

NAD Reviews Social Media Endorsements

In a case of first impression, the National Advertising Division of the Council of Better Business Bureaus (NAD) – the advertising industry’s self-regulatory forum – considered social media promotions, social media endorsements, and what it means when a company advertises that Facebook users “like” it. Specifically, NAD evaluated (1) an advertiser’s offer for “free glasses” to people who “like” the advertiser’s product (which NAD termed a “like-gated” promotion), and (2) the advertiser’s statements about how many people “like” its products (which NAD said is an endorsement). NAD investigated the statements made by Coastal Contacts, Inc., after a competitor, 1-800 Contacts, filed a challenge with NAD.

Coastal Contacts offered the following promotion on its Facebook page: “Like This Page! So you too can get your free pair of glasses!” Coastal Contacts also made statements on its Facebook page and in press releases about how many people “like” its products. 1-800 Contacts challenged the promotion by arguing that Coastal Contacts should have disclosed the material terms and conditions in conjunction with the offer, such as consumers would be charged shipping and handling charges, not all styles of glasses were available as part of the promotion, and only a certain number of glasses would be given away as part of the promotion. 1-800 Contacts also challenged statements about how many people “liked” Coastal Contacts’ products, arguing that such statements were fraudulent endorsements because some consumers may have “liked” the products in order to qualify for the promotion.

Regarding the promotion for free glasses, NAD agreed with the challenger and said Coastal Contacts should have clearly disclosed the material terms and conditions in conjunction with the offer. Coastal modified its promotion while NAD was adjudicating this challenge to include a disclosure explaining the conditions of the offer. As to the modified offer, NAD concluded that certain conditions of the free offer (e.g., a limit on the total number of glasses to be given away) were

sufficiently significant that they should be included as part of the claim itself, or in close conjunction with the claim, and that it was not sufficient to include them in the disclosure.

With respect to statements about how many people “like” the advertiser’s product, NAD determined that those representations can mean many things to consumers – that consumers like the company, product or service; that consumers who “liked” the content did so in order to participate in a promotion (a “like-gated” promotion); or that individuals wanted to share some content on the company’s page with their “friends.” According to NAD, “the overall message conveyed by Facebook ‘like’ or the total number of ‘likes’ on Facebook is one of general social endorsement.”

Because NAD found that actual consumers had “liked” the Coastal Contacts page and there was no evidence that those consumers who participated in the like-gated “free glasses” promotion did not receive the benefit of the promotion, it concluded that Coastal Contacts did, in fact, have the general social endorsement that the “likes” conveyed. NAD cautioned, however, that, had the evidence in the record demonstrated that consumers who participated in the like-gated promotion could not or did not receive the benefit of the offer, or that the advertiser used misleading or artificial means to inflate the number of Facebook “likes,” the outcome of the case would not have been as favorable to the company.

NAD also reportedly questioned why the number of Facebook “fans” or “likes” Coastal Contacts represented it had in press releases to the investor community exceeded the number displayed on the company’s U.S. Facebook page. Coastal Contacts explained that the numbers aggregated the “likes” the company had received across all of its Facebook pages globally. NAD recommended that Coastal clarify that the

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numbers were based on the totals from all of its Facebook pages targeted to different countries, in order to avoid conveying the unsupported claim that the Coastal Contacts' U.S. Facebook page alone had obtained such a high number of "fans" and "likes."

This decision highlights the importance of complying with traditional advertising laws when engaging in social media promotions. Statements made on social media platforms about offers or promotions should clearly disclose the material terms and conditions of those offers. And statements about how many consumers "like" a product or service should be accurate and should be the result of actual consumers "liking" the product or service.

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