



Online Celebrity Endorsements in Canada, the US and the UK

January 12, 2011 by Bob Tarantino

In the UK, the Daily Mail is reporting that the Office of Fair Trading (OFT) will be monitoring celebrity tweets for undisclosed paid endorsements (hat tip: THR, Esq.):

Dozens of celebrities, including actress Liz Hurley and singer Lily Allen, face possible court action over claims that they are endorsing luxury items on their internet blogs and Tweets without declaring that they have been paid by the companies concerned.

Actors, pop stars and TV presenters who fail to mention that they have a financial interest in 'plugging' goods such as cars or perfumes online could be contacted by the Government's consumer watchdog in the coming weeks. ... [OFT] enforcement officers are examining possible breaches of the law by celebrities involved in secret deals with manufacturers of luxury goods.

The story appears to be referring to the UK's Consumer Protection from Unfair Trading Regulations 2008 (see also this Guidance published by the OFT), which make it an unfair trading practice for a celebrity to promote a product without disclosing that the promotion has been in some fashion compensated (which appears to include the provision of free goods).

The United States appears to be, by far, the market leader (so to speak) in regulating online celebrity endorsements, particularly with reference to social media. In 2009 the US Federal Trade Commission published its guidelines concerning celebrity endorsements and testimonials:

- FTC Publishes Final Guides Governing Endorsements, Testimonials
- detailed FAQs about the Endorsement Guides
- text of the Endorsement Guides

Suffice it to say that paid endorsements in the United States communicated via social media (such as Twitter or Facebook) are required by the FTC Endorsement Guides to make mention of the fact that the endorser is being compensated for their statement (no form of disclosure is mandated, but the FAQ suggests using the hash tag "#paid ad" for tweets).

Suffice it also to say that Canada's legislative and regulatory regimes do not address these matters in anywhere near the detail found in the FTC Guides.



While the **Competition Act (Canada)** prohibits making of a false or misleading representation in connection with the sale of a product, we're left to query whether not disclosing that you've been paid to endorse a product (or given free samples of a product in the expectation that you will promote its use) constitutes a "misrepresentation" (and a "material" one at that).

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