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You can learn to navigate the new FTC guidelines

On October 5, the FTC announced that it had approved revisions to its *Guides Concerning the Use of Endorsements and Testimonials*. The revisions represent the most sweeping changes in almost 30 years to endorsements and testimonials. The approval was not entirely unexpected, but it generated significant response from the PR industry, bloggers, consumers, and even the media. The most frequently asked question has been why, after three decades, the FTC's rules regarding the relationships between marketers and product reviewers and endorsers were no longer deemed adequate? The answer is simple: Thirty years ago, regulators never foresaw the rise of social media marketing. Now, the law is simply trying to catch up with technical advancements – again.

The revised guides (which go into effect December 1) make clear that traditional marketing law principles apply equally to the world of blogs and social media as they have in the past to traditional media. For example, under the revised guides, bloggers will be required to disclose their material connections with a marketer, including, in most instances, whether the blogger received payment or free product from the marketer or its PR firms. The revised guides would also require that celebrities disclose their relationship with a marketer when touting a product or service on talk shows, interviews, or social media sites (e.g., Twitter, Facebook, etc.). Under the revised guides, a marketer or its PR firm could be liable if the blogger/celebrity fails to disclose his or her relationship with the marketer or makes an unsubstantiated statement about the marketer's product. However, the FTC said it would consider whether the marketer advised the blogger/celebrity of his or her responsibilities and monitored their online behavior before determining what, if any, action would be warranted.

With these issues in mind, we recommend marketers and PR firms adhere to the following four principles:

Reign in bloggers. Marketers and their PR firms should advise bloggers to whom they provide payments or free products to disclose their relationships with the marketer whenever making a positive review about

the marketers or their products or services. Marketers and their PR firms should then monitor bloggers to ensure that they are depicting a truthful and substantiated message about the products and services. If bloggers do not make the necessary disclosures, or if they make misleading or unsubstantiated statements about the marketers' products, marketers should cease sponsoring those bloggers and take necessary steps to halt the publication of misleading or unsubstantiated representations.

Educate celebrities. When celebrities are paid for promoting products in nontraditional media where the relationship between the celebrity and the product is not obvious (such as talk shows, interviews, and social media sites), celebrities should disclose their relationships with marketers. Spokespeople should undergo enhanced media training to ensure they understand what disclosures must be made and what representations they can make about the marketers' products and services in new media.

Pay attention to social media participation. Employees of marketers and their PR firms should clearly disclose their relationship to marketers if posting messages online. Marketers and PR firms should institute written policies concerning the rules by which their employees participate in social media.

Disclosure is not one size fits all. Marketers and their PR firms will be confronted with a variety of situations in which the proper disclosure required by the revised guides will depend on the specific facts and circumstances. Marketers and their communications firms should educate themselves on the variety of circumstances that affect the appropriate type of disclosure. They should also consult with experienced legal counsel as situations present themselves. ■

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