

FTC Issues Civil Penalty Notice to 700 Companies Regarding Endorsements and Reviews

October 14, 2021

The U.S. Federal Trade Commission (FTC) on October 13 published a Notice of Penalty Offenses advising more than 700 companies that they could incur significant civil penalties if they use endorsements in ways that run counter to the FTC's guidance. The FTC, in its own words, "blanket[ed] industry" with these notices to send a "clear message" that companies cannot use "fake reviews and other forms of deceptive endorsements" to "cheat consumers and undercut honest businesses."

With the rise of social media, the FTC is concerned that consumers cannot differentiate between authentic content and advertising. The types of endorsements called out in the notice include misrepresenting that an endorser is an actual, current, or recent user of the product; using an endorsement without good reason to believe that the endorser continues to have the presented view; using an endorsement to make deceptive performance claims; or failing to disclose a material connection with the endorser.

The FTC sent the notice to an "array of large companies." The FTC acknowledged that a company's inclusion on the list of recipients *does not in any way suggest* that the company has engaged in deceptive or unfair conduct.

FTC enforcement actions for deceptive advertising are brought under Section 5 of the Federal Trade Commission Act. Among other remedies, violators may be subject to civil penalties for each violation.

The notice serves as a good reminder for all companies to ensure that they have clear policies about reviews and endorsements as well as procedures to identify reviews and endorsements that make potentially problematic claims, including the following:

- Explain what reviewers can (and can't) say about products — for example, a list of claims they can make for your products, along with instructions not to go beyond those claims.
- In the case of performance claims, have adequate proof to back up the claim that the results are typical, or clearly and conspicuously disclose the generally expected performance.
- Instruct reviewers or endorsers on their responsibilities for disclosing their connections to you, including payments, free products, or any affiliation with the company.

- Periodically search for what people are saying, and follow up if you find questionable practices.

While companies cannot reasonably be expected to police all social media statements about their products, having established policies and procedures will go a long way toward demonstrating efforts to comply.

In light of the notice, all companies — not just the letter recipients — should anticipate increased legal activity in connection with social media endorsements and reviews.

CONTACTS

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work or

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