

ADVERTISING, MARKETING & PROMOTIONS

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NAD ACTION REQUIRING THE KARDASHIANS AND FIT TEA TO DISCLOSE THEIR CONNECTIONS IN SOCIAL MEDIA POSTS

As part of its ongoing monitoring program, the National Advertising Division (NAD) reviewed endorsements by Kourtney and Khloe Kardashian and Kylie Jenner (the Kardashians) that failed to disclose that they were paid to endorse a dietary supplement known as “Fit Tea” in their social media posts. In response to the NAD’s action, Fit Tea revised its social media posts to disclose Fit Tea’s material connections with its celebrity endorsers.

BACKGROUND

The Federal Trade Commission (FTC) Endorsement and Testimonial Guides (FTC Endorsement Guides) require clear disclosure of any material connections between an advertiser and its influencers and other endorsers, including when their endorsements are posted on social media platforms such as Twitter and Instagram. The FTC contends that, in the absence of such disclosure, consumers might believe that an endorsement on social media is a spontaneous recommendation of a product made without any compensation rather than a paid endorsement.

Regulatory and self-regulatory agencies, including the NAD, have indicated that disclosing whether an influencer has been paid for his or her endorsement is even more important when the influencer is a well-known celebrity because consumers – and, in particular, a celebrity’s fans – may afford more weight to a celebrity’s

THE BOTTOM LINE

This NAD case should serve as a reminder that influencers and other endorsers must disclose their material connections on Twitter, Instagram and other social media platforms. This is particularly important when the influencers are well-known celebrities as consumers are likely to afford more weight to their endorsements. This case also serves as a reminder that the NAD has authority to bring cases for violations of the FTC Endorsement Guides, which means that, even if the FTC does not bring an action against an advertiser for failing to disclose material connections, the NAD can bring an action on its own.

endorsement than to the endorsement of other, lesser known individuals.

FIT TEA CASE

The NAD reviewed the Kardashians’ endorsements posted on Twitter, Instagram and other social media platforms because it was concerned that the “material connections” between the Kardashians and Fit Tea – that is, the fact that the Kardashians were paid to endorse Fit Tea – had not been adequately disclosed to consumers. In many cases, the Kardashians took selfies

with the Fit Tea products, described the products as their ‘favorite,’ or touted the products as staples of their daily routine. The NAD explained that adequate disclosure was critical because “[c]onsumers are likely to weigh an opinion differently if it is a paid endorsement for a product. As a result, such a payment is a connection that is material to consumers and should be disclosed.”

In response to the NAD action, Fit Tea agreed to revise its celebrity endorsements to disclose that its celebrity endorsers were paid to

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endorse Fit Tea and agreed that its future advertising would comply with the FTC Endorsement Guides.

Because Fit Tea voluntarily agreed to modify its social media posts, the NAD did not review the matter on the merits. Although the NAD said that, for compliance purposes, it would treat Fit Tea's voluntary decision to modify its advertising as if NAD had recommended changes to Fit Tea's ads and Fit Tea had agreed to comply with that recommendation. Therefore, the NAD could initiate a compliance proceeding against Fit Tea if the Kardashians fail to include proper disclosures in their future Fit Tea endorsements.

This NAD action comes on the heels of another NAD action against Fit Tea, where the NAD recommended that

Fit Tea discontinue certain customer testimonials which claimed that Fit Tea "boosts energy" and "supports metabolism" because the advertiser did not have adequate support for these claims. The NAD cautioned Fit Tea that it should 1) ensure that its paid endorsers avoid conveying messages for which the advertiser lacks support and 2) that it should not repost testimonials on its web pages that make claims for which the advertiser lacks support. The NAD also required that Fit Tea separate its paid endorsements and testimonials from its authentic user reviews on its website and conspicuously disclose that its user reviews were not edited by Fit Tea.

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