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Native Advertising: An International Perspective

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NATIVE ADVERTISING

AN INTERNATIONAL PERSPECTIVE

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Table of Contents

Introduction	4
<i>Purpose of the study</i>	7
<i>Cultural Dimensions</i>	7
<i>Key issues</i>	9
Literature Review	10
<i>What is native advertising?</i>	10
<i>Goals of native advertising</i>	11
<i>History of regulating content</i>	12
<i>Barriers to native advertising</i>	13
Methods	14
<i>Research design</i>	14
<i>Sampling</i>	15
<i>Figure 1.1</i>	16
<i>Procedure</i>	16
<i>Data analysis</i>	17
Results	18
<i>How is native advertising currently being used in each country?</i>	18
<i>How is native advertising regulated in each country?</i>	20
<i>Figure 2.1</i>	24
<i>Do agencies prefer more regulation?</i>	25
<i>Additional theme: Native advertising's role in engaging with consumers</i>	28
<i>Additional theme: The future of native advertising</i>	29
Discussion	31
<i>Conclusion</i>	31
<i>How do the conclusions relate to the cultural dimensions?</i>	32

Implications and Recommendations for Future Research	33
References	34
Appendix A	38
Appendix B	40
Appendix C	57

Introduction

In an age where content is king, content marketing has come to the forefront as a leading method for engaging consumers. Traditional advertising, which refers to sponsored promotional material that is carried out in mass media (Sandler and Secunda, 1993), is slowly becoming a thing of the past as advertisers compete for consumers' attention through new outlets such as blogs and social media. Typically, traditional advertising will take the form of online banner ads, print advertising, or television commercials. Traditional ads are meant to stand out to the consumer and interrupt the users experience. Whereas the main goal of content marketing is to position the brand or company as a partner for the consumer rather than a promoter (Ling, 2014).

This idea of a partnership versus a promotion has led to a shift in advertising strategies (Ling, 2014). Native advertising is a different approach to advertising that welcomes content-based marketing. According to the Interactive Advertising Bureau (IAB), native advertising is defined as "paid for content that is relevant to the consumer experience, and is integrated into the surrounding content and is not interruptive" (IAB Ireland, pg. 4).

Native advertising is offering marketers a more effective way to engage with consumers, which is proven through higher click-through rates than traditional banner ads, particularly through mobile devices (Hoelzel, 2015). However, the concept of native advertising is still controversial. In the United States, publishers and advertisers are highly encouraged to make sure native ads are labeled as "sponsored content," as to not deceive or confuse consumers.

Internationally, not every country has determined the proper regulations that need to be instated to protect consumers from deceitful promotion, which they may view as biased content. The Federal Trade Commission in the United States, for example, is still working toward setting more regulations that allow for transparency, but still permits advertisers to remain competitive in the marketplace (Max, 2015).

As of December 2015, the Federal Trade Commission set a native advertising guide for businesses and issued an Enforcement Policy Statement on Deceptively Formatted Advertisements, which can be found in Appendix B. The purpose of this guide is to outline what constitutes as deceptive material. The FTC states that: “Under the FTC Act, an act or practice is deceptive if there is a material misrepresentation or omission of information that is likely to mislead the consumer acting reasonably in the circumstances. A misrepresentation is material that is likely to affect consumers’ choices or conduct regarding an advertised product or the advertising for the product” (Federal Trade Commission, 2015).

The Enforcement Policy Statement on Deceptively Formatted Advertisements explains the law in greater detail, but the FTC breaks down the main themes in a concise format (Federal Trade Commission, 2015):

1. From the FTC’s perspective, the watchword is transparency. An advertisement or promotional message shouldn’t suggest or imply to consumers that it’s anything other than an ad.
2. Some native ads may be so clearly commercial in nature that they are unlikely to mislead consumers even without a specific disclosure. In other instances, a

disclosure may be necessary to ensure that consumers understand that the content is advertising.

3. If a disclosure is necessary to prevent deception, the disclosure must be clear and prominent.

In Ireland, regulations, defined by the IAB Ireland, recommend the best ways to use native advertising. For instance, the recommendation reads: “Native advertising should be clearly and prominently labeled and readily recognizable as an advertisement/paid content. The identity of the advertiser should be apparent to the reader in the advertisement or paid for content” (IAB Ireland, pg. 15).

Additionally, the UK Committee for Advertising Practice (CAP) describes native advertising as “material [that] seeks to provide content generated by brands which doesn’t look out of place in the habitat within which it’s being viewed. This context driven approach isn’t a problem in and of itself, but marketers must be cautious that, in seeking to make ads more inviting, they do not camouflage advertisements” (CAP, 2016).

Although content-based advertising isn’t a new concept nowadays, the questions of how it is regulated, and is it regulated effectively still stand in the balance. Sandler (1993) suggested that advertisers might actually be in favor of some type of regulation, while agency executives would argue against stricter regulation. The general thought behind this is that advertisers would want to level the playing field through regulation, whereas executives are inclined to view regulation as a duress on their creativity (Sandler, et. al.,1993, p.79). Based off of this research, Sandler (1993) suggests that

future research examines whether this was strictly an American attitude, or whether there are international implications as well. The research states: “Surveys should be conducted in other countries to determine how advertising executives outside the United States view this issue” (Sandler, et. al., 1993, p.79). The research study concludes by suggesting that future research can provide useful data and information that can then be used in making decisions affecting the relationship between advertising and the news sources that carry them (Sandler, et. al., 1993, p.79).

Purpose of the study

Based on this research suggestion, the purpose of this study was to look at native advertising from an international perspective, focusing and comparing the United State’s use of native advertising to Ireland’s use of native advertising.

Cultural Dimensions

The reason these two countries were selected, was because, based on the Hofstede model of cultural dimensions, both countries scored low in power distance (USA: 40; IRE: 28), high in individualism (USA: 91; IRE: 70), higher in masculinity (USA: 62; IRE: 68), lower in uncertainty avoidance (USA: 46; IRE: 35), and low in long-term orientation (USA: 25; IRE: 24) (de Mooji, 2014). For the purposes of this study, any score below a 50 was considered lower within a particular dimension, and any score above a 50 was considered higher within a particular dimension.

To clarify what these dimensions mean and how they are relevant to understanding the cultural values of both Ireland and the United States, we must break

down each dimension individually. Power Distance is most relevant to people's relationships with elders and how they view and act toward authority. "Power distance measures the extent to which less powerful members of a society accept and expect that power to be distributed" (de Mooji, pg. 92). For low-scoring power distance cultures, "the focus is on equality in rights and opportunity" (de Mooji, pg. 93). De Mooji states that in the United States in particular, a lower power distance means that Americans will avoid becoming too dependent on others. Likewise, they do not want others to become dependent on them (de Mooji, 2014).

Scoring high in the individualism dimension, Ireland and the United States lean toward the idea that they can look after themselves, whereas in a collectivist culture, people thrive in groups, and depend on groups to look after one another. According to de Mooji, the Anglo-Saxon world is primarily individualistic, whereas the South and Eastern countries tend to be collectivists. De Mooji also states that "between 70 percent and 80 percent of the world's population is more or less collectivistic" (de Mooji, pg. 90). So, the fact that both Ireland and the United States lean toward individualism versus collectivism is telling of the types of cultural norms that advertisers might try to appeal to.

Masculinity-femininity is a complex dimension, because it determines the degree of "assertiveness or achievement orientation versus quality of life as well as the degree of role differentiation versus overlapping roles of males and females" (de Mooji, pg. 96). In the case of Ireland and the United States, both of which scored higher in masculinity, the common traits they possessed are achievement and success. Additionally, in masculine cultures, both males and females can be seen as tough (de Mooji, 2014). De

Mooji also points out that assertive cultures are viewed as dominant, and that the United States, in particular, is viewed as a very assertive society (de Mooji, 2014).

De Mooji referenced Hofstede's research and definition of uncertainty avoidance as the degree to which "people feel threatened by uncertainty and ambiguity and try to avoid these situations" (de Mooji, pg. 99). Given that both countries scored low in this dimension, it can be concluded that the threat of uncertainty wasn't present. Low-scoring cultures believe that the fewer rules there are in place, the better. They also tend to be more result oriented than process oriented (de Mooji, 2014).

Lastly, long-term orientation was low scoring for both countries. Long-term oriented cultures tend to have more lenient parents, they think in the long-term, and are pragmatic (de Mooji, 2014).

Based on these dimensions, these countries are correlative. This made them a good case study for this particular research study.

Key issues

This study addresses the key issues of how native advertising is regulated in these two countries; how native advertising is currently used in both countries; and if stricter, more defined governance of native advertising will damage the effectiveness native advertising has with engaging consumers.

Additionally, a lot of the native advertising discussion is focused around digital media. This study will investigate how native advertising is used in a different country and whether regulations set forth limit the type of content that ad agencies and

publishers are able to disseminate, as well as how they are able to engage with consumers.

Literature Review

What is native advertising?

Native advertising is advertising disguised as regular news content. Specific examples of native advertising include: sponsored posts, Search Engine Marketing (SEM), print stories that appear in newspapers or magazines but are promoted by a brand, and promoted posts on social media. The point of native advertising is to straddle the line between advertising and editorial content and engage the consumers with category-relevant information (Ling, 2014). According to Sandler and Secunda, 1993, native advertising is not a new concept. The Sandler study states that evidence of integrating advertising and editorial content can be seen as far back as the 1940s as commercially sponsored programs became more popular on the radio in the United States. Today, native advertising has made even larger advances due to consumers' increased use of digital and mobile media. Based on this case study, it became clear that "native advertising" is also called other names such as "content marketing," "sponsored content," and "branded journalism."

This review looks at in-depth literature and studies focused around native and content advertising to better understand the field's perception of this specialized form of marketing.

Goals of native advertising

A common issue with advertising is that consumers become desensitized to traditional advertisements. The challenge now is for advertisers to look for new and creative ways to reach consumers. According to a study conducted by Wojdynski and Evans, 2016, “the persuasion knowledge model (PKM), (Friestad and Wright, 1994) suggests that consumers’ ability to effectively cope with advertising messages is predicated on the recognition of the persuasive nature of the messages. Evidence from research in television product placement suggests that disclosing such content in advertising affects the use of persuasion knowledge only for consumers who pay visual attention to the content and who effectively recall the disclosure content” (Wojdynski, Evans, 2016, pg. 157).

Publications are also looking for new ways to extend their reach and increase revenue. This leads publications to re-think what they are giving to advertisers. It used to be that “if payment were involved in getting the message to consumers, it was ‘advertising.’ If the press wrote the message, it was ‘publicity.’ And if it came from a fellow consumer, we called it ‘word-of-mouth’” (Campbell, Cohen, and Ma, 2014, pg. 7). In today’s world, the Internet has changed all of that. Brands can market their product to millions of consumers at very little cost (Campbell et al. 2014). Instead of publications selling advertising space, they are now selling editorial control as well (Campbell et al., 2014).

It seems as though blurring that line is inevitable, especially with so much cross-ownership of media. With many companies now working together, the amount of time and space utilized in their publications can be expanded for advertisers across all the

different media (Sandler, et. al., 1993).

Furthermore, digital media has been placed on the fore-front of many campaigns and changed the game for marketers. First of all, digital marketing has become a cost-effective way to get a brand or product in front of the public eye for little to no cost. Second, the potential to reach consumers has increased exponentially due to easier distribution as well as access to one platform that allows advertisers to reach international audiences. One study argues that even if an online ad only receives a 0.1% click-through rate, that ad's reach could significantly boost online and offline sales (Fulgoni, Lipsman, 2014).

