



FTC Getting Serious About Full Disclosure in Endorsements

October 20, 2010

The Federal Trade Commission is taking steps to show that it is quite serious about enforcing the so-called blogger disclosure rules that it issued last year.

The rules say, essentially, that when someone endorses or reviews a product or service, the person must disclose any relationship with the company that produces the product. So if a blogger gets a free item from a manufacturer, the blogger has to say so in his or her review. The idea is that consumers would want to know if the objectivity of a review is tainted in any way.

This type of problem occurs frequently in affiliate marketing, since the affiliates of a manufacturer can discuss the manufacturer's products in their blogs. This would be a relationship that would have to be disclosed.

But the rule isn't limited to bloggers or affiliates. The commission just served notice that public relations and marketing firms are squarely in its focus. What if a PR firm's employees are endorsing their clients' products without disclosing that they are, essentially, being paid to do so?

That issue just came before the FTC. Tracie Snitker, the founder and sole officer of Reverb Communications, a small PR firm in the Sacramento area, signed a consent order that became final in late September. She agreed to remove any reviews on iTunes that discussed apps produced by Reverb's game developer clients that were actually written by Reverb employees who posed as ordinary customers and failed to disclose the relationship.



In addition, Snitker agreed not to post any further reviews on iTunes that fail to make that kind of disclosure – in effect, she and her employees are not allowed to pose as independent consumers.

Mary Engle, the director of the FTC’s Division of Advertising Practices, said at the time that the basic principle is clear: “Companies, including public relations firms involved in online marketing, need to abide by long-held principles of truth in advertising.”

The agreement that Snitker signed is legally binding. It follows a less stringent action that the FTC took in April against Ann Taylor Stores, which gave up to \$500 in gift cards to bloggers who attended a preview of its summer 2010 design collection. Not all the bloggers disclosed this financial connection.

In the Ann Taylor case, the agency simply closed the matter with a nonbinding “closing letter,” in which it stated that it expected Ann Taylor to “take reasonable steps to monitor bloggers’ compliance with the obligation to disclose gifts they receive.”

Affiliate marketers need to be aware of these two government actions of increasing severity. Endorsements are fine; you can say what you want, but you had better disclose your financial ties, whether you are an affiliate, a paid endorser, a PR firm employee, or simply the recipient of a free gift card.

Crime in the Suites is authored by the [Ifrac Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

The commentary and cases included in this blog are contributed by Jeff Ifrac and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrac and Jonathan Groner, the former managing editor of the Legal Times. We look forward to hearing your thoughts and comments!