



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO: THE COMMISSION  
ACTING STAFF DIRECTOR  
ACTING GENERAL COUNSEL  
FEC PRESS OFFICE  
FEC PUBLIC DISCLOSURE**

**FROM: OFFICE OF THE COMMISSION SECRETARY *[Signature]***

**DATE: June 14, 2011**

**SUBJECT: Comment on Draft AO 2011-09  
(Facebook)**

**Transmitted herewith is a timely submitted comment from CMPPLY, Inc. by Tom Chernaik regarding the above-captioned matter.**

**Draft Advisory Opinion 2011-09 is on the agenda for Wednesday, June 15, 2011.**

**Attachment**



Tom Chernaik  
<tom@cmp.ly>  
06/14/2011 10:48 AM

To secretary@fec.gov, chughey@fec.gov  
cc cbauerly@fec.gov, chunter@fec.gov, mpetersen@fec.gov,  
dmcgahn@fec.gov, swalther@fec.gov, ewointraub@fec.gov  
bcc  
Subject CMPLY Comment - Advisory Opinions 2011-9 A and B

Dear Ms. Werth:

CMPLY, INC., files the attached comments today with regard to the two Draft Advisory Opinions 2011-9 A and B, which have been issued in response to a request for an advisory opinion by Facebook (AOR 2011-9). The draft opinions are on the agenda for tomorrow's June 15, 2011 Commission meeting. I will fax a copy of this document to each of the listed fax numbers in addition to this email. Please confirm receipt of the faxes, if possible.

We appreciate the opportunity to comment and we are happy to answer any questions that you might have.

Sincerely,

Tom

--

Tom Chernaik

CEO

**\*\*new address\*\***

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Twitter - CMPLY

**“Where there's a challenge, there's probably a tech startup. Enter CMP.LY, which aims to make compliance simple for the Twitter and Foursquare users of the world.”**

**-CNN Money**

**“It's quick and easy, and you can even do it on micro-blogging services such as Twitter.”**

**-Mashable**



**CMP.LY FEC Comment Letter Final.pdf**



CMPLY, Inc.  
104 West 29<sup>th</sup> Street  
New York, NY 10001

June 14, 2011

Via Facsimile and Email

Ms. Shaen Worthen Werth  
Secretary & Clerk  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463  
Fax (202) 208-3333

Re: Comments on Draft Advisory Opinions 2011-9 (Facebook)

Dear Ms. Werth:

CMPLY, INC., files these comments today with regard to the two Draft Advisory Opinions 2011-9 A and B, which have been issued in response to a request for an advisory opinion by Facebook (AOR 2011-9). The draft opinions are on the agenda for the June 15, 2011 Commission's meeting.

In its request for an Advisory Opinion, Facebook "seeks confirmation that its small, character-limited ads qualify for the 'small items' and 'impracticable' exceptions, and do not require a disclaimer under the Federal Election Campaign Act (the "Act") or Commission regulations."

The Office of the General Counsel has presented the Commission two draft advisory opinions, each of which arrived to a different conclusion regarding Facebook's request for an exception to the disclaimer rules.

Draft A concludes that neither the "small items" or "impracticable" exception applies to Facebook's ads, but provides that the "disclaimer requirement is satisfied if a Facebook ad links to a website or a Facebook page containing a full disclaimer that is clear and conspicuous as required by 11 C.F.R. 110.11, and both the disclaimer and the Facebook ad are paid for by and authorized by the same person or persons." Draft A at 1. In Draft B, however, the Office of the General Counsel provides that "requiring any disclaimer to be appended to these Facebook ads would be impracticable pursuant to 11 C.F.R. 110.11(f)(1)(ii) and, thus, no disclaimer is required." Draft B at 1.

CMPLY urges the Commission not to foreclose on the use of a disclaimer in the body of Facebook Sponsored Ads, Sponsored Stories, or other short-form platforms merely because of the brevity of the text. Granting the exemption from the disclaimer requirements would have a far-reaching and long-term impact on the development and use of new and innovative platforms. Social networks have proven to be an effective method to disseminate information and news, but they are a relatively new form of communication and the tools, specifications and uses of the platforms are changing rapidly. There is great potential for harm if the transparency of the disclaimers required in 11 C.F.R. §110.11 are not applied to Facebook and its ads and promoted content.

We strongly oppose the adoption of Draft B, given that simple disclosure solutions exist specifically for short-form disclosure notices, are not "impracticable" and, in fact, are in regular use for similar regulatory disclosures within character-limited social media platforms. Regulatory requirements have been addressed in similar contexts for marketing, financial and pharmaceutical, without those regulators exempting disclosures in social media channels.