This same study also states that in terms of digital advertising, native advertising is actually a logical fit for social media, because companies are able to deliver ads at a sufficient scale. Ads are also able to be integrated into news feeds so that the content looks organic. This also helps the content translate well into the mobile experience (Fulgoni, Lipsman, 2014).

History of regulating content

Regulating content marketing isn't new. In fact, content marketing itself isn't a new concept. John Deere's *The Furrow* magazine is often credited as being the first to use corporate storytelling (Pulizzi, 2012). *The Furrow* didn't directly sell products to consumers, but rather, it educated them on the new John Deere technology, which led John Deere to become a reliable source for farmers (Pulizzi, 2012).

Basney (2014) looks at a case from *Esquire Magazine* from 40 years ago. An unnamed company had approached the magazine asking to sponsor long-form content.

This was an innovative idea at the time and as the research puts it, “ruffled more than a few feathers” (Basney, pg. 102). This then led to some basic guidelines to be set for content marketing. Basney (2014) lists them as:

1. There had to be absolute respect and integrity for both brands;
2. *Esquire* would have final editorial control;
3. There had to be clear transparency that the content was sponsored to not risk confusion with editorial content.

Barriers to native advertising

Pulizzi (2012) points out that there are three main barriers that used to exist as a metaphorical gate to content marketing: content acceptance, talent, and technology.

Pulizzi (2012) goes on to explain that in terms of content acceptance, a brand, no matter the size, doesn't have to have the status of the *Wall Street Journal* to have customers engage in the content. For talent, many journalists used to be against working for non-media brands. It was seen as tainting their brand. However, many writers today are available in a variety of industries to help brands produce compelling stories. Finally, for technology, posting online has become so easy that any company can publish content on the Internet for little investment (Pulizzi, 2012).

Additionally, there have been studies conducted on consumer perception of native advertising. An online marketing firm called HubShout conducted a study, which surveyed 425 randomly sampled Internet users. From that study it was discovered that 72.8 percent of Internet users who have seen native advertising believe it has equal or

greater value as non-native advertising on the same website. This could be because the content delivered through native advertising is viewed as needing to be presented at a higher quality (Grensing-Pophal, 2014). Also, 66.1 percent of those surveyed thought that having a sponsored link at the end of an article was a useful form of native advertising (Grensing-Pophal, 2014).

Methods

The study conducted by Sandler and Secunda (1993), which was mentioned in the introduction and the literature review, suggested that future research expand on that study by focusing on the international implications of blurring the line between advertising and editorial (Sandler, et al., 1993).

Based on that suggestion, this research attempted to answer the following crucial questions:

1. How is native advertising currently being used in each country?
2. How is native advertising regulated in each country?
3. Do agencies prefer more regulation? Why or why not?

These questions were not fully discovered and answered through secondary research, so this study looked at primary research and acted in an exploratory nature.

Research Design

A qualitative research design was used for this study as little had been investigated or written about Ireland's advertising practices in relation to the United States' practices. Additionally, qualitative methods were chosen as they can obtain "the intricate details about phenomena such as feelings, thought processes and emotions

that are difficult to extract or learn about through more conventional research methods” (Strauss, Corbin, pg. 11). A case study approach was used as this research sought to investigate multiple bounded systems through in-depth data collection such as observations, documents, and interviews (Creswell, 2007). The participants of this study were a part of a bounded system in that they all interacted with native advertising in a larger campaign sense.

Sampling

Study participants were chosen based on purposive sampling. When selecting U.S. participants, the American Association of Advertising Agencies website was consulted as well as suggestions from professors at the University of Nebraska—Lincoln and advertising professionals. When selecting Irish participants, the Association of Advertisers in Ireland was utilized as well as professional recommendations. A total of 24 agencies, industry professionals, and publishers were contacted about conducting an in-depth interview either in person, over the phone, via Skype, or via email. From those contacted, eight responded and agreed to be interviewed. From the eight participants, four were from Ireland, and four were from the United States, which is considered appropriate for a qualitative study (Creswell, 2007). With this sample, a variation of agencies, industry professionals, and publishers were interviewed, ranging in size, specialty, and location. Additionally, each agency, industry professional, and publisher focused on a particular type of native advertising. For instance, one focused primarily on social media, while another focused on search engine marketing (SEM), which according to webopedia, is “a type of Internet marketing associated with the

researching, submitting and positioning of a website within search engines to achieve maximum visibility and increase your share of paid and/organic traffic referrals from search engines” (Beal, n.d.). There were also a couple that focused on print media. The break down of each channel type can be seen in figure 1.1 below.

Participant	SEO	Social Media	Print	Other
IRE 1	X	X		
IRE 2				X
IRE 3		X	X	
IRE 4		X	X	X
USA 1	X	X		
USA 2		X		
USA 3			X	
USA 4	X	X		

Figure 1.1

This range of different channels used to promote native advertising provided an informative look at how native advertising is being utilized and regulated.

Procedure

In-depth interviews were conducted with staff members, advertising executives, content regulators, and publishers, who decided how advertising was used and

regulated within a marketing campaign. Interviews were conducted over a period of two months.

The average duration of interviews lasted approximately 14.98 minutes and proceeded until no new themes had emerged. In the interviews, the researcher followed a discussion guide, located in Appendix A, which included open-ended questions drawn from information obtained in the Sandler and Secunda (1993) study as well as other articles referenced in the literature review.

Institutional review board (IRB) approval was obtained and an informed consent document was written. The informed consent form outlined what the study was, asked permission to audio record interviews, as well as ensured the participants that their identity would remain anonymous in the research findings. The informed consent form was either physically handed to, or emailed to every participant to sign and return to the researcher. To ensure each participant would remain anonymous and to avoid bias, a coding system was created to keep the participants' identities secret. All the Ireland participants that were interviewed have been coded IRE 1-4 and all the United States participants have been coded USA 1-4.

Data Analysis

After the interviews were conducted, each one was transcribed verbatim and all interviews were analyzed for common themes. Since this was a case study, a reading and memoing approach was used when analyzing the data, which included reading through the interviews, highlighting key phrases and sentences, taking notes, and then drawing common themes from those notes (Creswell, 2007).

Using interviews as qualitative research allowed for first-hand accounts of how native advertising was being utilized both in the United States and Ireland.

Results

How is native advertising currently being used in each country?

As mentioned, each agency and publisher worked with native advertising on different channels, yet there seemed to be a common theme as to how native advertising was defined and used. For instance, USA 1, which primarily worked with SEM native ads, stated that native advertising was a cross between search and display ads. USA 1 also stated that "...the way you can differentiate [an ad] between a native ad and just a regular ad, or a search result, it has a sponsored image...." IRE 1, which also used SEM as its main channel for native advertising said that native advertising was a catch-all term, but it essentially appears as content. "But overall it's a non-intrusive advertising experience, it doesn't obviously appear as an ad, it feels more like content and less so like a separate kind of added on...entity."

Some subjects, such as IRE 3 described native advertising as content that was "hidden" or "camouflaged," where as other subjects such as IRE 4, USA 4, and USA 2 defined native advertising as being more organic and fitting into the environment, or paid channel, it had been placed.

When asked about specific examples of native advertising, there was a wide-range of samples. USA 2 primarily used social media to run native ads and used a mix of written content as well as videos to put together strategic campaigns based on the

client's needs and budget. USA 4 also used social media in the form of promoted tweets, and used Google AdWords. USA 3 dealt with written content and published those content-heavy native ads in a print publication. The most recent example USA 3 had was with a book being advertised. The publisher decided to run a native ad that told consumers more about the book, including a few excerpts from the book itself. According to USA 3, native advertising was effective for products such as this, because it allowed the consumer to dive in deeper and learn more about the product before making a purchasing decision. As USA 3 said, "You could put a lot of content [in the ad space] and the typical ad is not designed to do that, but a native ad, because it is made to look like an article, it's expected to be copy heavy."

IRE 4 worked with a client that wanted to run a campaign about how people spent their time. So, the subject conducted a study and once the results had come in from that study, IRE 4 turned their findings over to online publishers and newspapers to write editorial features sponsored by IRE 4's client.

Although the wording was different among subjects, and the examples varied, it was concluded that native advertising was viewed in both countries as advertising that fitted in organically with the content being disseminated. It wasn't disruptive, and it engaged the consumer while also allowing the consumer to learn more about a product or service being advertised.

How is native advertising regulated in each country?

The focus of this study was to learn more about how Ireland and the United States regulated native advertising. When asked about guidelines and regulations, the subjects interviewed gave a wide range of answers.

In Ireland, the Irish advertising industry tended to regulate itself, and set up and funded organizations that were “committed, in the public interest, to promoting the highest standards of marketing communications that is advertising, promotional marketing and direct marketing” (IRE 2).

One such organization had a Code that native advertising, as well as all advertising, were expected to follow. According to IRE 2, the relevant Code sections for native advertising were:

Truthfulness

4.1 A marketing communication should not mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.

Honesty

4.4 Advertisers should not exploit the credulity, inexperience or lack of knowledge of consumers.

4.5 The design and presentation of marketing communications should allow them to be easily and clearly understood.

Recognisability

3.31 A marketing communication should be designed and presented in such a way that it is clear that it is a marketing communication.

3.32 Marketing communications should not misrepresent their true purpose. Marketing communications should not be presented as, for example, market research, consumer surveys, user-generated content, private blogs, or independent reviews if their purpose is marketing, i.e. the promotion of a product.

3.33 Advertorials should be clearly identified, should be distinguished from editorial matter and should comply with the Code.

3.34 The identity of the advertiser, product or service should be apparent. This does not apply to marketing communications with the sole purpose of attracting attention to communication activities to follow (so called “teaser advertisements”).

Although the advertising regulation organizations were set up by the Irish advertising industry itself, IRE 2 mentioned that when the Code was written, other parties were consulted as well. For instance, the most recent edition of the Code was a comprehensive review that was undertaken by these advertising regulators, and “involved a significant public consultation process with a wide range of Government departments and agencies, consultations with consumer groups and other NGOs, and consultation with the advertising industry including advertisers, agencies and the media” (IRE 2).

An observation made while interviewing Irish agencies and publishers was that many of them set their own in-house guidelines and policies. Although, it should be

noted that many of these in-house guidelines are roughly based on the guidelines set by the Irish advertising industry, which tried to keep the consumers in mind.

IRE 4 stated that when working from a creative standpoint, there aren't many guidelines set in place. However, they always kept the consumer in mind when creating content and made sure that it was clear that an ad was labeled as sponsored content.

As IRE 4 pointed out, the goal wasn't to trick people, the point of native advertising was to generate content that is good enough that it delivered the brand idea to the consumer. "So, that would just be our own in-house principles but in terms of at an industry level or government like level, there's nothing really in place like it's just more of a kind of principle thing when you have the user or consumer in mind or the reader in mind, that you are giving them something that is genuinely interesting, you know, readable, that it's not just a brand trying to place ads" (IRE 4).

IRE 1 was in a similar position where they primarily relied on in-house marketing policies when creating content. An interesting aspect of IRE 1's guidelines though was that they followed the advertising standards of the United Kingdom, although IRE 1 was located in the Republic of Ireland, not the United Kingdom. IRE 1 also mentioned that these UK guidelines were largely an overview and somewhat similar throughout Europe. However, IRE 1 did want to stress that there were some local differences between European countries, and what might be a standard practice in Germany, might not necessarily be the standard practice in France.

