ADVERTISING THROUGH SOCIAL MEDIA & INFLUENCERS: FTC PERSPECTIVE

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Overview

- Section 5 of the FTC Act generally prohibits deceptive practices, including misleading advertising.
- Advertising is deceptive if it misleads consumers as to its source or nature.
- FTC has issued guidance – Endorsement Guides, FAQs, Native Advertising Business Guide – on how to comply with these principles.
- Advertisers, agencies & influencers are all responsible for compliance.
The FTC’s Revised Endorsement Guides: What People are Asking
FTC Endorsement Guides

• Explain how Section 5 of the FTC Act applies to endorsements & testimonials in advertising
• An endorsement is an advertising message that consumers believe reflects the views of someone other than the sponsoring advertiser
• An endorsement should reflect the honest beliefs, opinions, experiences of the endorser
• An advertiser can’t make claims through endorsers that it couldn’t make directly itself: endorsement claims need to be substantiated
Disclose “material connections”

Part IV

Federal Trade Commission

16 CFR 255
Guides Concerning the Use of Endorsements and Testimonials in Advertising Federal Acquisition Regulation; Final Rule

$255.5 Disclosure of material connections.

When there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience), such connection must be fully disclosed.
Examples of Material Connections

• Endorser received compensation for endorsement
  • E.g., cash, gift cards, free product, free travel, discounts, chance to win significant prize, chance to appear in TV commercial

• Endorser is employee, business associate of advertiser

• Endorser is related to advertiser
Context Matters

• Is the relationship or connection between the endorser and the marketer apparent from the context of the endorsement message?
  • If so, then no disclosure is necessary
  • If not, then the connection should be clearly and conspicuously disclosed in the endorsement message
Disclosures should be clear & conspicuous
Clear & Conspicuous explained

• Disclosures should be **unambiguous**
  • Don’t use industry jargon, words or phrases that are ambiguous or unfamiliar, unfamiliar icons or abbreviations; and don’t rely simply on a company logo or brand name
• Disclosures should be placed **where** consumers will look, in the advertising message to which they relate
  • Not under a “more” or “disclosure” button
• They should **stand out** so consumers will notice and read (or hear) them
  • In font size and colors consumers can easily read on screen
  • Not in a clutter of hashtags, tags, or fine print
Earlier this week enjoying the warmer temps and @lordandtaylor new #DesignLab collection feat. this breezy handkerchief dress #summerready #boho
No one reads this far into the description... what are you doing snooping around...
Bobby Le 6 months ago
I found this trampoline on the Bureau of trampoline review and this Is the best trampoline that I've ever owned. I had the jumpsport recently and it is not as advertised. Within 2 yrs, the frame started rusting. This crap is definitely china made. Don’t waste your money

Sonny Le and Bao Le (Trampoline Safety of America) (consent order)
“One thing can be said about PlayStation Vita...it’s a #gamechanger”

“PS Vita [ruling] the world. Learn about it! us.playstation.com/psvita/#GAMECHANGER”

“Thumbs UP #GAMECHANGER - check out the new PlayStation Vita”

“This is sick. . . .See the new PS Vita in action. The gaming #GameChanger”

“Got the chance to get my hands on a PS Vita and I'm amazed how great the graphics are. It’s definitely a #gamechanger!”
Bruh.. i've won like $8,000 worth of CS:GO Skins today on @CSGOLotto I cannot even believe it!
Aromaflage® 50ML

- **Quantity:** 1
- **Price:** $50.00
- **Reviews:** 5

**THE INTEGRITY OF OUR PRODUCTS**

- Aromaflage has been rigorously tested at one of the world’s leading universities and found to be as effective at repelling mosquitoes as the leading brand.
- Our products are carefully formulated by the finest fragrance houses with the highest quality ingredients.
- Aromaflage repels mosquitoes that carry Zika, Dengue, Chikungunya, and Yellow Fever.
- As effective as 25% DEET over 2.5 hours.

**Category:** Aromaflage, bug repellant, luxury fragrance for your outdoor chic.

**Lifestyle:**

**Type:** Fragrance & Insect Repellent
* * * * * Finally felt like a lady outdoors  
By Melissa Matarrese on July 26, 2016  
Scent Name: Aromaflage Wild Size: 4 Fluid Ounce  
I wouldn’t have survived my last trip to Nevis without this. Finally felt like a lady outdoors. It works too. no bites!
• FTC staff sent 90 letters to brands and influencers re Instagram posts appearing to promote a brand with no disclosure or inadequate disclosure of sponsorship. Our letters urge:
  • Using unambiguous terminology
  • Placing disclosure within the first 3 lines of text so it’s not under the “more” button
  • Not placing the disclosure in a clutter of hashtags
• We learned that not all of the posts were in fact sponsored; some were organic
giulianarancic: Can you spot my latest obsession? (Hint: it’s on my heel but you can barely see it!!!) Love high heels. Hate Blisters. Not leaving the house without #CompeedUS in my bag this summer. Check it out @Walgreens #musthave #partner #gsobsessions

View all 133 comments

@teresakiryakoza @chanel509
@melis_henry @jenmir not sure how it works
@brig_mo @marykate_noashley_rosella_lodua @akrzezewski heeeee giutyyyyy
@kat_hamilton @laneborgida
@4vrmgriz I need this❤️
@mapy0110 Me too 😊👠👠
@tammycruz47 Cute shoes

#partner
Follow-up Influencer Letters
September 2017

• FTC staff sent 21 follow-up letters to influencers, asking them to let us know if their Instagram posts were sponsored
• Tagging a photo w/brand name is endorsement requiring disclosure if sponsored
• “Thank you [brand]” not adequate to convey sponsorship b/c could just express satisfaction with the company
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<tr>
<th>FTC RECOMMENDATIONS</th>
<th>PRACTICES TO AVOID</th>
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<tbody>
<tr>
<td>Clearly DISCLOSE when you have a financial or family relationship with a brand</td>
<td>DON'T ASSUME followers know about all your brand relationships</td>
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<td>Ensure your sponsorship disclosure is HARD TO MISS</td>
<td>Don't assume disclosures BUILT INTO social media platforms are sufficient</td>
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<td>Treat sponsored tags, including tags in pictures, LIKE ANY OTHER endorsement</td>
<td>Don't use AMBIGUOUS DISCLOSURES like &quot;Thanks,&quot; #collab, #sp, #spon, or #ambassador</td>
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<td>On image-only platforms like Snapchat, SUPERIMPOSE DISCLOSURES over the images</td>
<td>Don't rely on disclosures that people will see only if they CLICK &quot;MORE&quot;</td>
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Source: Federal Trade Commission