

Retail Team

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To: Our Clients and Friends

## FTC Cracking Down on Affiliate Advertisers

### Affiliate Advertisers Sued by the FTC

Last month the Federal Trade Commission ("FTC") filed 10 lawsuits against companies and individuals that run affiliate advertising websites. These lawsuits come within two months of an earlier round of lawsuits targeting affiliate advertising programs. The most recent targets are fake news websites that promote acai berry weight loss products. The affiliate advertisers maintain websites linked to prominent sites, such as [cnn.com](http://cnn.com) and [weather.com](http://weather.com), and earn commissions by steering consumers to a retailer's website. The FTC's lawsuits allege that the affiliate websites mislead consumers by failing to disclose their financial connection with the sellers of the products featured in the "reports."

### What Kind of Disclosures are Required by the FTC?

The FTC requires affiliate advertisers to "clearly and conspicuously" disclose their connection to the sellers of the products they promote. Failure to disclose the affiliate's relationship to the seller, or inadequate disclosure, may violate the FTC Act and subject the Affiliate advertiser and retailer to liability. Disclosures should be "clear and conspicuous," located where the ordinary consumer can see them, not hidden at the bottom of a page. They should be easily readable, not printed in small, hard-to-read text and should be written in plain language without unnecessarily complex language.

### Monitoring Affiliates

Retailers using affiliate advertising programs should have a monitoring system in place to keep track of affiliate operations. Best practices for monitoring programs include:

- Monthly reviews of the top sales-generating affiliates
- Monthly reviews of a random sample of affiliates
- Secrecy in the review process to keep affiliates from "preparing" for the review

Monthly reviews should consider the following:

- Is there a correct, conspicuous disclosure of the relationship between the companies?
- Is the content of the affiliate website accurate and not misleading?
- Is the price information contained in the affiliate website current and correct?
- Are the product claims made by the affiliate approved by the seller?

### Contact Information

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