In the United States, there was a mix between using company-created guidelines, and strictly following the FTC guidelines. USA 1, for instance, had their own in-house guidelines that they followed, and distributed to clients. The guidelines used do

reflect key aspects of the FTC guidelines, specifically in reference to not being deceitful.

USA 1 provided a few examples of these guidelines:

- The image must be clearly relevant to the product or service being advertised. There should be a clear, simple, and logical link (product, theme, advertising campaign, or metaphor) between the image supplied and the ad message to users. Images can pique users' curiosity, but they should not mislead users by featuring products that are not available, or picturing a product or service that is substantially different than the one offered.
- Sexually suggestive images are not allowed. Images should be appropriate for a general audience. Images that focus on particular body parts for sexual effect are not allowed. Ads that use sexually suggestive images to promote completely unrelated products will be declined. For example, an image of a model in underwear to promote underwear for sale can be an appropriate image, but using the same image to promote offers for car insurance is not appropriate.
- Ads that mislead users by suggesting results beyond what is reasonable will be rejected.
- Images that include individuals smoking and/or have brandished weapons are prohibited.
- It is the advertiser's responsibility to ensure they have the necessary rights to use any submitted images, logos, and trademark text, and that they are not infringing on the intellectual property rights of any third parties.

USA 1's guidelines go even beyond what is listed above. Since USA 1 primarily dealt with SEM advertising, they utilized a user interface, which was set up so that

clients could login and update ads. USA 1 stated that about half their clients use the interface directly. This was why having strict, clear guidelines was important.

It is also important to mention that USA 1 viewed all ads before they were published. They had an internal policy team that viewed ads to make sure that clients comply with the company's guidelines. An example of an issue that has risen in the past was for clients pushing diet pills or weight loss programs. USA 1 stated that ads such as these have been turned down by the internal policy team for providing unrealistic expectations to the consumer.

Figure 2.1 outlines even more guidelines that USA 1 implements with clients.

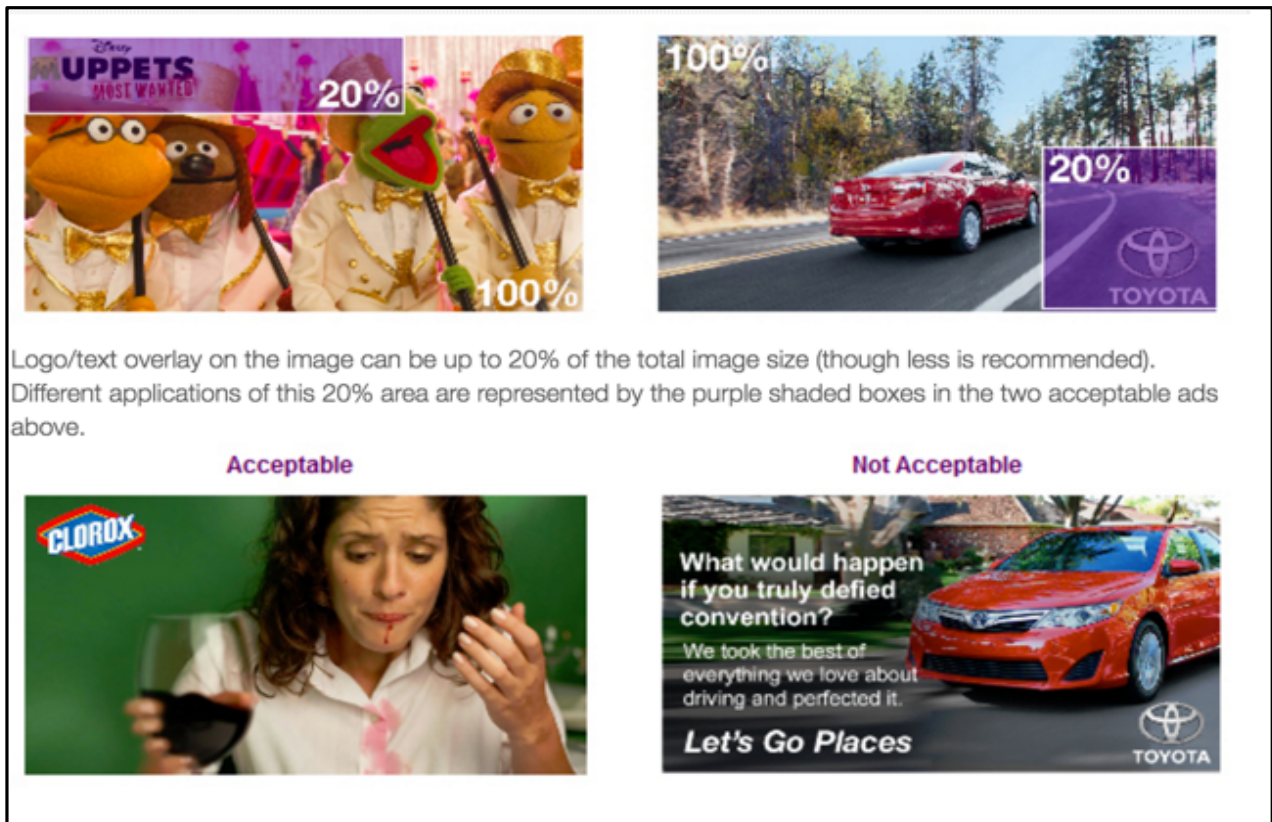


Figure 2.1

For USA 3, which is a smaller company, they used native advertising guidelines set by another company. USA 3 still used their judgment and reserved all rights to not run an ad, but the guidelines they followed were internal guidelines written and implemented by another publishing company. USA 4, followed the FTC guidelines, but also had in-house guidelines that they implemented. Whereas for USA 2, they monitored the FTC very closely and used the FTC's guidelines when creating content. According to USA 2, following the FTC's guidelines just assured that they, as a company, were "abiding by what is appropriate" (USA 2). Since USA 2 worked primarily with social media advertising, they followed the FTC's regulations about Facebook and Twitter very closely. However, USA 2 did have a sister company that they labeled as a "compliance company," and the sister company's job was to review the guidelines USA 2 followed and also to keep them "abreast of any changes" as they arise (USA 2).

Do agencies prefer more regulation?

As native advertising grows and becomes more prevalent in the content we consume, are more regulations needed to protect consumers and/or clarify what is and isn't allowed in terms of native advertising?

In Ireland, the advertising regulators, set up by the Irish advertising industry, intended on releasing a guidance note later this year on this very issue. According to IRE 2, the key question to consider and keep in mind was, will a reasonable consumer understand that the material being presented is marketing and advertising, not original content?

Overall, the Irish agencies interviewed felt that the advertising regulations currently set in place are sufficient enough. IRE 1 commented that there were a lot of safe guards already in place and they were constantly being updated. They also acknowledged that advertising was always evolving, however, the current process is working the way it is.

IRE 3 also felt that the regulations set in place were sufficient. They feared that more regulations would be too restricting to the advertising process. “The more regulated advertising becomes, there is potential for the creativity to take a fall...” (IRE 3).

IRE 4, on the other hand, viewed native advertising just like any other type of advertising— “native advertising to me is just advertising”—and stated that the standards set in place for channels such as TV, should also be applied to native advertising as well. Although not opposed to more regulations, IRE 4 felt that those regulations should come from the publisher. Stating that it is the “publisher’s responsibility to ensure that their readers know what is sponsored content and what isn’t” (IRE 4). From a creative standpoint though, more regulations could be a bit daunting. “I think the advertising end, the creative agency end, can just stick with our advertising principles and I think that should—that would be good way forward” (IRE 4).

In the United States, although all subjects agreed that regulations are good and important, there were mixed reviews as to whether more were needed. USA 3 stated that guidelines and regulations were important because it made sure the ads were clear to consumers, and helped build trust and solidify the publisher’s relationship with the

reader. USA 3 also stated that being a smaller company, more regulations wouldn't hinder them as much as a larger company.

USA 4 also had a similar standpoint, they felt that more regulations would definitely help more than hinder. "By being up front with the consumer you are working to build that foundation of trust. Some portions of your target audience may be turned off by ads in general, but better to be open and honest than have a potential customer feel tricked or that your company or product is not trustworthy and write you off completely" (USA 4).

USA 1, which is a larger company than USA 3 and USA 4, stated that the regulations currently in place, both the in-house policies and the FTC policies, are good, however, they could sometimes be "a little much" (USA 1). According to USA 1, ads that followed all the guidelines they had set-up would still sometimes get held up by the in-house policy team for various reasons. USA 1 stated that it's the policy team's perception of the ad that ultimately decides if it's OK to run or not. Although one person might think an ad looks alright, another person may have found it congested, so it gets held up. USA 1 thought one reason ads might be looked over and analyzed so closely in-house was because in the past, ads have gotten through the system that shouldn't have. One example was an ad for the movie *Deadpool*, which featured bombs and explosions. USA 1 says in this instance, that was a bad call, and therefore the level of regulation just depends on the type of ad being displayed.

For USA 2, they pointed out that the FTC has a long list of regulations and guidelines, which could appear daunting, but they understand why there was a need for so many regulations. "I think that sometimes the FTC can be over zealous in the

regulations that they put out, specifically around native advertising, but obviously at the end of the day, everything they are doing is to the extreme in the interest of the consumer” (USA 2). Furthermore, USA 2 stated that the current regulations are sufficient for the time being. However, as technology keeps evolving and social platforms keep changing, new regulations might be necessary. “I think as we start to see those different changes take place, then at that time there might be a need for stricter regulations, depending on how it is that we’ve moved and how we need to diversify and change native advertising.... So, I think if we continue to grow in technology, and become more savvy as consumers, we’re going to have to have regulations in place to a certain extent, just to really regulate those people that are looking to exploit” (USA 2).

Additional theme: Native advertising’s role in engaging with consumers

Based on the interviews conducted, traditional advertising, as defined in the introduction, was typically viewed as invasive and therefore hindering the user’s experience. It was concluded that the biggest problem native advertising resolved was presenting content in a non-disruptive fashion. USA 2 explained that native advertising wasn’t intended to be a more passive form of traditional advertising, rather, it acted as an informative piece, one that engaged the consumer and established a relationship with the user.

USA 1 noted that native advertising also helped advertisers target the correct audience in a hidden way. USA 1 noted that targeting the correct consumer with hidden content allowed the consumer to scroll through the regular, organic content without

being disrupted by sponsored content that may not be relevant. IRE 1 also indicated this same idea by stating: “I think it kind of addresses it, that whole notion of, question of relevance and precise delivery of the right ad to the right person” (IRE 1).

Additionally, USA 3 noted that native advertising allowed the user to learn and experience more about the product or service being advertised. So, therefore, another problem native advertising tried to solve was providing more in-depth content and information to the consumer. This was different than traditional ads because traditional tends to be more superficial, providing only the most basic information to the consumer.

IRE 3 identified the fact that consumers are becoming more savvy and therefore recognized ads more easily, which made it easier for the consumer to ignore the ads. IRE 3 argues that native advertising solves this issue by presenting content in an informative and natural way.

Along the same lines, IRE 4 pointed out that consumers are never disconnected, and ads are constantly weaving in and out of the content being consumed. This made it harder for a user to divert their eyes and mind to a particular piece of content. As IRE 4 pointed out, “it’s harder to segregate it all... you need to flex the creative and work to suit different channels and different moments for different people, so that’s another thing about it, that kind of optimization of creatives, which is definitely a native advertising trait” (IRE 4).

Additional theme: The future of native advertising

Predicting the future of marketing and staying on the cutting edge of trends is a necessity in order to make it in the advertising field.

