



Advanced Media and Technology Law

Advertising and Promotions Law



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FTC Answers New Questions About Endorsements and Disclosures

In light of the continued expansion of digital and social media, the FTC has released [updated guidance](#) on disclosing endorser relationships. In addition to reiterating its general guidance on when and how disclosures need to be made on digital platforms and in social media, the updated FAQs cover a variety of very specific topics, including advertiser responsibility for what others say in social media; “like” buttons; product placements; ambassador, affiliate and network marketing; employee endorsements; the implications of posts on social media sites such as Pinterest and YouTube; online review programs; contests on social media; and expert and employee endorsements, among others.

A few highlights and excerpts from the new FAQs that help illustrate the breadth of possible endorsement issues:

Wording of Disclosures/Limited Space. The FTC says that it isn’t mandating the specific wording of disclosures – it recognizes that a simple disclosure like “Company X gave me this product to try” would likely suffice. It did, however, reinforce that, regardless of the advertising medium, people have to “get the information they need to evaluate sponsored statements.” The FTC points out that the words “sponsored” and “promotion” use nine characters and “paid ad” uses seven characters, and starting a tweet with “Ad:” or “#ad” takes only three characters.

Posting a Product Picture. Even posting a picture of a product in social media could convey that the user likes and approves of a product and can constitute an endorsement.

Employees Posting in Social Media. Even if employees’ social media profile pages identify their employer, the employees should still consider disclosures in individual posts when talking about the company’s products. Other users who see posts will not necessarily see the posters’ profile pages or understand all of the products that the employees’ company makes.

Celebrity Endorsements. Even if celebrities are well known as endorsers of a product, a disclosure will still be necessary if a “significant portion” of followers don’t know that tweets or posts about the product were paid for. The FTC says it’s “tricky” to understand when that might be the case and recommends disclosure with every endorsement.

Product Integrations. Where a TV show host interacts with a product – for example, playing a game and saying something like “Wow, this is awesome!” – the FTC views it as “more than a product placement.” “It doesn’t matter that the host isn’t an expert or the segment is humorous as long as the endorsement has credibility that would be affected by knowing about the payment. However, if what the host says is obviously an advertisement – think of an old-time television show where the host goes to a different set, holds up a cup of coffee, says ‘Wake up with ABC Coffee. It’s how I start my day!’ and takes a sip – a disclosure probably isn’t necessary.”

Sweepstakes and Promotions. If a person is posting in exchange for receiving a chance to win a significant prize, a disclosure is probably needed.

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Making Disclosures When the Technology/Platform

Doesn't Accommodate It. Recognizing that some platforms/technologies (such as “like” buttons) may not offer the capability to include a disclosure along with an endorsement, the FTC suggests that advertisers just shouldn't encourage endorsements using channels or features that don't permit clear and conspicuous disclosures.

The FTC notes that it generally does not monitor bloggers and does not scrutinize online reviews or endorsements more stringently than endorsements made on traditional advertising platforms. Indeed, the principle of “truth in advertising” applies to all media – whether they have been around for decades (like print and television) or are relatively new (like blogs and social media).

“The issue is – and always has been – whether the audience understands the reviewer's relationship to the company whose products are being recommended. If the audience understands the relationship, a disclosure isn't needed.”

While the new FAQs are oriented toward endorsements and required disclosures on digital and social media, the FTC's blog post and the new publication stress that even though the media may have changed, the legal principles remain the same:

- Endorsements must be truthful and not misleading.
- If there's a connection between an endorser and the marketer of the product that would affect how people evaluate the endorsement, disclose it clearly and conspicuously.
- If the advertiser doesn't have proof that an endorser's experience represents what consumers will achieve by using the product, clearly and conspicuously disclose the generally expected results in those circumstances.

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