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PR gets greater attention from marketers, clients, and the FTC

Public relations executives were justifiably pleased to see the September 9 New York Times headline, "Growing Appreciation for PR on Madison Avenue." The article was yet another example that marketers continue to view PR as taking on higher strategic importance based on its unique role in amplifying a brand's message and in building relationships. In fact, by capitalizing on its experience in social media, the PR industry has been able to rebound faster from – and even flourish – during this economic downturn.

But with success comes greater scrutiny. Thus, it should come as no surprise that the FTC's first action since it revised its Guides Concerning the Use of Endorsements and Testimonials in December 2009 was against a PR firm, and not an ad agency. According to the FTC, between November 2008 and May 2009, Reverb Communications, a 20-person California-based PR firm, and Tracie Snitker, its sole partner, engaged in deceptive marketing by having employees pose as ordinary consumers and post reviews of the PR firm's client's video-game applications on iTunes. The FTC claimed that Reverb and Snitker's postings were misleading because they did not disclose that Reverb had been hired to promote the gaming applications. Nor did the postings disclose that Reverb's fee often included a percentage of the sales of its client's gaming applications.

Reverb and Snitker entered into a consent decree with the FTC in which they agreed to remove any previously posted endorsements that failed to disclose their connection with the marketer of the product. They also agreed to refrain from making any endorsements about any other client's products unless they "clearly and prominently" disclose their relationship to their clients.

The FTC's action is important for several reasons, most notably because it is the first action since the FTC revised its Endorsement Guides and it was brought against a PR firm – not its client, nor an advertising agency. In addition, the FTC brought the action against the firm's sole owner and officer and director – Tracie Snitker, thereby making her personally liable for the misleading online endorsements. Last, Reverb and Snitker posted the misleading endorsements between November 2008 and May 2009 – several months before the December 1, 2009 effective date of the Guides. Thus, the FTC brought the action for conduct that took place prior to the effective date of the revised Guides.

In light of the FTC's action against Reverb and Snitker, along with the increased regulatory scrutiny of the PR industry, PR firms are strongly encouraged to: Consult with experienced legal counsel to adopt policies regarding blogs and other forms of consumer-generated media; Require employees to disclose their relationship with their client whenever posting online about a client or its products or services. For example, employees should not write about a client or its products without stating that the client is one of the firm's clients and that the employee works for the agency; Remove any online comments posted by the firm about a client or its products if there is not "clear and prominent" disclosure of the firm's or the employee's relationship to the client, even if comments were posted prior to the effective date of the Guides.

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