

FTC Provides Further Guidance to Advertisers Using Social Media

Client Alert

August 10, 2010

The undeniable benefits of word of mouth and viral marketing via blogs, Twitter, Facebook and other social media platforms have radically changed the marketing landscape. In an effort to stay current with the way in which consumers obtain product information in today's marketing world, the Federal Trade Commission has, for the first time since 1980, issued Revised Guides Concerning the Use of Endorsements and Testimonials in Advertising. The Guides – issued under the Federal Trade Commission Act which prohibits “unfair methods of competition and unfair or deceptive acts in or affecting commerce” – were detailed in a previous Michael Best [client alert](#). The FTC recently posted a [Factsheet](#) answering frequently asked questions regarding the Guides. The Factsheet addresses several topics, including when the Guides apply to endorsements, how and when disclosures should be made and whether the Guides apply to affiliate and network marketing. The [text of the Guides](#) also provides a number of examples illustrating the principles considered by the FTC in evaluating endorsements and testimonials.

The FTC's goal in issuing the revised Guides is to ensure truth in advertising in all media, including blogs and social networking sites; the Factsheet specifically notes that “the most important principle is that an endorsement has to represent the accurate experience and opinion of the endorser.” In order to accomplish this objective, the Guides clarify the FTC's longstanding requirement that any “material connection” between advertisers and endorsers – such as cash payments or free products – be fully disclosed. Blog posts touting products or services are considered endorsements under the Guides requiring bloggers to disclose completely any cash, products or other benefits received in exchange for their reviews.

The Factsheet also addresses social media platforms like Facebook and Twitter by noting that all consumers should receive information sufficient to evaluate fully sponsored statements regardless of the advertising medium utilized. Adequate disclosure on social media platforms may be complicated by the sites' functionality. For instance, on Twitter, where messages are limited to only 140 characters, some creative disclosures – such as the hashtag “#paid ad” – may be required. As another example of frequently asked questions, the Factsheet notes that even when a Facebook page identifies a blogger's employer, an additional disclosure should be made when discussing the company's products. In the words of the FTC, “[a] single disclosure does not really do it because people visiting your site might read individual reviews or watch individual videos without seeing the disclosure [elsewhere].”

The Guides and the Factsheet indicate that companies utilizing user generated content as part of their marketing campaigns have an affirmative obligation to monitor what is being said about them on the Web as well as to investigate questionable practices. While the FTC does not elaborate on what it considers “questionable practices,” it does acknowledge that it would be unrealistic to monitor every statement made by members of every social media network; however, it is clear that a significant effort to keep apprised of public statements must be made.

The Guides are not without bite. For example, the FTC recently announced an investigation conducted pursuant to the Guides. In January, clothing retailer Ann Taylor LOFT invited bloggers to preview its summer collection. To encourage participation, the marketing campaign stated that “bloggers who attend will receive a special gift, and those who post coverage from the event will be entered in a mystery gift card drawing where you can win up to \$500 at LOFT!” The FTC investigated potential violations of the FTC Act citing concerns that the bloggers failed to disclose gifts received in exchange for posting blog content about the event. The FTC ultimately decided not to bring an enforcement action against Ann Taylor LOFT

because, in part, the company agreed to adopt a written policy regarding disclosure of all material connections with bloggers. In addition to the attendant public relations fallout, the primary penalties arising from a FTC enforcement action are a cease and desist order and, if that order is violated, civil penalties of up to \$16,000 per violation.
