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Broad New FTC Guidelines for Endorsements and Testimonials Create Risks for Manufacturers, Advertisers, Bloggers and Others



Barry J. Bendes
Partner



Timothy D. Watson
Associate

New revised Federal Trade Commission (FTC) guidelines for advertisements containing endorsements or testimonials focus attention on “new media” as an advertising venue. The guidelines require transparency and disclosure of any material relationship between the manufacturer and the endorser or poster. Postings on a wiki, blog, social network, chat room or other internet site may be considered endorsement/testimonial advertising regardless of who makes the posting. The guidelines make clear that the same rules apply to “new media” as well as to TV, radio and print ads.

Any connection between an endorser and advertiser that “might materially affect the weight or credibility” of a statement must be fully disclosed. “Connections” are not just limited to cash payments or free goods. Employees of the manufacturer, advertising agency or others having a relationship with the manufacturer, who make statements about a product or service in a blog, tweet, chat room, LISTSERV or other online community, or reply to others who make statements, must clearly and conspicuously disclose their employment or other relationship. A consumer reviewing a product favorably on a blog who received the product or any other goods or services free or at a reduced cost from the manufacturer must disclose that fact.

Failure to disclose these types of connections or facts may result in liability for both the poster and the manufacturer. If a blogger or other poster misrepresents the product’s effectiveness or makes unsubstantiated claims, both the manufacturer

- Portray an accurate representation of a consumer’s expectations.
- “Results Not Typical” and similar disclaimers are no longer enough.
- Obtain, rely upon and retain adequate substantiation of an endorser’s claim, including “competent and reliable scientific evidence,” if appropriate.
- Clearly and conspicuously disclose the generally expected performance of the product.
- Disclose any “material connections” between an endorser and the advertiser, manufacturer or distributor.

of the product and the endorser/blogger/poster may be liable for such claims, even if no formal endorsement was intended.

What to do now:

- Review and – if necessary – revise print, radio, television and “new media” ads that contain testimonials or endorsements.
- Consider regularly searching or monitoring blogs, wikis, social networks (such as Facebook®, MySpace®, LinkedIN®, Twitter, etc.), virtual worlds and social media, consumer and technical chat rooms, discussion groups and other websites for postings that might be considered endorsements or testimonials.
- Review how you use new media viral marketing venues.
- Adopt or revise your blogging, social networking and wiki policies.
- Train your employees about policies on internet postings and the new FTC guidelines.

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Barry J. Bendes, Partner
Timothy D. Watson, Associate

212.912.2911
401.455.7605

bbendes@eapdlaw.com
twatson@eapdlaw.com

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