

The National Retail Federation appreciates the opportunity to provide its members views as to some of the factors affecting online retailing in response to the Commission's request for comments regarding its guidance. As the world's largest retail trade association, the National Retail Federation's global membership includes retailers of all sizes, formats and channels of distribution. In the U.S., NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers and generated 2010 sales of \$2.4 trillion. Significant online as well as "click & mortar" retailing are becoming the norm in many areas of our industry. Moreover, the methods by which consumers and merchants interact are ever changing. This is a particular concern for NRF's Shop.Org division, and we appreciate the Commission's willingness to consider the following points as it revises and updates its Guidance.

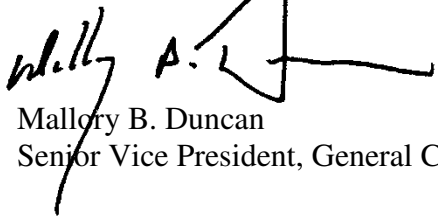
1. Different formats present different limitations. The Guidance itself needs to have flexibility in order to address those limitations. For example, if a consumer is viewing something on a mobile device, the size of the font will vary based on the consumer's settings. So, even if guidance specified 8 point font, a retailer cannot guarantee it will be displayed that size on the consumer's phone. The Guidelines should acknowledge this issue and recognize that merchants cannot always comply with specific font sizes in certain formats. In practice this should not become a significant issue because users can usually take action to enlarge the font. Rather than a specified font size, perhaps what is needed is a general direction that important disclosures be sufficiently indicated in a manner such that consumers are aware they exist and can readily access them.
2. The Guidance should be cognizant of the fact that some social media sites (e.g., Twitter) greatly limit what can be said. To perhaps an even greater degree than with television advertisements, it may not be possible to include disclaimers of significant length, or embed those disclaimers within the limited message. Here, as in point one above, it might be helpful to instead have standard "hash tags" that would alert customers that they should follow a link to important information. Over time, it is likely consumers will become accustomed to seeing those notices and appreciate how to use them.
3. The Guidance should recognize that once information is disseminated, retailers may have limited, if any, control over its downstream use. Under such circumstances, holding the originating entity responsible for subsequent use may be unfair. For example, a retailer may send out a tweet, only to have someone re-tweet it, but delete a pertinent portion in doing so. Even in a more controlled environment, a reputable company may initially post all required information in an ad, but a marketing affiliate may pick up the information, seek to convey it in a dynamic environment and (despite being required by contract not to change it) the affiliate may slightly tweak the information, especially if it is being

converted for distribution in a different format. While companies can and should make reasonable efforts to direct everyone to accurately convey content, it may not possible to police and address every subsequent use or re-use.

4. Finally, and related to the above, businesses routinely provide popular bloggers and others, with free products and information in hopes that they will communicate their familiarity and experiences to others. We can advise the recipients of the need to follow the Commission's Guidelines on Endorsements and disclose that they were paid when that is the case. However, the recipients might not do so. Furthermore the business might not know where or when or in all manners how, the recipients convey their knowledge or experience. We hope that the Guidelines would recognize that while businesses can and should take reasonable steps to try to remind recipients to "do the right thing," it is not possible to fully control the activities of those who are acting largely independently.

We appreciate the Commission's interest in this area and its consideration of these points.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mallory B. Duncan", with a stylized flourish extending to the right.

Mallory B. Duncan  
Senior Vice President, General Counsel