USA 3 predicted that native advertising will evolve and eventually be called something new. Additionally, USA 3 stated that native advertising will eventually become the traditional form of advertising and other forms of marketing, such as word-of-mouth marketing, will leap frog over native ads.

Along the same lines, USA 2 saw native advertising staying, but believed it will evolve. They stated that we're already seeing this with SEO and social media in particular. "I will not be surprised if there are more opportunities for native advertising to become more prevalent on those large search engine players there. Other than that, right now it's social, I think that is going to continue to increase exponentially as to how native advertising is even going to look" (USA 2).

USA 4 also saw native advertising evolving in the future, but warned that it may get to a point where a line is crossed in regards to how advertisements functioned within our daily lives. "It is important that we do keep a clear understanding and policy in regards to showing separation between advertisement/sponsored content and organic content. Otherwise native advertising has the potential to desensitize consumers to the overall goal of showcasing products that may be of benefit to them, therefore completely defeating the overall goal of native advertising in the first place" (USA 4).

IRE 1 saw native advertising maintaining the same concepts and form, but doing it even better. "I see even more potential with targeting, reaching a more precise audience, [and] a lot more advertisers making better use of the platform" (IRE 1).

IRE 4, on the other hand, already viewed native advertising as a thing of the past. "Well I actually think native advertising is an old term now that, like, we find that native advertising is really really big... but nowadays it's just advertising, like it is

expected now that you would tailor your work to fit the channel that it lives in and it is expected now that you do more editorial type features” (IRE 4).

Discussion

Conclusions

This study sought to understand how native advertising was utilized and regulated from an international perspective. Through interviews with advertising agencies, industry professionals, and publishers in both the United States and Ireland, several themes were identified to help the advertising industry better understand how to engage with consumers in an effective, non-invasive fashion.

Both the United States and Ireland defined native advertising the same. It was defined as paid for content that didn't interrupt the user's experience. However, Ireland and United States regulated native advertising differently. In the United States, regulations were implemented on a government-level, whereas in Ireland, there was some government input, but by in large, most of the regulations were enforced by the Irish advertising industry.

Previous research found that blurring the lines between advertising and editorial might be a favorable decision among advertisers, and that agency executives might argue for stricter regulation, with the overall results pointing toward self-regulation as the best practice (Sandler, et. al., 1993). That research also pointed out that this idea might strictly be an American one, where as international agencies might have a different perception (Sandler, et. al., 1993). This study showed that the United States and Ireland, two different countries with different advertising regulations and policies,

knew that stricter regulations would be inevitable in the future as advertising continued to evolve, however, they didn't suggest more regulations at this time. They stated that more regulations could interfere with how advertisers engaged with consumers.

Additionally, other studies predicted that native advertising would gain popularity and spending would exceed \$21 billion by 2018 (Hoelzel, 2015). The findings in this study coincided with that idea, as it showed consensus among participants that native advertising would be around for a while and gain traction going forward. However, it was noted that native ads may evolve and change over time. Eventually, new forms of advertising will come to the forefront, and native ads will become an old practice for reaching consumers. It is important though that advertisers continue to follow policy and make the purpose of the ads transparent as native advertising, and the regulations associated with native advertising, continue to evolve (Max, 2015).

How do the conclusions relate to the culture dimensions?

An interesting observation that formed through this research was although both Ireland and the United States scored high in individualism on the Hofstede model of cultural dimensions, Ireland takes more of a collectivist approach when setting regulations. United States advertisers set up their own policies based on the FTC guidelines set forth. The Irish advertising industry works together as a collectivist group to monitor and regulate how agencies produce ad campaigns. Although each Irish agency sets up their own guidelines, it appears that those guidelines are linked to the policies set forth by the Irish advertising industry as a whole.

Power distance also plays an interesting part in this, as lower power distance countries avoid becoming too dependent on others (de Mooji, 2014). For the United

States, they have to rely on the FTC to implement guidelines to follow, but for Ireland, they rely on the advertising industry itself to regulate advertising policies. Due to this, Ireland is given input by the government to set regulations, but isn't necessarily reliant on government regulations when monitoring advertising practices and campaigns. Therefore, Ireland's low power distance score is conclusive with how they set regulations.

Additionally, as mentioned above, both the United States and Ireland urged against more regulation at this time. This wasn't very surprising considering both the U.S. and Ireland scored low in uncertainty avoidance, meaning they tend to be less dependent on rules and regulations. They also tend to be more process-oriented (de Mooji, 2014).

Implications and Recommendations for Future Research

This research provided a basis for understanding how native advertising influenced and affected advertising industries from an international perspective. Although, the sample size was acceptable for a qualitative study (Creswell, 2007), future research in this area should consider collecting data from a larger sample size. Also, researchers should look at agencies that are the same size and work with the same types of clients. It is also recommended that future researchers look at the United Kingdom as a whole, rather than just Ireland, since some standards may overlap. Additionally, with Brexit taking effect, some standards and policies may change, which could effect the advertising industry standards in the UK and the rest of Europe.

Furthermore, given that this was a qualitative case study, the results of this study were not meant to generalize to the larger population due to the non-random sampling (Creswell, 2007). It was, however meant to explore this topic from two different cultural perspectives.

With digital advertising becoming a major channel for reaching consumers, it is important for advertising agencies to understand marketing from an international perspective, acknowledging the regulations and policies practiced in other countries across the globe. Future research can provide insightful information on how to reach the right target audiences in the most effective, and least intrusive way. This in turn can help build trust with the consumer, giving the marketing campaign more credibility and boosting its impact.

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Discussion Guide

Introduction (10 minutes)

- Overview: name, purpose of the study and interview, timing, statement of confidentiality (clients' names will not be used in the research paper for the confidentiality reasons, instead, a general description of the product category will be used), informed consent must be signed

Native advertising interview (30 minutes)

Native advertising defined

- How do you define native advertising?
- Does your company use native advertising as a regular marketing practice?
- Do you have examples of how your company has used native advertising in the past?

Regulation

- What guidelines are set in place to regulate how native advertising is used?
- Are these regulations issued through the government or are they company policy?
- Do regulations help or hinder companies from engaging with consumers?

- Do you feel that additional regulations are needed to help clarify what is and isn't allowed in terms of native advertising?

Native advertising content

- How does native advertising differ from traditional advertising?
- What problems does native advertising try to solve?
- Is native advertising effective in global marketing campaigns? Why or why not?
- What is the future of native advertising?

Conclusion (5 minutes)

- Thank the interviewee for participating in this study.
- Ask if you may follow up later either by email or phone if you have questions.
- Remind them to sign the consent form.

Appendix B

(information retrieved from Federal Trade Commission, December 22, 2015)



United States of America
FEDERAL TRADE
COMMISSION WASHINGTON,
D.C. 20580

Enforcement Policy Statement on Deceptively Formatted Advertisements

The Federal Trade Commission issues this enforcement policy statement regarding advertising and promotional messages integrated into and presented as non-commercial content.¹ The statement summarizes the principles underlying the Commission’s enforcement actions, advisory opinions, and other guidance over many decades addressing various forms of deceptively formatted advertising.

Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” As the Commission set forth in its 1983 Policy Statement on Deception, a representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers – that is, it would likely affect the consumer’s conduct or decisions with regard to a product or service.² In determining whether an advertisement, including its format, misleads consumers, the Commission considers the overall “net impression” it conveys.³ Any qualifying information necessary to prevent deception must be disclosed prominently and unambiguously to overcome any misleading impression created.

The Commission has long held the view that advertising and promotional messages that are not identifiable as advertising to consumers are deceptive if they mislead consumers into believing they are independent, impartial, or not from the sponsoring advertiser itself. Knowing the source of an advertisement or promotional message typically affects the weight or credibility consumers give it. Such knowledge also may influence whether and to what extent consumers choose to interact with content containing a promotional message. Over the years, the Commission has challenged as deceptive a wide variety of advertising and other commercial message formats, including “advertorials” that appeared as news stories or feature articles, direct-mail ads disguised as book reviews, infomercials presented as regular television or radio programming, in-person sales practices that misled consumers as to their true nature and

¹ The scope of this enforcement policy statement is restricted to commercial speech the

Commission has authority to regulate. The Commission traditionally considers factors articulated in *R.J. Reynolds Tobacco Co.*, 111 F.T.C. 539, 544-46 (1988), in evaluating whether speech is commercial. *See, e.g., POM Wonderful LLC*, 155 F.T.C. 1, 74-75 (2013), *aff'd*, 777 F.3d 478 (D.C. Cir. 2015).

² *FTC Statement on Deception*, 103 F.T.C. 174, 175 (1984) (*appended to Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)) (“*Deception Policy Statement*”).

³ *Id.* at 178.

purpose, mortgage relief ads designed to look like solicitations from a government agency, emails with deceptive headers that appeared to originate from a consumer’s bank or mortgage company, and paid endorsements offered as the independent opinions of impartial consumers or experts.

With the emergence of digital media and changes in the way publishers monetize content, online advertising known as “native advertising” or “sponsored content,” which is often indistinguishable from news, feature articles, product reviews, editorial, entertainment, and other regular content, has become more prevalent. In digital media, a publisher, or an authorized third party, can easily and inexpensively format an ad so it matches the style and layout of the content into which it is integrated in ways not previously available in traditional media. The effect is to mask the signals consumers customarily have relied upon to recognize an advertising or promotional message.

At the same time, the business models of many publishers also have undergone significant change, as, increasingly, consumers are able to skip or block digital ads while watching digitized programming or browsing publisher content. Consequently, many publishers have begun to offer advertisers formats and techniques that are closely integrated with and less distinguishable from regular content so that they can capture the attention and clicks of ad-avoiding consumers.

Regardless of the medium in which an advertising or promotional message is disseminated, deception occurs when consumers acting reasonably under the circumstances are misled about its nature or source, and such misleading impression is likely to affect their decisions or conduct regarding the advertised product or the advertising. This statement sets forth generally applicable standards on which the Commission relies in making such a determination.

I. Deceptive Advertising Formats

The principle that advertising and promotional messages should be identifiable as advertising is found in Commission and staff policy guidance,⁴ specific cases challenging deceptive advertising in a wide range of media,⁵ and Congressional policy with regard to telemarketing calls and commercial email.⁶ As set forth below, over the years, the Commission

⁴ See, e.g., *Advisory Opinion No. 191, Advertisements which appear in news format*, 73 F.T.C. 1307 (1968) (hereinafter “*Advisory Opinion on Ads in News Formats*”).

⁵ See, e.g., *Georgetown Publ’g House Ltd. P’ship*, 122 F.T.C. 392 (1996) (consent); *JS&A Grp., Inc.*, 111 F.T.C. 522 (1989) (consent).

⁶ See Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. . §§ 7701-7713 (hereinafter the “CAN-SPAM Act”); Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108 (hereinafter the “Telemarketing Fraud Act”).

and staff have addressed the potential for consumers to be deceived by various categories of advertising formats, such as ads appearing in a news or feature story format, deceptive endorsements, undisclosed sponsorship of advertising and promotional messages, and ads in search results.