Furthermore, these existing technologies can provide significant improvements to the modified disclosures that are referenced in Draft A. Disclosures are vital to provide context and reference to political marketing messages that are disseminated to inform and influence voters, and provide valuable insights with reference to the origin and source of a given message. Within social channels, communications are intentionally and seamlessly integrated into conversation requiring higher, not lower, standards for transparent marketing.

Given the rapid adoption of social platforms in news and political discourse, as well as the increasing trend toward communication platforms with character constraints and reliance on advertising revenue models, we believe that it is vital that the Commission issue clear guidance with respect to whether the disclaimer specifications at 11 C.F.R. § 110.11 are appropriate in the context of character-limited internet communications and, if so, to establish specifications for such disclaimers.

## Why This is Significant

The unprecedented growth of social media channels as communication tools has fundamentally changed the media landscape. Social networks have enabled users to connect and share information and are new sources of news, influence and advertising that leverage the power of "Word of Mouth Marketing" in ways that could not have been imagined just a few years ago.

Advertisers have responded and embraced social marketing channels to connect directly with consumers in novel ways and advertisers have increasingly adopted advertising platforms designed to be less intrusive than traditional ad units and are more deeply integrated into social networks and conversations.

The ability to connect directly with consumers has forced regulators, including the Federal Trade Commission (the "FTC"), the Food and Drug Administration (the "FDA"), the Securities Exchange Commission (the "SEC") and the Financial Industry Regulatory Authority ("FINRA") to revisit their marketing and disclosure requirements to effectively respond to the communication within social media networks.

Significantly, while these regulators have struggled with the challenges of disclosure and transparent marketing in emerging social media channels, none of them has exempted their constituents from required statements, regardless of social media platform space-constraints.

- The FTC has actively addressed the need for disclosure and transparent marketing practices within social media platforms. In October 2009, the FTC updated its "Guides for Endorsements and Testimonials" to extend and apply to social and digital channels. The Guidelines specifically require clear and conspicuous disclosures in blog posts, Tweets and Facebook Status Updates.
- The FDA issued a number of warning letters in March 2009 to marketers of pharmaceuticals within social media channels. Furthermore, the FDA held hearings in November 2009 to discuss the use of social media channels for medical products. Currently, the FDA is seeking comments on the issue.
- The SEC has recognized corporate blogs and potentially other forms of social media as a form of meeting public disclosure requirements under Regulation FD (Fair Disclosure) – in some cases.
- FINRA issued Guidance 10-06 in January 2010 to address the use of social media channels to market financial service products.

## Emerging Platforms are Increasingly Influential in Politics

Social networking has fundamentally changed the manner in which people communicate. Innovations in social networking focus on real-time, mobile and interactive communication, much of which is in short-form. The rapid and widespread adoption of social media is unprecedented in American history. The impact social networking on the upcoming elections in 2012, and on all future election cycles, cannot be anticipated.

Consider the following growth figures for just Twitter and Facebook:

Twitter	Facebook
Nov 2004 - Did not exist	Nov 2004 - Fewer than 1 MM users
Nov 2008 - approx. 4 MM users	Nov 2008 - approx. 120 MM users
May 2011 - approx. 300 MM users	May 2011 - approx. 700 MM users

In recent months, we have seen social media platforms play a significant role in political uprisings in the Middle East, in particular in Egypt and Libya. Its role in politics has also been evident here in the US, as candidates from both parties have in recent weeks announced their candidacies for President on social networks: Newt Gingrich on Twitter and Barack Obama on Twitter and Facebook. In addition, breaking news stories are originating and spreading on social platforms, for example the first reports of the attack against Osama Bin Laden were picked up on Twitter's platform. With the current trends, it is clear that social media will play a prominent role in 2012 elections and beyond.

While social media ads present challenges to candidates and other regulated entities, they are different than buttons and bumper stickers. Sponsored Stories on Facebook allows organizations and individuals to promote a statement or an action (such as pushing the like button) to friends and followers. In exchange for paying Facebook, the sponsor's messages are persistently in a high position of the news feed.

Facebook argues that due to the amount of the text it allows in Sponsored Stories and Standard Ads that its users should not be required to include disclaimers. However, the disclaimers allow consumers to have a complete understanding of the context of an ad regardless of how they encounter it. Exempting short form text advertisements from the disclaimer rules may result in consumers not being aware of the source of the advertisements, or the method in which they are being promoted. Standard Ads have 160 characters included in the body of the message, and clear disclosure methods have been developed for, and proven in, environments of 140 characters or less. According to a May 2011 report by ComScore, Facebook accounted for approximately 31.2% of overall US ad impressions (346.4 billion impressions) in the first quarter of 2011, an increase from up from 25.9% in the fourth quarter of 2010 and 15.6% in Q1 2010. Facebook has been projected to exceed 1 trillion impressions served in the year.

