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Regulators are watching the entire influencer ecosystem

In my column three months ago, I wrote about influencer marketing agreements and warned that “regulators are watching the entire influencer ecosystem.”

Since then two companies — Atlanta-based PR firm Creaxion Corporation, and Inside Publications (the publisher of Inside Gymnastics magazine) — have become prime examples of how marketing comms firms, and publishers, can get in trouble.

Recently, the FTC announced it would settle serious allegations that Creaxion, Inside Publications, and their principals used false and deceptive marketing practices in a 2016 marketing campaign for HealthPro Brands’ FIT Organic Mosquito Repellent.

According to the FTC, HealthPro Brands engaged Creaxion to produce a media campaign to promote a new mosquito repellent. It was tied to the 2016 Summer Olympics in Brazil and the mosquito-borne Zika virus.

Creaxion helped Inside Publications and HealthPro engage athlete endorsers to promote the repellent across digital media channels. Two gold medalists were each paid several thousand dollars for their participation.

According to the complaint, the athletes posted social media endorsements without disclosing they were paid and Inside Publications then reposted those endorsements across social media again without disclosures.

The FTC also alleged that Inside Publications promoted the repellent through ads disguised as articles in Inside Gymnastics magazine, and that Creaxion and its CEO offered reimbursement to employees and “friends” to review the product on Walmart.com.

To settle the allegations, the FTC issued two orders prohibiting Creaxion and its CEO Mark Pettit, along with Inside Publications, and its owner Christopher Korotky from doing three things.

First, they can’t misrepresent the status of any endorser or reviewer of a product or service, including claiming they are independent users or ordinary consumers.

They also can’t make representations about any endorser of a product or service without clearly and conspicuously disclosing material connections the endorser has with anyone affiliated with the product or service.

And finally, they cannot claim that paid commercial advertising is an opinion from an independent or objective publisher or source. They also have to notify endorsers of these responsibilities, monitor their activity, and fire endorsers who don’t comply with the rules.

The proposed orders remain in place for 20 years and could result in a penalty of $40,000 per violation.

It cannot be stated strongly enough that regulators are watching the entire influencer ecosystem. Also, the FTC is expanding its focus when reviewing violations of the FTC Act and is now including top executives of PR agencies and publishers, as individuals.

The days of the FTC looking only at brand owners are long gone. In this case, the brand owner was not even as a named party to the complaint.

Instead, the FTC looked at the contractual relationships between the PR firm and its client and emphasized that collectively, Creaxion, Inside Publications and their owners were responsible for the complete execution of the HealthPro campaign.

PR agencies, marketers and publishers are increasingly offering full-service solutions to clients and reducing the need for client intervention during a campaign.

This is enticing for PR firms and content creators financially and otherwise, but the extra responsibility often comes with potential liability. Marketers should understand the regulatory landscape and put safeguards in place when they agree to deliver on all aspects of a marketing campaign.

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