A. Advertisements Appearing in a News Format or That Otherwise Misrepresent Their Source or Nature

The Commission first addressed the issue of print advertisements appearing in a news format in a 1967 press release and subsequent 1968 advisory opinion.⁷ A newspaper column, advertising the cuisine of local restaurants, was written in narrative form, with each write-up discussing such details as how a meal was prepared, the name of the chef and/or head waiter, cocktail service offered, whether dancing was permitted, hours, and the price range of the meal.⁸ The Commission found that the column “use[d] the format and ha[d] the general appearance of a news feature and/or article for public information which purport[ed] to give an independent, impartial and unbiased view of the cuisine facilities of a particular restaurant.” The Commission also explained that the inclusion of the exact price of the meal advertised or listing a range of prices for other meals would not alter this impression. The Commission concluded that a clear and conspicuous disclosure that the column was an advertisement was necessary to prevent consumers from being deceived. Specifically, the Commission suggested placing “ADVERTISEMENT,” in clear type, sufficiently large to be readily noticed, in close proximity to the ad. The Commission, however, noted that in some instances, “the format of [an] advertisement may so exactly duplicate a news or feature article as to render the caption ‘ADVERTISEMENT’ meaningless and incapable of curing the deception.”⁹

Two decades later, in a case against a bookseller, the Commission applied this same analysis and concluded there was reason to believe that the bookseller violated the FTC Act through a deceptive direct-mail ad formatted to appear as if it were a book review torn out of a magazine, with a personalized note attached.¹⁰ The Commission alleged that the ad’s format communicated a misleading claim that it was “a book review written by an independent

journalist or reviewer, containing the independent opinions of the journalist or reviewer, and was disseminated in a magazine or other independent publication.” The Commission observed that the ad was printed on glossy stock and had a ripped, left edge, and included other elements, such as the header “REVIEW,” a byline, a publication date, and page numbers, and part of an unrelated article on the reverse side, which, taken together, made it look like a published review of the book advertised. In evaluating what the ad communicated to consumers, the Commission

⁷ *Statement in Regard to Advertisements That Appear in Feature Article Format*, FTC Release, (Nov. 28, 1967) (hereinafter “*Statement on Ads in Feature Article Format*”); *Advisory Opinion on Ads in News Formats*.

⁸ *Advisory Opinion on Ads in News Formats*, 73 F.T.C. at 1307.

⁹ *Statement on Ads in Feature Article Format*.

¹⁰ *Georgetown Publ’g House Ltd. P’ship*, 122 F.T.C. at 393-96

also considered that affixed to each ad was a small, stick-on note containing what appeared to be a personalized, handwritten message, with the recipient’s first name and saying, “Try this. It works! J.”

During the 1980s, after the Federal Communications Commission removed its ban on program-length commercials, such advertisements, known as infomercials, began to air on television and radio.¹¹ Concerned about the increasingly blurred line between advertising and non-promotional content, the Commission brought cases alleging that deception occurs when infomercials are presented as regular television or radio programming, such as a news report or talk show. In the Commission’s first such case in 1989, the Commission challenged a television infomercial that opened with the statement, “Welcome to ‘Consumer Challenge,’ hosted by Jonathan Goldsmith,” and went on to describe the program as one that “examines popular new products for you,” with the help of investigative reporters.¹² It then announced that the day’s program would investigate a particular brand of sunglasses, posing the question to viewers: “[N]ew Product innovation or consumer rip-off?” In evaluating the sunglass infomercial, the Commission asserted that its format was likely to mislead consumers into believing that it was “an independent consumer program . . . that conducts independent and objective investigations of consumer products,” including for the company’s sunglasses. Since bringing that case, the FTC has charged that numerous other television and radio infomercials were deceptively formatted.

In nearly every such case, the Commission has issued an order requiring a clear and prominent disclosure, at the beginning of an infomercial and again each time ordering instructions are given, informing consumers that the program is a “PAID ADVERTISEMENT” for the particular product or service advertised.¹³

¹¹ See *Deregulation of Radio*, 84 F.C.C.2d 968, 1007 (1981) (rescinding the FCC's policy banning program-length radio commercials); *Revision of Programming and Commercialization, Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 F.C.C.2d 1075 (1984) (rescinding the FCC's policy banning program-length television commercials).

¹² *JS&A Grp., Inc.*, 111 F.T.C. at 523-24.

¹³ See, e.g., *Vital Basics, Inc.*, 137 F.T.C. 254, 274, 340-41 (2004) (consent); *Nutrivida, Inc.*, 126 F.T.C. 339, 342-43, 351-52 (1998) (consent); *Bogdana Corp.*, 126 F.T.C. 37, 47, 100-01 (1998) (consent); *Mega Sys. Int'l, Inc.*, 125 F.T.C. 973, 986, 1218-19 (1998) (consent); *Olsen Labs., Inc.*, 119 F.T.C. 161, 167, 214 (1995) (consent); *Wyatt Mktg. Corp.*, 118 F.T.C. 86, 94, 113-14 (1994) (consent); *Del Dotto Enters., Inc.*, 117 F.T.C. 446, 452-53, 466 (1994) (consent); *Synchronal Corp.*, 116 F.T.C. 989, 1002-03, 1045 (1993) (consent); *Michael S. Levey*, 116 F.T.C. 885, 900-01, 950-51 (1993) (consent); *Nat'l Media Corp.*, 116 F.T.C. 549, 559, 582 (1993) (consent); *CC Pollen Co.*, 116 F.T.C. 206, 209, 239-40 (1993) (consent); *Nu-Day Enters., Inc.*, 115 F.T.C. 479, 483, 488-89 (1992) (consent); *Twin Star Prods., Inc.*, 113 F.T.C. 847, 852-53, 862 (1990) (consent); *TV Inc.*, 113 F.T.C. 677, 679, 693 (1990) (consent); see also *FTC v. Direct Mktg. Concepts, Inc.*, 648 F. Supp. 2d 202, 209, 211 (D. Mass. 2009) (noting parties' stipulation to an injunctive provision addressing deceptive formats), *aff'd*, 624 F.3d 1 (1st Cir. 2010).

More recently, the Commission has brought a series of cases concerning ads disguised to look like news reports on weight-loss pills and other products, where a purported journalist tested the advertised product and authored the story.¹⁴ The ads used devices such as news-related names and headlines suggestive of a local television station, trademarks of established news companies, reporter by-lines, and reader comment sections to create that false impression. In one case, the Commission alleged the format was deceptive despite the presence of a small-print disclaimer "Advertorial" in the top border of some websites.¹⁵ Consumers reached all these fake news websites by clicking on ads presented as attention-getting news headlines, which frequently appeared on legitimate news websites.

In another recent case, the Commission challenged as deceptive a website purported to originate from an independent scientific organization. The Commission alleged that dietary supplement marketers misrepresented that their website promoting the health benefits of their children's supplements was an independent, objective resource for scientific and other information on treating a specific health condition, and that they failed to disclose their relationship to the website.¹⁶

The Commission also has challenged advertisements misrepresenting that a government agency endorsed or was affiliated with a product or service. For example, one such case against a seller of mortgage relief services concerned radio ads formatted to appear as public service announcements from the United States government, which began, "Please stay tuned for this important public announcement for those in danger of losing their home"

and prominently featured the word “federal.”¹⁷ A federal district court found these radio ads deceived consumers,

¹⁴ See, e.g., Complaint at 4-5, 8-9, *FTC v. Circa Direct LLC*, No. 11-cv-2172 (D.N.J. Apr. 18, 2011) (stipulated order); Complaint at 3-4, 6-7, *FTC v. DLXM LLC*, No. CV 11-1889 (E.D.N.Y. Apr. 18, 2011) (stipulated order); Complaint at 3-4, 6-7, *FTC v. Coulomb Media, Inc.*, No. 211-cv-11618 (E.D. Mich. Apr. 15, 2011) (stipulated order).

¹⁵ See Complaint at 6, *FTC v. Circa Direct LLC*; see also Memorandum in Support of Plaintiff’s Motion for a TRO at 14, *FTC v. Circa Direct LLC* (Apr. 18, 2011). Similarly, in a Securities and Exchange Commission case concerning paid promotions of stocks that appeared in a news format, a court held that, “[t]he ‘advertorial’ label ... simply does not convey to the reader that the articles, which appear in a news-item format, were indeed purchased by the subject companies; this label does not provide investors with the material information regarding the publishers’ bias.” *SEC v. Corp. Relations Grp., Inc.*, No. 6:99-cv-1222, 2003 U.S. Dist. LEXIS 24925, at *26-27 (M.D. Fla. Mar. 28, 2003).

¹⁶ Complaint at 3-4, 28-29, *FTC v. NourishLife, LLC*, No. 15-cv-00093 (N.D. Ill. Jan. 7, 2015) (stipulated order).

¹⁷ Complaint at 6, 12, *Fed. Loan Modification Law Ctr., LLP*, No. SACV-09-401 (C.D. Cal. Apr. 3, 2009) (summary and default judgments). The Commission similarly has challenged sweepstakes prize promotion mailings misrepresenting a government affiliation. See, e.g., Complaint at 11-12, 15, *FTC v. Nat’l Awards Serv. Advisory, LLC*, No. CV-10-5418 (N.D. Cal. Nov. 30, 2010) (stipulated judgment) (some of the challenged mailings claimed a government affiliation using words such as “State of Illinois Commissioners of Regulation” or the “OFFICE observing that the defendants “intended to cause consumers to associate [those responsible for the ads] with the federal government so that consumers would be more likely to believe that [they] were credible and stable.”¹⁸ The Commission similarly has alleged that direct mail mortgage loan modification ads sent in official-looking brown envelopes with a window and a Washington, D.C. return address identifying the sender as the “NHMC Department of Financial Records” or “Nations Housing Modification Center” were deceptive.¹⁹

In 2002, when online search was a relatively new medium, FTC staff issued guidance concerning the potential for consumers to be deceived by paid ads formatted to appear as the regular search results that search engines return in response to consumers’ queries.²⁰ The Commission concurs with the staff’s conclusion, as articulated in the 2002 guidance and updated guidance issued in 2013,²¹ that consumers ordinarily would expect a search engine to return results based on relevance to a search query, as determined by impartial criteria, not based on payment from a third party. Knowing when search results are included or ranked higher based on payment and not on impartial criteria likely would influence consumers’ decisions with regard to a search engine and the results it delivers. Thus, failing to clearly and prominently disclose the paid nature of such advertising results is deceptive.

OF THE PRESIDENT OFFICIAL NOTIFICATION,” and included language, symbols, and artwork evoking a government connection, such as “In God We Trust” or a bald eagle).

¹⁸ Order Granting Plaintiff’s Motion for Summary Judgment Against Boaz Minitzer at 7, *Fed. Loan Modification Law Ctr., LLP*, No. SACV-09-401 (C.D. Cal. Nov. 17, 2010).

¹⁹ Complaint at 5, 13, *Fed. Hous. Modification Dep’t, Inc.*, No. 09-CV-01753 (D.D.C. Sept. 15, 2009) (stipulated orders).

²⁰ Letter from Heather Hipsley, Acting Associate Director, Division of Advertising Practices, Federal Trade Commission to Gary Ruskin, Executive Director, Commercial Alert (June 27, 2002) (“Search Engine Guidance”), *available at* www.ftc.gov/sites/default/files/documents/closing_letters/commercial-alert-response-letter/commercialalertletter.pdf.

²¹ Press Release, Federal Trade Commission, FTC Consumer Protection Staff Updates Agency’s Guidance to Search Engine Industry on the Need to Distinguish Between Advertisements and Search Results (June 25, 2013), *available at* www.ftc.gov/news-events/press-releases/2013/06/ftc-consumer-protection-staff-updates-agencys-guidance-search; *see also* Exemplar letter from Mary K. Engle, Associate Director, Division of Advertising Practices, Federal Trade Commission to General Purpose Search Engines (June 24, 2013), *available at* www.ftc.gov/sites/default/files/attachments/press-releases/ftc-consumer-protection-staff-updates-agencys-guidance-search-engine-industryon-need-distinguish/130625searchenginegeneralletter.pdf (“Updated Search Engine Letter”).