Today, Standard Ads make up the majority of ads on the Facebook platform, but Facebook continues to innovate to incorporate advertising and sponsorship of messaging into the fabric of the user experience. While marketers have found Standard Ads on the platform to be incredibly effective, the types of advertising that are available on Facebook are constantly evolving.

The Facebook "Like" button has been incorporated into the Facebook experience and across third-party sites as a means to further engage and leverage the power of social networks to influence increasingly large groups within social groups.

Sponsored Stories only recently launched as an option for advertisers, carrying premium pricing, exclusive access and premium features. The Sponsored Stories platform allows an organization to promote a statement (a selected status update) or an action (such as pushing the like button) to the friends and followers of a particular user account and, with such paid placement, enables the message to be persistent in a top position in the news feed with minimal, if any, disclosure. Promoted or sponsored tweets similarly allow an organization to promote messages within a user's network in a prominent position.

Throughout all of these advertising channels, including traditional ads, advertiser disclosures are key to a complete understanding of context and are vital to maintain open and transparent communications. With an exemption from disclosure rules in these formats, we run a significant risk of confusion and/or obfuscation of the source of content within social media and a strong likelihood that important material connections between the promoters of such content and its original source being hidden from public view.

There is no doubt we will continue to see these forms of advertising develop further as the platforms mature. Disclosures and disclaimers will be even more important as these messages become shorter in length and more seamlessly integrated into social conversations.

#### Technological Feasibility

Disclosure is possible in short-form without complexity or inconvenience to the advertiser or the consumer. Bloggers and Twitter influencers have been adopting ad hoc methods such as "hashtags" to simply disclose FTC material connections in short-form. While "hashtags" would not provide a "paid for by" disclosure statement, there are alternatives that can make a clear statement in 140 characters or less.

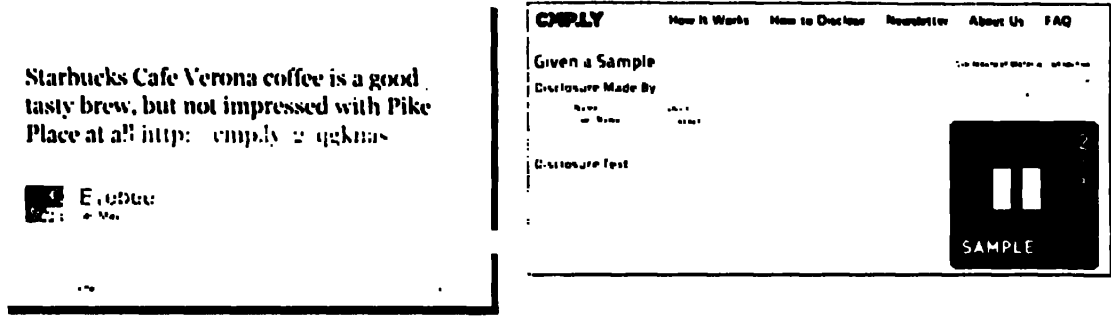
We at CMPLY, Inc. introduced a more structured, standardized solution not long after the issuance of the updated FTC guides and, more recently, we announced the development of solutions addressing disclosure requirements for regulated industries including financial services (under SEC and FINRA) and healthcare/pharma (under FDA). We have devised a standardized and simple solution, which provides for detailed and documented disclosures even in the space constrained environments of Twitter, Facebook, Foursquare, SMS Text and other social media platforms, and is an emerging standard for the disclosure of any required information or fine print related to content.

While the issue of disclosure in short-form seems at first to be a complex problem to solve, with the proper framework in place such statements are easily included in the body of content and can provide for tracking and reporting to ensure compliance. In addition, our solution employs a linking structure that enables a clear and prominent disclosure to be documented and displayed to the user whenever the CMP.LY disclosure link is clicked.

Our solution relies on a principle of Iconic Compliance and a standardized coding framework that enables influencers to include a concise short-form disclosure that is readable on its face in the body of their content. Within character-limited platforms and ads, a simple coded URL provides a universally identifiable solution as an indication that a relationship or required disclosure of a certain type exists. It also provides clear, documented and trackable methods

for including disclosures clearly and conspicuously, making sure to clearly highlight full text of disclosures - even in environments of 140 characters or fewer.

