

FTC Warns Massive List of US Companies Not to Deceive Consumers With False Endorsements and Reviews

October 15, 2021

On October 13, the Federal Trade Commission (FTC) put more than 700 US companies on notice not to deceive consumers by, among other things, falsely claiming an endorsement by a third party, misrepresenting that an endorser is an actual user of its products or services, and/or failing to disclose a material connection between the company and an endorser. The FTC's "Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct around Endorsements and Testimonials" appears to lay a foundation for the Commission's issuance of fines against the recipient companies should they, in the future, engage in any of the identified conduct.

The recipients of the FTC's Notice include top advertisers, leading retailers, top consumer product companies and major advertising agencies. The list of recipients also includes technology companies, telecommunications companies and many mid-sized and smaller businesses.

According to the cover letter that accompanied each notice, companies use endorsements and testimonials in many forms to advertise and market their products and services, both in traditional and social media, as well as in the form of online reviews. In the FTC's view, some companies use these advertising tools in a manner that deceives consumers. The FTC has identified eight specific tactics that it considers to be unfair or deceptive trade practices, including the following:



- representing, whether expressly or by implication, that a third party has endorsed a product or its performance when that third party has not, in fact, done so;
 - misrepresenting that an endorsement represents the experience, views or opinions of actual users of the product;
 - misrepresenting that an endorser is an actual user, a current user, or a recent user of the product or service;
 - using testimonials to make unsubstantiated or otherwise deceptive performance claims — even if such testimonials are genuine;
 - failing to disclose a connection between an endorser and the seller of a product or service if that connection might materially affect the weight or credibility of the endorsement and if the connection would not be reasonably expected by consumers; and
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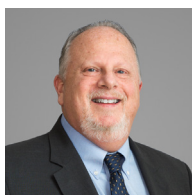
- misrepresenting, through the use of testimonials, that the experience of endorsers represents the typical or ordinary experience of users of the product or service.

The Notice and its cover letter make clear that the recipient companies have not been singled out. The fact that they received the Notice is not meant to suggest that the companies have already engaged in deceptive or unfair conduct. Nevertheless, the Notice and its wide distribution constitutes a warning shot that the FTC is watching marketers carefully and intends to pursue substantial fines if and when appropriate.

At present, the recipients are not required to take any specific actions in response to the Notice. However, Katten strongly recommends that recipients and any other businesses that rely upon endorsements and testimonials by third parties – especially social media influencers – review their current advertising and promotion practices to ensure that they do not engage in any of the acts that the FTC considers unfair or deceptive.

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