

To: Our Clients and Friends

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FTC Suit Signals Increased Scrutiny of Advertising Endorsements

On May 26, 2011, the Federal Trade Commission (FTC) brought suit against a company that sold a promissory note business system based upon the allegation that the company used consumer testimonials that could not be substantively substantiated, and that the company did not adequately disclose the typical performance that consumers were likely to achieve as a result of purchasing the business system. This marks the thirteenth case this year in which the Commission has alleged that a company has deceptively used testimonials and endorsements in advertising. The National Advertising Division of the Council for the Better Business Bureau has adjudicated several similar cases this year as well.

Although the FTC's enforcement action continues the Commission's trend to vigorously pursue cases against advertisers who misuse testimonials and endorsements, it also marks the first time that the FTC has proceeded against an individual consumer for providing a false endorsement. In this case, the FTC named as a defendant a consumer after using the promissory note system exaggerated the amount of money she was able to earn.

In 2009, the FTC released new guidelines on the use of endorsements and testimonials in advertising. For consumer testimonials, advertisers should ensure the consumer's statements are substantiated. In addition, advertisers that use consumer testimonials which quantify results should have evidence that the consumer's results are typical of everyone who uses the product or affirmatively disclose the product's typical performance. Generic disclosures such as "Results may vary" do not guarantee protection against FTC action for consumer testimonials that portray exceptional results.

The new guidelines also make clear that online bloggers are subject to the advertisement endorsement guides. In some situations, advertisers may be liable for a blogger's misleading or unsubstantiated statements, or for the blogger's failure to disclose a material connection to the advertiser. To guard against these dangers, advertisers can:

- Verify endorsements or testimonials are honest and non-misleading;
- Require endorsers to clearly describe other factors contributing to atypical results;
- Monitor posts by paid bloggers to ensure compliance with FTC endorsement rules; and
- Disclose connections to statements that may affect an endorsement's credibility.

If you would like further information on how to comply with FTC regulations on endorsements and testimonials in advertisements, feel free to contact [Josh James](#) or [David Zetoon](#) in Washington, D.C. at 202-508-6000; [Rebecca Nelson](#) in St. Louis at 314-259-2000; or [Andrew Klungness](#) in Santa Monica at 310-576-2100.

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