed that the Companies may use any method to clearly and prominently distinguish advertising from natural search results as long as it is noticeable and understandable to consumers. The FTC’s consumer protection staff sent a letter explaining the new guidelines to “general-purpose search engines AOL, Ask.com, Bing, Blekko, DuckDuckGo, Google, and Yahoo!” and “17 of the most heavily trafficked search engines that specialise in the areas of shopping, travel, and local business, and that display advertisements to consumers.”

Press release of the FTC of 25 June 2013

<http://www.ftc.gov/opa/2013/06/searchengine.shtm>

Guideline update of 24 June 2013

<http://www.ftc.gov/os/2013/06/130625searchenginegeneralletter.pdf>

Guidelines for search engine advertising of June 2002

<http://www.ftc.gov/os/closings/staff/commercialalertattach.shtm>

