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Editorial “Native” Ads May Confuse Consumers

By John C. Greiner, Esq.

Q: What is native advertising?

A: Advertising is usually easy to identify when you pick up a magazine or watch a television program because the ads are clearly differentiated from the magazine article or TV program. Native advertising is a form of paid media that may be harder to identify as advertising because it “looks and feels” like editorial content and is integrated with whatever a consumer may be reading or viewing.



Q: What’s the big deal?

A: The issue is whether the consumer realizes the content is advertising. Most of us approach advertising expecting that the advertiser isn’t objective and is trying to sell us something. But we tend to approach editorial content from a different perspective, and may be more likely to accept as “truth” advertising that is merged with content. Blurring the lines between editorial content and advertising could lead to confusion if not deception.

Q: Is native advertising regulated?

A: There are no regulations set out in the Code of Federal Regulations that expressly address this, but Section 5 of the Federal Trade Commission Act gives the Federal Trade Commission broad authority to prohibit “unfair or deceptive acts or practices in or affecting commerce.” The FTC has enforcement power if it deems a piece of native advertising “deceptive,” even without clear cut guidelines. If the FTC finds a native ad to be “deceptive,” it can file a court injunction and apply “corrective practices” against the advertiser.

Q: How can I avoid an enforcement action by the FTC?

A: Be as transparent and conspicuous as possible within the framework of the editorial content you offer. For example, some websites feature a “blog roll” with boxes running down the page showing a thumbnail photo and a snippet of the blog post. If the blog roll contains posts that are purely editorial and others that are native advertising, you should clearly identify the “native ad” posts. Use some background shading along with some text to indicate that the “native ad” content is paid advertising.

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Small Businesses Can Take Steps to Help Ensure Credit Report Accuracy

By Jack Landskroner, Esq.

Access to credit is the lifeblood of most small enterprises. Accordingly, it is crucial that the information reported on a company’s commercial credit report is accurate. Any false or misleading report that is published can have a dire effect on the business’s reputation as well as its ratings and credit scores. Generally, when credit scores drop, the cost of credit rises and access diminishes.

In the realm of consumer credit, each company that reports a credit transaction is listed on a consumer’s credit report, but the world of commercial credit operates under the cloak of secrecy. No commercial credit reporting agency publishes the identity of the business that makes a negative report about a company’s credit record. Moreover, unless the company that provides a trade experience agrees to be identified, it takes a lawsuit to force the release of this information from the credit reporting agency due to intercompany confidentiality agreements.

Small business owners are adversely affected when credit reporting agencies publish what might be a false

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Native Advertising, cont. from page 1

In addition, make sure your readers/viewers know what they are getting. Just using the words “sponsored by” may not be clear enough. For example, does “sponsored by” mean someone paid the website to write the content or does it mean that the sponsor actually wrote the piece? If the latter is true, you should consider providing additional text such as “sponsor-generated

content,” which may be a more accurate description.

Q: What should I keep in mind when developing native ads for my business?

A: Native advertising potentially offers you two advantages. First, it is less disruptive than traditional advertising. The advertising content flows more naturally with the

editorial content. Second, it allows you to present interesting, engaging content that readers enjoy. You can easily make sure the reader knows that what you’re providing is advertising by offering transparency and clear disclosure.

This article was prepared by Cincinnati attorney John C. Greiner, partner at Graydon Head & Ritchey LLP.

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and defamatory statement about their business’s credit reputation. To help solve this dilemma, business credit reporting agencies have developed products that allow small businesses to monitor their own credit profile. However, the marketing of such products may be seen as an attempt on the part of credit reporting agencies to benefit from their own refusal to disclose information.

In 2010, Dun & Bradstreet (D&B), the most powerful and prominent small business credit reporting agency, sold its own credit monitoring product line (“Self-Awareness Solution”) to a new start-up company called the Dun & Bradstreet Credibility Corporation (DBCC). Since then, small businesses have been solicited by a marketing company that has licensed and uses the D&B name and logo to leverage the sale of DBCC’s “Creditbuilder” credit-monitoring product line.

The collective practices of D&B and DBCC have come under scrutiny in a class action lawsuit filed in February 2014 in the Northern District of Ohio and has since been transferred to a federal court in Washington State, where it will be litigated with four other similar cases that have been filed across the country.

To protect your business from questionable credit reporting or marketing agency practices, ask these questions before buying a credit-monitoring product:

1) Who is making the solicitation?

If not the actual credit reporting agency, the soliciting company likely cannot directly affect your business’s credit profile.

2) What information should I disclose about my business? Telemarketing companies may use

information gathered from a business to put more detail about a company into the credit reporting agency’s databases. Remember that these reporting agencies are for-profit companies and have no governmental authority. You are under no obligation to provide a credit reporting agency with any information about your business.

3) What happens if I don’t provide information about my company? Credit reporting agencies may have a credit profile on your company created from public filings, but they may not have the information necessary to rate your business. Most companies need a minimum number of trade experiences in their database to maintain a credit score on a business. When solicited by a credit reporting or marketing agency, limit the disclosures

you make about your business, its needs and/or its finances unless you need or want a credit score.

4) Do “self-monitoring” products work? Most products cannot directly improve your credit score or fix negative trade reports on your credit profile. For example, DBCC has no direct access to change, correct or impact your D&B business’s credit report. You can, however, visit www.iupdate.dnb.com and independently challenge inaccurate credit reports at no charge. Be forewarned that using this site will likely result in a marketing solicitation from DBCC within 72 hours, as D&B will immediately provide DBCC your business contact information.

5) What if I cannot resolve a dispute about the accuracy of my business’s credit report? Challenge any inaccurate statement as soon as you become aware of it. Most trade partners of credit reporting agencies will automatically remove disputes, but be vigilant to make sure that the same incorrect information does not reappear on your report. If, despite your dispute, inaccurate information remains on your report and has damaged your business’s reputation, you may need to consider taking legal action to protect your business.

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