

October 30, 2009

This is the print preview: [Back to normal view »](#)

Mary K. Engle

Director, Federal Trade Commission's Division of Advertising Practices

Posted: October 29, 2009 06:13 PM

Setting the Record Straight on the FTC's Testimonial and Endorsements Guide

What's Your Reaction?

President and Chief Executive Officer of the Interactive Advertising Bureau, Randall Rothenberg recently took a shot at the FTC on the Huffington Post for its newly introduced Testimonial and Endorsements Guide. Here is our response:

Dear Mr. Rothenberg:

I saw your open letter in the Huffington Post regarding the Commission's recently revised Guides for the Use of Endorsements and Testimonials in Advertising. You say the FTC is ignorant, disingenuous, and just generally doesn't get new media - but in the nicest way. In all seriousness, I appreciate the opportunity to clarify our position. I believe we share the goal of making sure corporate malfeasance by a few doesn't diminish the credibility and utility of social media for all.

There has been a strong reaction to the revised Guides, as you note - much of it based on fundamental misunderstandings about what the Guides are and do. For example, many people have objected, as you do, that the Federal Trade Commission can fine people for violating the Guides, but the Commission can't fine people one penny for violating the Guides. Indeed, the Guides are not "rules" and there is no monetary penalty for violating them. Rather, the Guides are intended to help advertisers comply with the FTC's bread-and-butter statute, the FTC Act.

Your critique mainly focuses on another issue: whether the Commission is holding new media to a different standard than traditional media, or holding "individuals more liable than larger corporations."

That's not the case. Let me explain why.

The FTC Act prohibits "unfair or deceptive acts or practices in commerce." When the FTC challenges a false or misleading advertising claim - or a deceptive omission - we look at it from the viewpoint of a reasonable consumer. The question to be answered is whether reasonable consumers take away a deceptive message from the ad.

So when we evaluate whether an endorsement is deceptive under the FTC Act, consumer expectations are

key. For instance, consumers understand that celebrities in ads are paid for their endorsements, so the Guides make clear that advertisers don't have to disclose that fact. But let's take another example. A Wall Street Journal reporter interviewed a blogger who, "after a favorable review," got "a Flex crossover vehicle for a year and a gas card. 'It was love at first sight,' Ms. Smith wrote in her blog, after test-driving the car." She and other bloggers were "flown to Santa Barbara by Electronic Arts to work out with Oprah Winfrey's personal trainer," were hosted at the Four Seasons and got "makeovers as they [wrote] about taking a 30-day challenge on an upcoming fitness video program for the Nintendo Wii." Miguel Bustillo and Ann Zimmerman, "Paid to Pitch: Product Reviews By Bloggers Draw Scrutiny," Wall Street Journal, April 23, 2009. This blogger apparently disclosed that she was compensated for these reviews, but if she hadn't, do you think a consumer reading her review for the Flex would expect that she had gotten to use it free for a year? Do you think a consumer would want to know that, even if Ford hadn't thrown in the gas money? And if the blogger doesn't disclose that, how will consumers know?

That doesn't mean we will be pursuing individual bloggers. Our concern is with the advertisers who pay consumers to talk up their products and make it look like independent consumer opinion. Companies don't always pay in the form of cash, though, so we included examples in the Guides where consumers are compensated through free products.

Your letter says no harm, no foul. Don't enforce truth in advertising on the Web because hey, this is all so new, and ads online aren't always delivered in tidy boxes like in the newspaper.

Ignore word of mouth marketing, blog advertising networks, and all the other techniques now employed by large, sophisticated companies - the kind you complain that we're somehow letting off the hook - that are searching for the pot of gold at the end of the marketing rainbow: good word of mouth, even if it's purchased.

Social media marketing is here to stay, and we have enough respect for advertising on the Internet and the important role of the blogosphere as a marketplace for public opinion to hold it to the same standard we apply to advertising in any other medium.

One last thing. The Guides relate only to advertising - commercial communications (and the FTC Act applies only to acts or practices in commerce). Are there instances where it can be hard to distinguish advertising from editorial content? Yes. But that's true whether you're talking about Twitter or traditional media (think advertising vs. advertorials vs. editorials). The Guides illustrate some of the factors relevant to distinguishing social media advertising from editorial content when marketers use consumers to generate their marketing messages. But where the message is advertising, online disseminators have an obligation to ensure it is not misleading, just as marketers using traditional media do. This includes, when it's not otherwise clear from the context, identifying when the endorser has a relationship with the marketer. So go ahead and blog that halibut recipe.

Very truly yours,

Mary K. Engle