B. Misleading Door Openers

Other formats that mislead consumers about a commercial message’s nature or purpose also have been alleged or found to be deceptive, such as misleading sales visits and calls and emails with falsified sender information. An early example of such a challenge was a 1976 case against an encyclopedia seller.²² A salesperson would “disguise his role as a salesman and appear as a surveyor engaged in advertising research” or salespeople would “approach prospects’ homes in the guise of delivering . . . gifts or prizes without identifying themselves as salesmen, or that the purpose of their visit is to sell encyclopedia.”²³ The Commission order required the respondents’ sales representatives to present a card that clearly disclosed the purpose of the visit before entering a prospect’s home.²⁴ Subsequently, the Commission’s Deception Policy Statement categorized this practice as a “misleading door opener,” citing it for the general proposition that, “when the first contact between the seller and a buyer occurs through a deceptive practice, the law may be violated, even if the truth is subsequently made known to the purchaser.”²⁵

In 1994, concerned about deception and abuse occurring in the telemarketing of goods and services, Congress enacted the Telemarketing Fraud Act,²⁶ which prohibited the use of deceptive door-openers in telemarketing. That Act, among other things, outlawed as an abusive practice a telemarketer's failure to "promptly and clearly disclose ... that the purpose of the call is to sell goods or services" when that is the case.²⁷ The Commission implemented Congress's

²² *Encyc. Britannica, Inc.*, 87 F.T.C. 421, 495-97, 531 (1976), *aff'd*, 605 F.2d 964 (7th Cir. 1979), as modified, 100 F.T.C. 500 (1982); *see also Grolier, Inc.*, 99 F.T.C. 379, 383 (1982), *aff'd*, 699 F.2d 983 (9th Cir. 1983), as modified, 104 F.T.C. 639 (1984).

²³ *Encyc. Britannica, Inc.*, 87 F.T.C. at 496.

²⁴ *Id.* at 524-26, 533-34.

²⁵ *Deception Policy Statement*, 103 F.T.C. at 180 & n.37. A number of courts have stated or held, both before and after issuance of the *Deception Policy Statement*, that the FTC Act is violated if a consumer's first contact is induced through deception, even if the truth is clarified prior to purchase. *FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 632 (6th Cir. 2014); *Resort Car Rental Sys., Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir. 1975); *Exposition Press, Inc. v. FTC*, 295 F.2d 869, 873 (2d Cir. 1961); *Carter Prods., Inc. v. FTC*, 186 F.2d 821, 824 (7th Cir. 1951); *FTC v. LeanSpa, LLC*, No. 3:11-cv-1715, 2015 U.S. Dist. LEXIS 26906, at *33-34 (D. Conn. Mar. 5, 2015); *FTC v. Ivy Capital, Inc.*, No. 2:11-cv-00283, 2013 U.S. Dist. LEXIS 42369, at *23 (D. Nev. Mar. 26, 2013); *FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1066 (C.D. Cal. 2012); *FTC v. City West Advantage, Inc.*, No. 2:08-CV-00609, 2008 U.S. Dist. LEXIS 71608, at *7-9 (D. Nev. July 22, 2008); *FTC v. Med. Billers Network, Inc.*, 543 F. Supp. 2d 283, 304 (S.D.N.Y. 2008); *FTC v. Connelly*, 2006 U.S. Dist. LEXIS 98263, at *49 (C.D. Cal. Dec. 20, 2006).

²⁶ 15 U.S.C. §§ 6101-6108.

²⁷ *Id.* at § 6102(a)(3)(C).

intent to prohibit this practice when it promulgated the Telemarketing Sales Rule.²⁸ In enforcing that Rule, the Commission has brought cases against telemarketers who misrepresented that calls were from, or made on behalf of, companies with which consumers had done business, such as banks and credit card companies.²⁹

When Congress passed the CAN-SPAM Act,³⁰ among the practices the law was intended to address were emails that "mislead recipients as to the source or content of such

mail.”³¹ Specifically, Congress concluded that “[m]any senders of unsolicited commercial electronic mail purposefully disguise the source of such mail” and “include misleading information in the messages’ subject lines in order to induce the recipients to view the messages,” and that the recipients of such mail “incur costs for the ... time spent accessing, reviewing, and discarding such mail”³² The CAN-SPAM Act therefore effectively prohibited deceptive door-openers in commercial email. The Act outlawed the sending of emails containing falsified header information, including sender or subject information, and made doing so a violation of the FTC Act.³³ Even prior to the law’s passage, in a case against an email marketer, the Commission alleged it was deceptive to forge an email’s header information so as to make recipients believe a well-known bank or mortgage company sent it.³⁴

²⁸ 16 C.F.R. § 310.4(d)(2).

²⁹ See Complaint at 26, 28, *FTC v. FTN Promotions, Inc.*, No. 807-cv-1279 (M.D. Fla. July 23, 2007) (stipulated orders); Complaint, *Millennium Indus., Inc.*, No. 01-1932 (D. Ariz. Oct. 18, 2001) (stipulated order); Complaint, *Creditmart Fin. Strategies Inc.*, No. C99-1461WD (W.D. Wash. Sept. 14, 1999) (stipulated order); Complaint, *Liberty Direct, Inc.*, No. 299-cv-01637 (D. Ariz. Sept. 14, 1999) (stipulated order).

³⁰ 15 U.S.C. §§ 7701-7713.

³¹ *Id.* at § 7701(b)(2).

³² *Id.* at § 7701(a)(3), (7), and (8).

³³ *Id.* at § 7704(a)(1) and (2). In certain circumstances, materially falsifying header information also can be a crime punishable by a fine, imprisonment, or both, and enforceable by the United States Department of Justice. See 18 U.S.C. § 1037.

³⁴ Complaint, *GM Funding, Inc.*, No. SACV 02-1026 (C.D. Cal. May 5, 2003) (stipulated order). The Commission has since brought a number of other cases challenging spam emails with deceptive sender and subject line information. See, e.g., Complaint at 21, *FTC v. Sale Slash, LLC*, No. CV15-03107 (C.D. Cal. Apr. 27, 2015); Complaint at 10-11, *FTC v. Cleverlink Trading Ltd.*, No. 05C 2889 (N.D. Ill. May 16, 2005) (stipulated order); Complaint, *Phoenix Avatar, LLC*, No. 04C 2897 (N.D. Ill. Apr. 23, 2004).

II. Commission Policy on Deceptively Formatted Advertising

The recent proliferation of natively formatted advertising in digital media has raised questions about whether these advertising formats deceive consumers by blurring the

distinction between advertising and non-commercial content. Natively formatted advertising encompasses a broad range of advertising and promotional messages that match the design, style, and behavior of the digital media in which it is disseminated. The ads can appear in a wide variety of forms, including written narratives, videos, infographics, images, animations, in-game modules, and playlists on streaming services. Often natively formatted ads are inserted into the stream of regular content a publisher offers,⁴⁰ generally referred to in this statement as a “publisher site,” such as news and news aggregator sites and social media platforms.⁴¹ In some instances, publishers place these ads on their sites and, in other instances, advertising networks operating ad content-recommendation engines do so. Advertising and promotional messages also can be embedded into entertainment programming, including professionally produced and user-generated videos on social media.

Regardless of an ad’s format or medium of dissemination, certain principles undergird the Commission’s deceptive format policy. Deception occurs when an advertisement misleads reasonable consumers as to its true nature or source, including that a party other than the sponsoring advertiser is the source of an advertising or promotional message, and such misleading representation is material. In this regard, a misleading representation is material if it is likely to affect consumers’ choices or conduct regarding the advertised product or the advertisement, such as by leading consumers to give greater credence to advertising claims or to interact with advertising with which they otherwise would not have interacted.⁴² Such misleadingly formatted advertisements are deceptive even if the product claims communicated are truthful and non-misleading.⁴³

Although the particular facts will determine whether an advertisement formatted like the material in which it appears is deceptive, this statement sets forth the factors the Commission will consider in making that determination.

⁴⁰ Commonly, when a natively formatted ad appears on a publisher site, it consists of headline text, a short description, and a thumbnail image, which, if clicked, lead to additional content.

⁴¹ The term “publisher site” refers to any media platform on which consumers consume content and media creators and curators publish content. The content may be delivered by publishers through various means, including the web and mobile applications, and may be accessed by consumers on different devices, including computers, smartphones, tablets, and televisions.

⁴² By product or advertising claims, the Commission generally means any representations about the benefits or attributes of a product, type of product, or category of products, including disparaging claims about a competitor’s products.

⁴³ The Commission has challenged advertising formats as deceptive without challenging product claims made in advertisements. *See, e.g., Complaint, ADT LLC; Georgetown Publ’g House Ltd. P’ship*, 121 F.T.C. 392; *JS&A Grp., Inc.*, 111 F.T.C. 522.

A. An Advertisement's Format Can Mislead Consumers as to Its Nature or Source

In evaluating whether an ad's format is misleading, the Commission considers the net impression the advertisement conveys to reasonable consumers, not statements in isolation.⁴⁴ Ads can convey claims by means other than, or in addition to, written or spoken words, such as visual or aural imagery and the interaction among all elements of the ad.

Applying the net impression standard in its *Advisory Opinion on Ads in a News Format*, the Commission commented that inclusion of exact price information would not change the overall impression conveyed that a series of newspaper ads were feature articles giving independent and impartial restaurant reviews.⁴⁵ In a case against a bookseller, the Commission's complaint noted a number of elements, including the challenged ad's printing on magazine-like paper, a ripped left edge, page numbering, inclusion of a publication date and byline, and an affixed personalized sticky note, in alleging that the overall impression created was that the ad was an independent book review.⁴⁶ Thus, in evaluating whether an ad's format is misleading, the Commission will scrutinize the entire ad, examining such factors as its overall appearance, the similarity of its written, spoken, or visual style to non-advertising content offered on a publisher's site, and the degree to which it is distinguishable from such other content.

Any determination of whether an advertisement's format misleads as to the ad's nature or source depends on how reasonable consumers would interpret the ad in a particular situation. To be reasonable, an interpretation or response of consumers to a particular ad need not be the only one nor be shared by a majority of consumers.⁴⁷ Interpretations that advertisers intend to convey about an advertisement's nature or source are presumed reasonable.⁴⁸

In digital media, consumers can encounter natively formatted ads in a wide variety of situations, including in the news feed or main page of a publisher site, or through other means, such as posts in social media, in search results, and in email. In evaluating whether reasonable consumers would recognize ads as such, the Commission will consider the particular circumstances in which the ads are disseminated, including customary expectations based on consumers' prior experience with the media in which it appears and the impression

⁴⁴ *FTC v. Am. Home Prods. Corp.*, 695 F.2d 681, 687 (3d Cir. 1982), citing *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976).

⁴⁵ *Advisory Opinion on Ads in News Formats*, 73 F.T.C. at 1307-08.

⁴⁶ *Georgetown Publ'g House Ltd. P'ship*, 122 F.T.C. at 393-96.

⁴⁷ *Deception Policy Statement*, 103 F.T.C. at 177 n.20. "A material practice that misleads a significant minority of reasonable consumers is deceptive." *Id.*

⁴⁸ *Id.* at 178.

communicated by the ad's format.⁴⁹ For instance, if a natively formatted ad appearing as a news story is inserted into the content stream of a publisher site that customarily offers news and feature articles, reasonable consumers are unlikely to recognize it as an ad.

