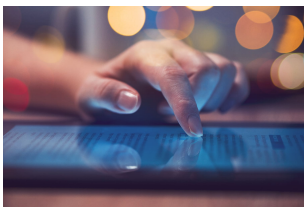

ALP: Is there a minimum font size requirement for disclaimers in advertising?

Apr 15, 2005

Categories:

Publications

There is no hard and fast rule for disclaimers that can be applied to all advertising, or even to all print or television advertising. Instead, a clear and conspicuous standard governs all mediums of advertising, including broadcast, direct mail, print, radio and web-based advertising. The key is that all disclaimers must be able to be read and understood by consumers.

The Federal Trade Commission has often taken action when a disclaimer is too small, flashes across the screen too quickly, is buried in other information, or is otherwise difficult to understand. In broadcast advertising, disclaimers should be made in the same manner as the claim (i.e., if a claim is made verbally, disclaimers must also be made verbally). In web-based advertising, the disclaimer should appear on the same page as the claim, and not several double-clicks away. And in print advertising, disclaimers must be clear and conspicuous enough that they will be read by a reasonable consumer.

The definition of clear and conspicuous will vary with each advertisement, depending on the overall context and consumer takeaway of the ad. Therefore, just because a disclosure has been found to be clear and conspicuous in one ad does not mean that it necessarily satisfies the legal test in another.

Finally, it is important to remember that the legal requirements regarding disclaimers in your advertising are guided by the overall takeaway of your ad alone. The FTC and the courts will not permit a company or advertising agency to defend the adequacy of their disclaimer on the basis that a competitor's advertising disclaimers are worse.

Because the clear and conspicuous test does not provide a rigid set of guidelines, and may vary with each ad, it is important to consult with an advertising attorney before relying on your small print.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons