

## **New FTC Guidelines May Hold Companies Liable for Unsolicited Employee Endorsements**

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You work for Company ABC and one of your best employees, Jane, maintains a blog which covers a wide variety of topics, from Jane's recipe for her grandmother's brownies to pictures of her dog, Tucker. Included within Jane's blog posting is the following statement: "I've suffered from eczema for years, but have finally found a cure – the new lotion from ABC! I couldn't believe how fast my eczema disappeared after using ABC's lotion! Try it, you'll be amazed!"

Company ABC, however, has no reliable evidence that its lotion cures eczema, which is why the claim is not made in ABC's advertising. In fact, ABC never even knew Jane had a blog, was using the ABC lotion, or making claims about ABC's lotion. Yet, under the new FTC guidelines on endorsements and testimonials, ABC could be liable for the unsubstantiated performance claim made by Jane regarding ABC's lotion. And, in light of the FTC's broad definition of "endorsement," ABC's liability could extend to Jane's statements on her Facebook page or Twitter account.

Now, let's assume that Jane's endorsement is substantiated and ABC does have reliable and competent evidence that its lotion cures eczema. Jane's blog is still a problem under the new FTC guidelines because Jane does not disclose on her blog that she is an employee of ABC, the company whose product she is endorsing. Under the new guidelines, any endorser who has a "material connection" with the product manufacturer must clearly and conspicuously disclose that fact. This "material connection" includes an employment relationship, even if the employee is not paid by the company to write the blog or endorse its products.

How do you protect your company from liability for this type of unsolicited endorsement? The issue is best managed through the company's social media policy, which should: (a) prohibit employees from making false or misleading claims about the company's products or services and, if employees do make claims in any social media, the employees must clearly and conspicuously disclose the employment relationship; or, (b) ban employees from making any comments regarding the company's products or services in any social media. Once your company has chosen which policy path it will take, it should then ensure that appropriate and effective education, compliance and enforcement procedures are in place. If you need help establishing a social media policy for your company, give a member of our Labor and Employment Group a call.