The target audience of an ad also may affect whether it is likely to mislead reasonable consumers about its nature or source. Increasingly, in digital media, advertisers can target natively formatted ads to individual consumers and even tailor the ads' messaging to appeal to the known preferences of those consumers.⁵⁰ The propensity of an ad to mislead as to its nature or source may be different when considered from the perspective of its target audience. To the extent that an advertisement is targeted to a specific audience, the Commission will consider the effect of the ad's format on reasonable or ordinary members of that targeted group.⁵¹

Certain ads that are formatted like the non-advertising content with which they are presented, however, may be unlikely to mislead consumers acting reasonably. Some ads by the

⁴⁹ For example, consumers' customary use of and prior experience with search engines are relevant to the need to distinguish paid from regular search results. *See* Updated Search Engine Letter, at note 2 and accompanying text.

⁵⁰ There may be a host of data collection and use activities associated with natively formatted ads disseminated programmatically in digital media, some of which may not be transparent to consumers. This enforcement policy statement is not intended to address the legal and policy implications of such practices. Existing Commission and staff guidance address the privacy issues raised by digital advertising and consistently recommend that companies provide truthful and prominent information and choices to consumers about their data collection, use, and sharing practices. *See, e.g.*, FTC, Protecting Consumer Privacy in an Era of Rapid Change: Recommendations For Businesses and Policymakers (Mar. 2012), *available at* www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf (recommending a framework for addressing consumer privacy, including transparency and simplified choice regarding the online collection and use of consumer data for marketing purposes); FTC Staff Report: Self-Regulatory Principles For Online Behavioral Advertising: Tracking, Targeting, and Technology (Feb. 2009), *available at* www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-staff-report-self-regulatory-principles-online-behavioral-advertising/p085400behavadreport.pdf (setting forth proposed principles related to online behavioral advertising).

⁵¹ *Deception Policy Statement*, 103 F.T.C. at 177-78. For example, special considerations may be relevant in determining whether a natively formatted ad directed to children would be misleading. *Id.* at 177; *cf. Commission Enforcement Policy Statement in Regard to Clear and Conspicuous Disclosure in Television Advertising*, CCH Trade Regulation Reporter, ¶ 7569.09

(Oct. 21, 1970) available at

www.ftc.gov/system/files/documents/public_statements/288851/701021tvad-pr.pdf

(disclosures in television ads that are intended to qualify misleading claims communicated to children “must be written and presented in a manner that would be understood by them and have the capacity to attract their attention”).

very nature of their promotional message communicated may be inherently obvious as advertising to consumers. For instance, if 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.

Finally, in determining the overall impression communicated by an ad, the Commission also will consider any qualifying information contained in the ad.⁵² Advertisements may include disclosures to inform consumers of their commercial nature, including text labels, audio disclosures, or visual cues distinguishing the ad from other content into which it is integrated.

Any disclosure used must be “sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression.”⁵³ A disclosure’s adequacy ultimately will be measured by whether reasonable consumers perceive the ad as advertising.⁵⁴

A disclosure must be made in “simple, unequivocal” language, so that consumers comprehend what it means.⁵⁵ For example, in infomercial cases, the Commission has required the use of the words “Paid Advertisement.”⁵⁶ In its Advisory Opinion on Ads in a News Format, the Commission suggested use of the term “Advertisement” to prevent consumers from being deceived by those particular advertising formats.⁵⁷ Disclosures also must be made in the same language as the predominant language in which ads are communicated.⁵⁸

The conspicuousness of the disclosure will depend on the method of delivery and placement within the ad. Depending on the circumstances, a disclosure in the text may not remedy a misleading impression created by the headline because reasonable consumers might glance only at the headline.⁵⁹ In Commission cases and Rules addressing audio ads, the

⁵² *Deception Policy Statement*, 103 F.T.C. at 181.

⁵³ *Removatron Int’l Corp. v. FTC*, 884 F. 2d 1489, 1497 (1st Cir. 1989).

⁵⁴ See *supra* note 47 and accompanying text.

⁵⁵ *Thompson Medical Co.*, 104 F.T.C. 648, 783 (1984), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986).

⁵⁶ See, e.g., *FTC v. Direct Mktg. Concepts, Inc.*, 648 F. Supp. 2d at 209, 211; *Vital Basics, Inc.*, 137 F.T.C. at 340-41; *Nutrivida, Inc.*, 126 F.T.C. at 351-52; *Bogdana Corp.*, 126 F.T.C. at 100-01; *Mega Sys. Int'l, Inc.*, 125 F.T.C. at 1218-19.

⁵⁷ *Advisory Opinion on Ads in News Formats*, 73 F.T.C. at 1307-08; *Statement on Ads in Feature Article Format*.

⁵⁸ See, e.g., Final Order and Judgment at 8, *Direct Mktg. Concepts, Inc.*, No. 04-11136-GAO (D. Mass. Aug. 13, 2009) (as to Direct Marketing Concepts, Inc. and others); Free Annual Credit Disclosures, 16 C.F.R. § 610.4(a)(3)(ii) (general requirements for disclosures).

⁵⁹ *Deception Policy Statement*, 103 F.T.C. at 180.

Commission has required audible disclosures to be delivered in a volume, cadence, and speed sufficient for ordinary consumers to hear and understand them.⁶⁰

To be effective, a disclosure also generally must be made contemporaneously with the misleading claim it is intended to qualify. For example, disclosures that subsequently inform consumers of a natively formatted ad's commercial nature after they have clicked on and arrived at another page will not cure any misleading impression created when the ad is presented in the stream of a publisher site. This approach also reflects and is consistent with long-standing public policy, as codified in the CAN-SPAM Act⁶¹ and Telemarketing Fraud Act⁶² and found in Commission cases,⁶³ that material misrepresentations as to the nature or source of a commercial communication are deceptive, even if the truth is subsequently made known to consumers.

A. Misleading Claims about the Nature or Source of Advertising Are Likely Material

Deception occurs when an ad misleads consumers about a material fact.⁶⁴ Material facts are those that are important to consumers' choices or conduct regarding a product.⁶⁵ Misleading representations or omissions about an advertisement's true nature or source, including that a party other than the sponsoring advertiser is the source of the advertising, are likely to affect

⁶⁰ See, e.g., Final Order and Judgment at 8, *Direct Mktg. Concepts, Inc.* (radio disclosures must be "in a volume and cadence sufficient for an ordinary consumer to hear"); Agreement Containing Consent Order at 3, *Carrot Neurotechnology, Inc.*, FTC File No. 142-3132 (Sept. 17, 2015) (consent accepted pending public comment) (necessary disclosures under the order must be "in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand"); Free Annual Credit Disclosures, 16 C.F.R. § 610.4(a)(3)(iv) ("Audio disclosures shall be in a slow and deliberate manner and in a reasonably understandable volume and pitch.").

⁶¹ 15 U.S.C. §§ 7701-7713 at 7704(a)(2).

⁶² 15 U.S.C. §§ 6101-6108 at 6102(a)(3)(C).

⁶³ See, e.g., *supra* notes 22, 25, 34 and accompanying text.

⁶⁴ *Deception Policy Statement*, 103 F.T.C. at 182.

⁶⁵ *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992) (“a claim is considered material if it ‘involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding a product’”) (quoting *Cliffdale Assocs., Inc.*, 103 F.T.C. at 165). Material information may influence consumer behavior apart from the purchase of a product. *Deception Policy Statement*, 103 F.T.C. at 182 n.45. A material misrepresentation is one “the reasonable person would regard as important in deciding how to act, or one which the maker knows that the recipient, because of his or her own peculiarities, is likely to consider important.” *Id.* (citing Restatement (Second) of Torts, § 538(2) (1965)).

consumers’ behavior with regard to the advertised product or the advertisement.⁶⁶ Consumers with such a misleading impression, for example, are likely to give added credence to advertising messages communicated and to interact with advertising content with which they otherwise would have decided not to interact.⁶⁷

The Commission presumes that claims made expressly and claims the advertiser intended to make are material.⁶⁸ The Commission also considers certain misleading formats to be presumptively material. Depending on the facts, false claims that advertising and promotional messages reflect the independent, impartial views, opinions, or experiences of ordinary consumers or experts are presumed material.⁶⁹ Similarly, the Commission views as material any misrepresentations that advertising content is a news or feature article,⁷⁰ independent product

⁶⁶ There are some exceptions, where consumers might not act differently if they were to identify certain forms of advertising as such. For example, if a branded product is included in entertainment programming in exchange for payment or other consideration from an advertiser, unless this paid product placement communicates an objective claim about a product, the fact that such advertising was included because of payment is unlikely to affect consumers’ decision-making. When no objective claims are made for the product advertised, there is no claim to which greater credence can be given; thus, whether an advertiser had paid for the placement or the product appeared because of the program writer’s creative judgment would not likely be material to consumers. See generally Letter from Mary K. Engle, Associate Director, Division of Advertising Practices, Federal Trade Commission to Gary Ruskin, Executive Director, Commercial Alert (Feb. 10, 2005), available at www.ftc.gov/system/files/documents/advisory_opinions/letter-commercial-alert-applying-commission-policy-determine-case-case-basis-whether-particular/050210productplacemen.pdf

(response to a petition from a consumer group to issue guidelines requiring the on-screen disclosure “ADVERTISEMENT,” whenever paid product placement occurred in television programming; FTC staff concluded that such a disclosure would not generally be necessary to prevent deception and that when particular instances of paid product placement or brand integration were deceptive, they could be adequately addressed on a case-by-case basis).

⁶⁷ In evaluating materiality, the Commission takes consumer preferences as given rather than considering whether they are objectively justified. *Deception Policy Statement*, 103 F.T.C. at 182 n.46.

⁶⁸ *Deception Policy Statement*, 103 F.T.C. at 182.

⁶⁹ *See, e.g., supra* notes 36, 37, 38, 39 and accompanying text. Regarding the specific issue of advertisers using spokespersons to promote products in programming without disclosing the spokesperson’s financial ties to the advertiser, a connection between an advertiser and an endorser that is not reasonably expected by the audience must be fully disclosed. *See, e.g., ADT LLC*, No. C-4460, 2014 FTC LEXIS 142, at *3, 5-6 (June 18, 2014) (consent); Endorsement Guides, 16 C.F.R. § 255.5.

⁷⁰ *See, e.g., supra* notes 7, 8, 13, 14 and accompanying text.

review,⁷¹ investigative report,⁷² or scientific research or other information from a scientific or other organization.⁷³ Commercial communications that mislead consumers that they are from the government,⁷⁴ a legitimate business, such as a well-known bank,⁷⁵ or a marketing surveyor⁷⁶ also are presumed to be material.

I. Conclusion

Although digital media has expanded and changed the way marketers reach consumers, all advertisers, including digital advertisers, must comply with the same legal principles regarding deceptive conduct the Commission has long enforced. This statement sets forth principles of general applicability on which the Commission will rely in determining whether any particular advertising format is deceptive, in violation of Section 5 of the FTC Act. The Commission will find an advertisement deceptive if the ad misleads reasonable consumers as to its nature or source, including that a party other than the sponsoring advertiser is its source.

Misleading representations of this kind are likely to affect consumers’ decisions or conduct regarding the advertised product or the advertisement, including by causing consumers to give greater credence to advertising claims or to interact with advertising content with which they otherwise would not have interacted.

⁷¹ *See, e.g., supra* note 10 and accompanying text.

⁷² *See, e.g., supra* notes 12, 13 and accompanying text.

