



Client Alert

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If you advertise through blogs, testimonials, or celebrity endorsements, the Federal Trade Commission's ("FTC") recent revisions to its official guidance (the first revisions since 1980) on that topic are a must read. The revised guidance makes it clear that both the advertiser and endorser may be held liable under the FTC Act for false or unsubstantiated claims or for failure to disclose material connections between the advertiser and endorser.

Consumers today greatly rely upon advertising that appears as journalism, like blogs, or as anecdotal endorsements or testimonials, including celebrity advertisements. Hence, businesses have a greater imperative to fully disclose any media that is, in reality, advertising, as well as any material connections between a business and bloggers or endorsers of its products and services.

A Summary Of Revisions To The Guides

The revised guidance asks businesses to disclose "material connections" between advertisers and endorsers, especially when such connections may not be expected by the consumer. So, if your favorite radio talk-show host raves about a new spinal decompression therapy that helps his back pain, but never discloses that he gets this therapy for free in exchange for "talking it up" on his show, both the therapy provider (advertiser) and the talk show host (endorser) could end up being in trouble with the FTC, along with being held liable under the FTC Act.

Similarly, when a blogger reviews a product or service in exchange for cash or in-kind payment, it is considered to be an endorsement. The FTC requires that the blogger disclose any relationship with the seller of the product or service, and payment received, in the blog post. With many consumers browsing online reviews of products and services before making a purchase, the FTC's revised guidance is aimed at blogs that may be perceived by consumers as a source of independent opinion on a particular product or service, but are, in reality, endorsements paid for by the seller of the product or service.

Also, a business may refer to research findings in its advertising, and this often occurs with health and nutrition products and services. If that business sponsored the research, it must disclose this material connection in the advertising. On a related note, businesses can no longer get away with featuring the experience of a consumer, for example of losing 50 pounds with a weight loss product, and disclaim that "results are not typical." The FTC now advises that businesses clearly disclose the results that consumers *can* generally expect.



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What This Means For You

As a practical matter, any business looking to reach consumers through blogs, viral videos, testimonials, or other unconventional forms of advertising should take steps to ensure that consumers understand that the media is really an advertisement and to ensure that the advertising clearly conveys the nature of the business's relationship with the advertising source.

Not if, but how

Arnall Golden Gregory, LLP has significant experience in the area of marketing and promotions, including evaluating advertisements and advertising-related disputes. Do not hesitate to contact us if we can be of help to you.

A copy of the FTC's revised Guides Concerning the Use of Endorsements and Testimonials in Advertising, with illustrations of applications of the revised guidance, is available [here](#).

Feel free to forward this Client Alert to others in your business network.

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