



# Intellectual Property CPDB Update

## Advertising Endorsements and Testimonials: New FTC Guidelines

New Federal Trade Commission guidelines place greater responsibility on advertisers for the accuracy and reliability of claims made by endorsers or bloggers. The FTC's recently updated ***Guides Concerning the Use of Endorsements and Testimonials*** provide that **advertisers may be held liable for any false or unsubstantiated statements made by endorsers, or for not disclosing material connections between themselves and endorsers.** The new ***Guides*** also suggest that **advertisers can be held liable for false or unsubstantiated statements made by a blogger** who has been engaged by the advertiser to review a product and write a review.

The ***Guides*** define an "Endorsement" as any advertising message, including verbal statements, demonstrations or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization, that consumers are likely to believe reflects the opinions, beliefs, findings or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser. Testimonials are treated the same as endorsements.

The updated ***Guides*** provide that endorsements must reflect the honest opinions, findings, beliefs or experience of the endorser.

- Endorsements must **not be presented out of context or reworded** in any way as to distort the endorser's opinion or experience with the product.
- An endorsement may be used only so long as the advertiser has good reason to believe that **the endorser continues to subscribe to the views** presented in the endorsement:

An advertiser can satisfy this obligation by obtaining the endorser's views at reasonable intervals, including where there is new information on the

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performance or effectiveness of the product, or changes in the performance of competitors' products.

Where an advertisement represents that the endorser uses the endorsed product, the endorser must have been a **bona fide user** of the product at the time the endorsement was given. The advertiser can run advertisements only so long as it has reason to believe the endorser continues to be a bona fide user of the product.

Advertisers may be subject to liability for false or unsubstantiated statements made through their endorsers or for **failing to disclose material connections** between themselves and their endorsers (endorsers may also be liable for false or unsubstantiated statements). Such liability may extend to situations in which advertisers engage **bloggers** to try and write about their products.

- Even where the advertiser does not provide certain claims to the blogger, the advertiser may be held liable for false statements or material misrepresentations made by the blogger on his or her own initiative.
- The Guides recommend that, to limit their potential liability, advertisers should provide guidance and training to their bloggers concerning the need to ensure that the statements they make are truthful and substantiated.
- Advertisers should monitor bloggers who are being paid to promote their products, and take steps to stop the continued publication of deceptive statements as soon as they are discovered.

The **Guides** also provide that consumer endorsements must specify if a consumer's experience is representative of what consumers generally will achieve or if it is atypical. Advertisers must rely on adequate substantiation for claims that a consumer's experience is representative. If such substantiation is not available, the advertisement should clearly and conspicuously disclose the generally expected performance in the stated circumstances.

In addition, the **Guides** also provide that, where there is a connection between the endorser and the seller of the advertised product that could affect the credibility of the endorsement, the connection must be disclosed. This includes payment or promise of payment or compensation of any type, or even the promise of potential appearance on television as an endorser.

For questions and further information on the revised FTC **Guides Concerning the Use of Endorsements and Testimonials**, contact one of the advertising attorneys at Coblentz, Patch Duffy and & Bass LLP.

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