⁷³ *See, e.g., supra* note 16 and accompanying text.

⁷⁴ *See, e.g., supra* notes 17, 18, 19 and accompanying text.

⁷⁵ *See, e.g., supra* notes 29, 34 and accompanying text.

⁷⁶ *See, e.g., supra* note 23 and accompanying text.

**Native Advertising
A Guide from IAB
Ireland's Native
Council**

2015





This document is designed to offer a definition and best practice guide for Native Advertising Online for the Irish market.

The objective of the guide is:

- to provide a set of clear and practical definitions
- to show examples
- to share best practice recommendations for Native Advertising online

There are different views as to what constitutes ‘Native Advertising’. This area is constantly evolving. This document is designed to give an overview and be as inclusive as possible in its definition and the examples shown.

A DEFINITION OF NATIVE ADVERTISING:

“

PAID-FOR CONTENT THAT IS RELEVANT TO THE
CONSUMER EXPERIENCE, IS INTEGRATED INTO THE
SURROUNDING
CONTENT AND IS NOT INTERRUPTIVE

WHAT'S INCLUDED IN THE DEFINITION
OF NATIVE?

1. **Discovery/Recommendation Units**
 2. **In-feed - Publisher controlled:**
 - a. Paid-for Content / Sponsored content
 - b. Sponsored content area
 3. **In-feed - Advertiser controlled**
 4. **Custom Integration**
- See visual illustrations below.

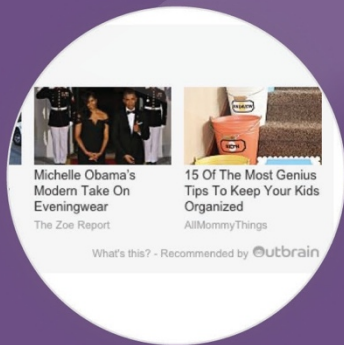
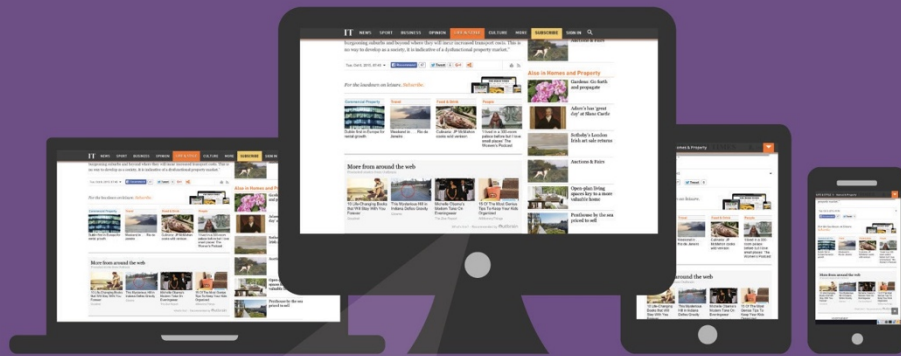
Features of each Native Ad Format

Ad formats	Discovery / Recommendation units	In-feed publisher controlled	In-feed advertiser controlled	Custom Integration
Integrated into web page				
Mimic the appearance of surrounding content				case by case
Stay on website / app				case by case
Link to page off the site				case by case

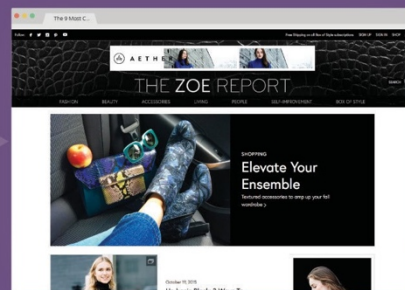
1. Discovery/Recommendation Units

These units are integrated into a web page but do not mimic the appearance of editorial content feed. They link to a page off the site.

Common disclosure language: 'Recommended by', 'Sponsored content by', 'You might also like', 'Recommended for you'



Link to page off the site



<http://thezoereport.com/>

2. In-feed - Publisher controlled:

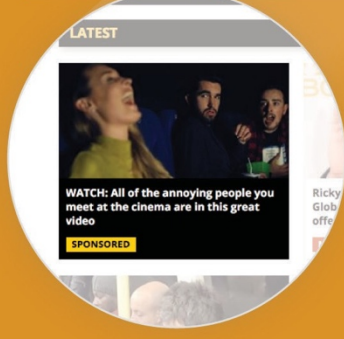
a. Paid-for Content / Sponsored content

This form of native advertising is written in partnership with the publisher, this content looks like surrounding editorial but is signed off by advertiser and has been sold with guaranteed placement.

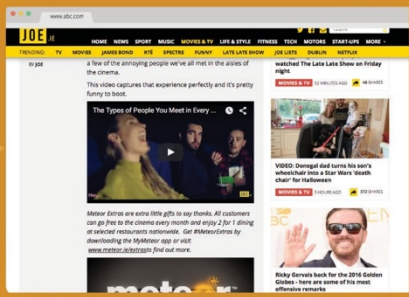
Common disclosure language: 'Sponsored'

Stay on website/app

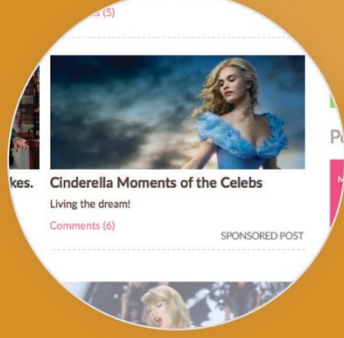
<http://www.dailymail.co.uk/femail/article-id.html>



Stay on website/app



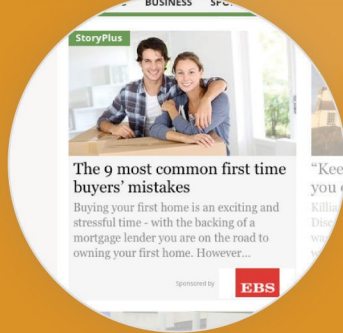
<http://www.independent.ie/storyplus/article-id.html>



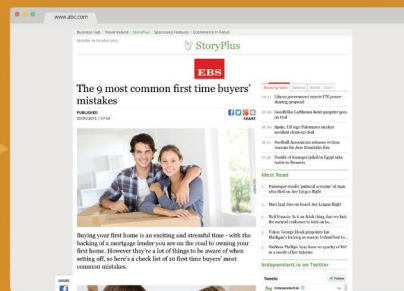
Stay on website/app



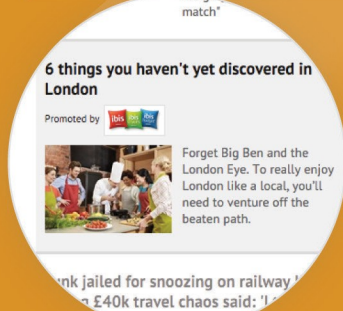
Stay on website/app



Stay on website/app



<http://www.independent.ie/storyplus/article-id.html>



Stay on website/app



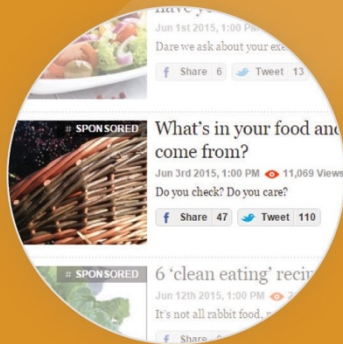
Stay on website/app

2. In-feed - Publisher controlled:

b. Sponsored content area

Can be written by either the publisher or advertiser or in partnership - looks like surrounding editorial, sold with guaranteed placement

Common disclosure language: 'Sponsored'



Stay on website/app



Stay on website/app

3. n-feed - Advertiser controlled:

eg. Twitter, Facebook, LinkedIn

Produced by the advertiser, this content looks like surround editorial in the feed but usually links off the site to content it is sold with guaranteed placement

Common disclosure language: 'Sponsored'

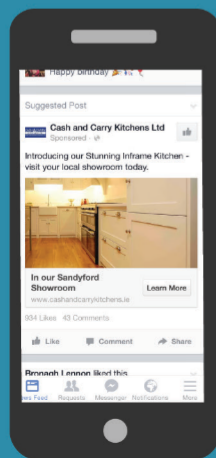


twitter.com

Link to page off the site

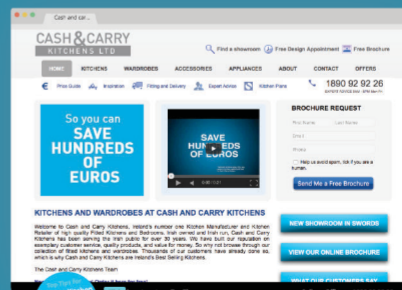


http://thezero report.com/



facebook.com

Link to page off the site

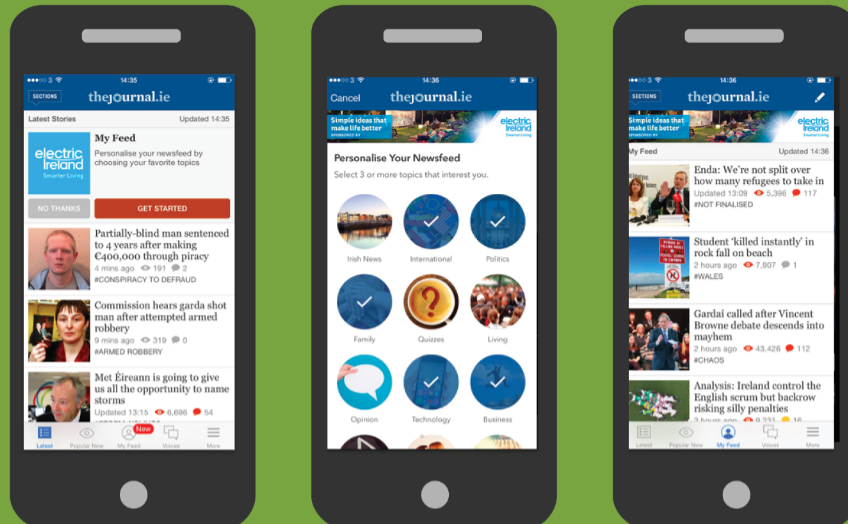


http://cashandcarrykitchens.ie

4. Custom Integration

eg. Content-rich publishers, Spotify, Pandora, Tumblr

This is a native format customized by collaboration between a publisher and advertiser – these ad units don't fit neatly into the other categories above, they may involve custom playlists or may be platform-specific.





RECOMMENDED IAB IRELAND NATIVE COUNCIL DISCLOSURE PRINCIPLES:

IAB Ireland is committed to providing clarity and transparency for consumers in respect of Native Advertising.

Regardless of the type of Native Advertising being used, IAB Ireland recommends the following:

“

NATIVE ADVERTISING SHOULD BE CLEARLY AND AN
ADVERTISEMENT / PAID FOR CONTENT.
PROMINENTLY LABELLED AND READILY RECOGNISABLE AS
THE IDENTITY OF THE ADVERTISER SHOULD BE APPARENT TO THE READER IN THE
ADVERTISEMENT OR PAID FOR CONTENT.

”

This can be achieved by any or all of the following:

- Visual cues: including prominent brand logos around or within the content
- Label descriptions: such as sponsored, brought to you by etc.
- Clear visual demarcation: using different design by the publisher such as shading, which marks the content out as being different to other editorial.

The following IAB Ireland Publisher Members are committed to the above Native Disclosure Principles:

DMG Media, Entertainment Media, Independent News & Media, Journal Media, Maximum Media, Mirror Media, Pigsback, The Irish Times.