

ADVERTISING, MARKETING & PROMOTIONS

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THE WARNINGS WERE REAL: FTC FINES TEAMI, AND SENDS LETTERS TO INFLUENCERS ABOUT INADEQUATE DISCLOSURES

Teami, LLC (Teami) agreed to settle Federal Trade Commission (FTC) charges that the company made false and unsubstantiated health claims regarding its tea and skincare products and hired influencers who failed to adequately disclose that they were being paid to endorse its products on social media.

Notably, the FTC also warned ten celebrity influencers (including Jordin Sparks and Cardi B) about their obligation to disclose their material connections when paid to endorse products on social media. In particular, the FTC insisted that those disclosures should be above the “more” button on Instagram.

TEAMI'S SETTLEMENT

The FTC alleged that Teami and two of its owners and officers (collectively, the defendants) participated in deceptive acts or practices in violation of the FTC Act by advertising various Teami tea products as being able to treat cancer, reduce serum cholesterol, unclog arteries and cause weight loss. Several of these claims were made through Teami's paid influencers' Instagram posts. The FTC found that these claims were false and misleading because Teami lacked adequate substantiation for these claims at the time they were made. Moreover, the FTC found that the defendants failed to adequately disclose to consumers that the celebrity influencers who

THE BOTTOM LINE

Marketers and influencers should take the Teami action, and the FTC's warning letters, to heart. At a time when the FTC is reviewing its guidance on social media endorsements, the FTC will likely continue to monitor marketers and influencers to combat false and misleading influencer marketing practices, especially those that are already on its radar.

promoted its products were paid to endorse them on social media.

The settlement prohibits the defendants from making certain health or weight loss claims for their products, including that they treat cancer, reduce the risk of heart disease, help shed pounds or lower cholesterol or blood pressure, without having “competent and reliable scientific evidence” that such representations are true.

Importantly, the settlement also requires that the defendants take actionable steps to monitor their endorsers to ensure that they adequately disclose their material connections to Teami.

The actions now mandated by the FTC include:

- >> Providing each endorser with a statement of his or her disclosure responsibilities;
- >> Creating a system to monitor and review the representations and disclosures of their endorsers;
- >> Declining to approve posts that do not contain adequate disclosures; and
- >> Terminating payments to any endorser who fails to adequately disclose a material connection.

Finally, the settlement imposes a \$15,209,452 judgment against the

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defendants, which the FTC partially suspended upon the payment of \$1 million based on the defendants' financial condition. The settlement also imposes onerous recordkeeping and reporting obligations on the defendants.

THE FTC'S WARNINGS TO INFLUENCERS

In conjunction with its proceedings against the defendants, the FTC sent warning letters to ten influencers (including music and television personalities) who, according to the FTC, failed to adequately disclose that they were paid to endorse Teami products.

Consistent with the FTC's prior guidance on influencer disclosures, the warning letters reminded influencers that they should use unambiguous language that consumers would easily notice and understand and that consumers must be able to see disclosures without having to click to expand additional text. Specifically, the letters reiterated that endorsers should disclose any material connection above the "more" button on Instagram. Based on the examples the FTC appended to its complaint, the influencer's endorsement of the Teami products invariably appeared within the post's video or photo or within the first two or three lines of the post's caption. However, any disclosure regarding the

influencer's connection to Teami was not visible unless the consumer clicked the "more" button.

The FTC added that:

- >> Disclosures should not be hidden among multiple tags, hashtags or Instagram handles;
- >> Disclosures must use clear language that stands out;
- >> A disclosure should be in each and every social media post because consumers might not see and associate multiple posts with each other; and
- >> Videos also must disclose any material connection, even if the disclosure is included in the text portion of a post.

The FTC further emphasized that individual influencers who fail to make adequate disclosures about their connections to marketers are subject to legal enforcement action by the FTC.

PRIOR FTC LETTER

Teami is no stranger to the FTC. In April 2018, the FTC sent "educational" letters to Teami reminding the company that material connections between its influencers on Instagram and the company should be clearly and conspicuously disclosed. This letter, and subsequent guidance

from the FTC, made clear that on Instagram, this disclosure should be above the "more" button. The FTC's follow-up action is a clear message to all companies who received such letters that compliance with the FTC Endorsement Guides is essential and will be monitored by the FTC.

In addition, this FTC action makes clear that simply having a social media policy or influencer contract is not enough. After receipt of the FTC's letter in 2018, Teami actually established a social media policy instructing influencers to make clear and conspicuous disclosures, and to make such disclosures above the "more" button. However, according to the FTC, the company did not monitor to ensure its influencers were actually making their disclosures in compliance with this policy.

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