

ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

NAD CONSIDERS 'LIKE-GATED' CAMPAIGN FOR THE FIRST TIME

Many companies rely on social media to promote their brands and products. Toward that end, these companies often use a variety of offers, including rebates and coupons, to solicit Facebook "likes."

One of the newer kinds of promotions using Facebook is known as the "like-gated" promotion. This social media advertising tool, which is a component in a growing number of companies' advertising campaigns, requires that consumers "like" a company's Facebook page to gain access to a benefit, such as a deal, a coupon code, early access to merchandise, or other savings. Once a person "likes" a company's Facebook page, he or she is considered a "fan" of the company. Content that a person "likes" appears on that person's Facebook Wall and Facebook Newsfeed, which can be seen by all of that person's "friends."

Recently, the Council of Better Business Bureaus' National Advertising Division (NAD) considered – for the first time – a challenge to a "like-gated" campaign, when 1-800 Contacts, Inc. (1-800 Contacts) challenged Coastal Contacts, Inc.'s (Coastal) "free" glasses promotion. The NAD's decision in this challenge provides important guidelines for companies considering "like-gated" promotions in the future.

THE CHALLENGE

At the time of the Complaint, Coastal's Facebook page stated: "Like This Page! ... So you too can get your free pair of glasses!" Although additional terms and conditions applied to the offer (e.g., additional fees for lens upgrades and shipping and handling, offer valid for only a specific time period and only until a specific number of frames were given away), this information was not available to consumers until after they entered the promotion by "liking" Coastal's page. After commencement of the proceeding, Coastal voluntarily modified its offer by including the fact that "*conditions apply" and by providing the additional terms and conditions at the bottom of its Facebook page.

According to 1-800 Contacts, Coastal had fraudulently induced consumers to "like" Coastal's Facebook page in order to obtain the "free" glasses, resulting in widespread social media marketing on false pretenses. The challenger also argued that these "fraudulently obtained endorsements" had perpetuated the

THE BOTTOM LINE

While "like-gated" promotions are currently a popular marketing tool, these promotions must be structured properly so that "likes" are not obtained by misleading offers. As such, the material terms and conditions of the offer should be disclosed prior to a consumer "liking" a company's page, and the consumer should actually receive the benefit offered. Keep in mind that just because a promotion runs on Facebook does not mean it is exempt from NAD scrutiny.

misleading suggestion that Coastal enjoyed broader support than it would have had in the absence of its misleading "free" promotion. For these reasons, 1-800 Contacts asserted that all fraudulently obtained "like" endorsements should be removed.

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DECISION

The NAD reviewed both the original and the modified promotional offers. With respect to the original promotional offer, the NAD determined that the offer failed to clearly and adequately disclose the material terms of the offer as these terms should have been provided to the consumer at the outset of the offer and not after the consumer entered the promotion by “liking” the page.

The NAD determined that the modified promotional offer also failed to clearly disclose the material terms of the offer. According to the NAD:

- >> the total number of “free” glasses that were to be given away should appear in the main claim, and not as part of the disclosure;
- >> the approximate cost of shipping and handling should appear immediately below or alongside the “free” offer; and
- >> Coastal should enhance the “conditions apply” notice and increase the font size of the disclosure.

With these modifications, the NAD was satisfied that the remaining terms of the offer would be noticed by the consumer and easy to understand.

In response to whether Coastal should be required to remove the “likes” that were the result of the “misleading like-gated” promotion, the NAD found that the overall message conveyed by a Facebook “like” or the total number of “likes” on Facebook is one “of general social endorsement.” The NAD then determined that, as long as actual consumers “liked” the Coastal page (and Coastal did not use misleading or artificial means to inflate the number of Facebook “likes”), and as long as those consumers who participated in the like-gated promotion received the benefits of the promotion (which they did), Coastal had received the general social endorsement that the “likes” conveyed. Therefore, Coastal was not required to remove any “likes” that were the result of its promotional offer.

With that in mind, the NAD cautioned that the outcome of this case would have been quite different if the consumers who participated in the like-gated promotion could not or did not receive the benefit of the offer, or the advertiser used misleading or artificial means to inflate the number of “likes” (e.g., paying a service to inflate the number of “likes” or requiring Coastal employees to “like” the page without a disclosure that they worked for Coastal).

FOR MORE INFORMATION

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