

FTC Consumer Protection Alert: FTC Closes Blogger Marketing Investigation

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By [Cynthia J. Larose](#)

In a [previous Client Alert](#), we noted that the Federal Trade Commission (FTC)'s new [Guides Concerning the Use of Endorsements and Testimonials in Advertising](#) contain numerous provisions that apply to messages in social media, such as blogs, word-of-mouth marketing, and other promotions in which companies encourage consumers to speak on their behalf. Among other things, the Guides require bloggers to disclose if they have received a gift from, or have any other material connection to, a company whose products they write about. Although the companies themselves may be liable if bloggers fail to make the required disclosures, the FTC has suggested that the Commission would not hold a company liable if the company instructs bloggers about their requirements and takes steps to ensure the bloggers comply.

Just a few days ago, the FTC [announced](#) that it was closing an investigation into whether Ann Taylor Stores violated Section 5 of the FTC Act in connection with a promotion in which the company provided gifts to bloggers who the company expected would blog about the company's LOFT division. According to [the FTC's letter](#), some of the bloggers failed to disclose that they had received free gifts from LOFT, as required by law. After conducting an investigation, the FTC ultimately determined not to recommend enforcement action because, in part, "LOFT adopted a written policy... stating that LOFT will not issue any gift to any blogger without first telling the blogger that the blogger must disclose the gift in his or her blog." The FTC also noted that they expect the company to "monitor bloggers' compliance with the obligation to disclose gifts they receive from LOFT."

The FTC's investigation holds a number of important lessons for marketers. First, it is clear that the FTC is paying attention to whether bloggers and companies comply with the new Guides. Second, companies would be well-advised to establish written policies designed to ensure that their employees, bloggers, and other agents comply with the Guides. And, third, companies should closely monitor bloggers and take actions against those who do not comply with their policies. If companies fail to take these steps, they are more likely to be held liable for the actions of bloggers.

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If you need assistance with policies relating to marketing activities that utilize social media, or have questions relating to marketing or advertising activities, please contact one of the attorneys listed on this Client Alert, or your Mintz Levin attorney.

For assistance in this area please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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