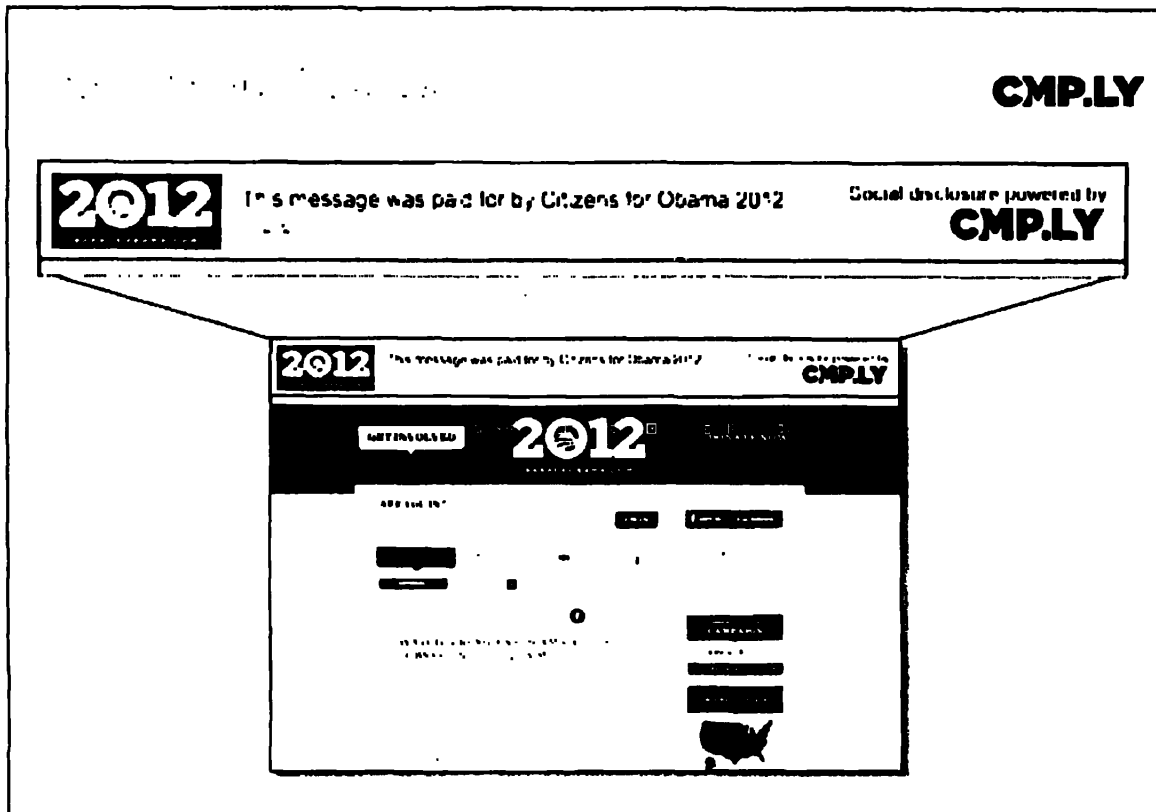
This codified link can be displayed clearly and prominently with the content that is the subject of the post and in relatively few characters (10-15% of overall message content in the 140 or 160 character platforms) while providing clear and conspicuous disclosure.



Aside from shortening the length of a given link to content, CMP.LY codes carry specific meanings. Unlike standard URL shorteners, which are generic in nature and may refer to any form of content, CMP.LY URLs always refer a user to content that includes some form of legal disclaimer or disclosure. Furthermore, CMP.LY codes indicate to a user, before clicking the link, that disclosure or legal language applies, in addition to the type of disclosure that is referenced, by a standardized framework of designated numbers and letters.

			<b>CMP.LY</b>
<b>Coded URL</b> (Twitter, Facebook, etc.)		<b>Visual Icon Badge</b> (blogs, other websites)	
<b>cmp.ly/2/uNiQuE</b>			
Indicates compliance disclosure	Indicates disclosure type	Unique code to track & monitor	
<b>cmp.ly/F/abc123</b>			

Significant to the requirements under 11 C.F.R. § 110.11, we have added the ability to frame a given page of content and ensure that the disclosure is prominently displayed on-screen whenever the user follows a CMP.LY link to a designated page of content. Those reading the communication can then click through the link to view a page that includes a full disclosure along with the full content from any source (including Facebook pages, web sites, blogs, social media profiles or pages which might be owned, operated or controlled by the person paying for the Facebook ad, or by any 3rd party).



