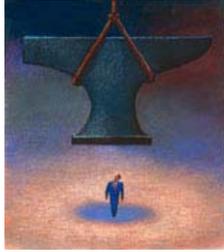


[Send a letter to the editor](#)[Print this page](#)[Email this article](#)

Am I liable for a blogger's review of my products?

Why should companies care about claims being made about their products in social media? According to advertising law expert Andrew Lustigman, companies should care because there is potential liability surrounding those claims.



Lustigman, speaking at "Copyright, Trademark and Advertising in New Media," during the 25th Annual Intellectual Property Law Conference of the [Section of Intellectual Property Law](#), explained that [guideline changes from the Federal Trade Commission](#) in December expand what constitutes a "material connection" between an advertiser and endorser.

Companies that pay or provide free product to people who write about their products online, must disclose the material connection between the two parties to consumers, if there is a direct or indirect relationship. Moreover, companies with a material connection to someone who posts his opinions on their products are liable for what that person posts, under section 5 of the Federal Trade Commission Act—even when the post in question is a product review or an opinion on a message board.

The change addresses companies' increasingly common practice of encouraging third-party reviews of their products to stoke word-of-mouth buzz. While the FTC guideline was obviously adopted to protect consumers, Lustigman expressed concern that the online community is being singled out by the FTC.

"If an online blogger makes a statement and there's some situation where that person gets some product for free, the person is an endorser. But in traditional media, even though a reviewer may get expensive equipment to write about and keep, there's no obligation to disclose that material connection," explained Lustigman.

In addition to disclosing a material connection, companies must also make sure that people making the endorsements are legitimate users of the product they are reviewing and that claims made about product are reasonably substantiated. "You can't say something indirectly [through a testimonial] that you couldn't say yourself directly," said Lustigman.

"It's very important that you put into place procedures in which you are monitoring what is being said by others about your company and your company's products," urged Lustigman. Companies that locate material that fits the FTC definition of a testimonial should take corrective action, which may include training online posters on the rules.

In addition to the FTC rules on testimonials, the session featured other online intellectual property concerns, including trademark infringement on social media websites.

Besides Lustigman, the panel featured Matthew Asbell of Ladas and Parry, LLP, Matt Robinson of Attributor, Inc., Mike O'Donnell of iCopyright and Maria Pallente of the U.S. Copyright Office.

[Back to top](#)

[Back to home](#)

YourABA is a monthly publication e-mailed to all ABA members who have provided an e-mail address.

If you are already a member and want to sign up for *YourABA*, click [here](#).

If you would like information on joining the ABA, click [here](#).

Your e-mail address will only be used within the ABA and its entities. We do not sell or rent e-mail addresses to anyone outside the ABA.

[Update your profile](#) | [Unsubscribe](#) | [Privacy Policy](#)

American Bar Association | 321 N Clark | Chicago, IL 60654-7598
1-800-285-2221

© 2010 American Bar Association

EYE ON ETHICS

[Going, Going, Gone! Or may a lawyer provide legal services as an item in a charitable auction?](#)

TECHNOLOGY TRANSLATORS

[Web profiles: Define yourself online](#)

FIRST FOCUS

[Becoming partner: How to get there, tips ensuring success](#)

AROUND THE ABA

[10 ways to raise your practice to a new level](#)

[Am I liable for a blogger's review of my products?](#)

[Tough clients: Solutions for dealing with them](#)

[Justice Scalia, Garner provide tips on making persuasive arguments](#)

[Young lawyers—boost networking skills, build business](#)

[Advising on bankruptcy? What the US Supreme Court says](#)

[Drawbacks of clawbacks](#)

[Lobbying? Awareness of rules, transparency important](#)

[ABA Day in Washington highlights access to justice issues](#)

MEMBERSHIP

[Group membership can benefit your organization—Tell your office administrator today!](#)

MEMBER ADVANTAGE

[KitchenAid® portables discounts added to Member Advantage](#)