**Note: Example for documentation purposes only**

To describe this more explicitly, a user who clicked on a given sponsored political message, campaign ad or "Sponsored Story" would be delivered to the candidate's web site (or other designated destination) with FEC specified "paid for by" disclaimer language featured clearly and prominently along with context of the referral. The user still has unfettered access to the designated content and can close out the display of the disclosure content, after it has been served and viewed. This is a significant improvement over the modified disclaimer which has been discussed in Draft A and ensures that, without additional complexity, the full text of a disclosure can be included when promoting messages in short-form content.

The only alternative solution that we are aware of for FTC disclosures is the ad hoc use of "hashtags" to disclose material connections. "Hashtags" are commonly used in social media channels (in particular in Twitter) where individual messages can be filtered in search based upon the inclusion of a hash mark (#) immediately followed by a word used for further qualification or classification. For example, in general terms a "hashtag" such as #FEC could be used to identify messages of relevance to the Federal Election Commission, enabling users to follow conversations or monitor communications on a particular topic. In the FTC disclosure context specifically, #AD (for advertising content), #SPON (for sponsored content) and #ENDORSE (for endorsements) have been used to make simple disclosure statements in short form. These would likely not be sufficient for FEC disclosures and note that these are nowhere near as comprehensive, documented or trackable as the system that CMP.LY has developed.

While there are currently no other commercial solutions providing short-form compliance tools for advertisers, it is likely that other solutions will develop and a standard will emerge from the free market to address the numerous regulatory disclosure requirements that exist today, as well as those that are defined in the future. The combination of innovation and structure that is required exists today and will continue to evolve as the needs of the marketplace grow.



There are many other similar situations where complex concepts have been simplified to visual and readable shorthand codes. Examples include the movie ratings system, the video game ratings system, road signs and highway safety placards.



Using the highway safety placard example, when you see a red flammable sign displayed on the back of a truck it is immediately clear what the context is. The casual user understands that there is a hazard and to keep clear. A safety official can readily identify a vehicle's safety class upon visual verification of the required placard. Further, a fireman can read the specific numbered code on the badge and understand the detailed information about the specific contents and requirements for the treatment of a hazardous condition.

In each situation, a concise visual statement is immediately recognizable and provides enough information for the casual user to act upon without reliance on language, reading skill or additional training. In addition, with the same immediacy, the exact same visual cue can be used to make much more complex assessments from the additional codes on the placard. With standardization of these placards, trucks can travel the highways across all 50 states, and even internationally, with a universal understanding of their meaning.

#### **Conclusion**

We strongly urge the Commission to consider the significance of this decision before exempting an emerging communication category from disclosure requirements. Openness and transparency are of even greater importance when sponsored content is integrated with social channels and the means to disclose clearly and prominently are simple to use and not "impracticable" for use by individuals or organizations of all sizes.

As we have outlined, granting the exemption from the disclaimer requirements would have a far-reaching and long-term impact on the development and use of new and innovative platforms. Social networks have proven to be an effective method to disseminate information and news, but they are a relatively new form of communication and the tools, specifications and uses of the platforms are changing rapidly. With the increasing level of integration of innovative ad units within social content, the need for disclosures is greater. There is significant potential for harm if the transparency of the disclaimers required in 11 C.F.R. §110.11 are not applied to Facebook and its ads and promoted content.

We strongly oppose the adoption of Draft B, given that simple disclosure solutions exist specifically for short-form disclosure notices, are not "impracticable" and, in fact, are in regular use for similar regulatory disclosures within character-limited social media platforms. Disclosures are vital to provide context and reference to political marketing messages that are disseminated to inform and influence voters, and provide valuable insights with reference to the origin and source of a given message. Regulatory requirements have been addressed in similar contexts for marketing, financial and pharmaceutical, without those regulators exempting disclosures in social media channels.

We support the continuation in Draft A that "neither the 'small items' nor the 'impracticable' exemption applies in Facebook's ads..." Draft A at 1. However, we urge the Commission to review existing technologies and applications

developed for other regulatory requirements to ensure that the appropriate disclosures are included in sponsored political content and advertising within social media platforms moving forward.

Given the rapid adoption of social platforms in news and political discourse, as well as the increasing trend toward communication platforms with significant character constraints and reliance on advertising revenue models, we believe that it is vital that the Commission issue clear guidance with respect to whether the disclaimer specifications at 11 C.F.R. § 110.11 are appropriate in the context of character-limited Internet communications and, if so, to establish specifications for such disclaimers.

We appreciate the opportunity to provide these comments to you and we would be happy to answer any questions that you might have.

Sincerely,

*/s/ Tom Chernak*

Tom Chernak  
CMPLY, Inc.

Copy to: Christopher Hughley, Acting General Counsel  
Each Commissioner