

**FTC’S REVISED ENDORSEMENT GUIDES:  
BLOGGER’S MATERIAL CONNECTIONS  
MUST BE DISCLOSED**

By

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The Federal Trade Commission (FTC)’s revised Guides Concerning the Use of Endorsements and Testimonials in Advertising (the “Guides”) address endorsements by consumers, experts, organizations and celebrities, as well as the disclosure of important connections between advertisers and endorsers. The Guides represent nonbinding administrative interpretations (advisory in nature) of laws enforced by the FTC for the guidance of the public in conducting its affairs in conformity with legal requirements that prohibit false, unfair or deceptive advertising. The revised Guides became effective on December 1, 2009. Practices inconsistent with the Guides may result in enforcement action by the FTC under Section 5 of the FTC Act if, after investigation, the FTC has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute.

The Guides set forth the general principles that the FTC will use in evaluating endorsements and testimonials, together with examples illustrating the application of those principles. Whether a particular endorsement or testimonial is deceptive will depend on the specific factual circumstances of the advertisement at issue.

The revised Guides specify that while decisions will be reached on a case-by-case basis, the post of a blogger who receives cash or in-kind payment to review a product or service will be considered an endorsement subject to the prohibitions of Section 5 of the Act regarding unfair and deceptive practices. Bloggers who make an endorsement must disclose the “material connections” they share with the seller of the product or service they review. Specifically, when there exists a connection between the endorser and the seller of the product or service at issue that might materially affect the weight or credibility of the endorsement (i.e., the connection is

not reasonably expected by the audience), such connection must be fully disclosed (e.g., payments, gifts, commissions on sales, employment relationships, etc.). In this regard, by way of example, bloggers that receive free products from a company with the understanding that they will promote the products in their blogs as well as bloggers who are part of network marketing programs where they sign up to receive free product samples in exchange for writing about them are required to disclose these connections.

The Guides provide additional practical examples illustrating circumstances under which bloggers are required to make disclosures regarding “material connections”. The following examples are representative of such circumstances, though not exhaustive:

- An online message board designated for discussions of new music download technology is frequented by MP3 player enthusiasts who exchange information about new products, utilities, and the functionality of numerous playback devices. Unbeknownst to the message board community, an employee of a leading playback device manufacturer has been posting messages on the discussion board promoting the manufacturer’s product. Knowledge of this poster’s employment likely would affect the weight or credibility of her endorsement. The poster, therefore, should clearly and conspicuously disclose her relationship to the manufacturer to members and readers of the message board.
- A college student who has earned a reputation as a video game expert maintains a blog where he posts entries about his gaming experiences. Readers of his blog frequently seek his opinions about video game hardware and software. As it has done in the past, the manufacturer of a newly released video game system sends the student a free copy of the system and asks him to write about it on his blog. He tests the new gaming system and writes a favorable review. Because his review is disseminated via a form of consumer-generated media in which his relationship to the advertiser is not inherently obvious, readers are unlikely to know that he has received the video game system free of charge in exchange for his review of the product, and given the value of the video game system, this fact likely would materially affect the credibility they attach to his endorsement. Accordingly, the blogger should clearly and conspicuously disclose that he received the gaming system free of charge. The manufacturer should advise him at the time it provides the gaming system that this connection should be disclosed, and it should have procedures in place to try to monitor his postings for compliance.

Although, as noted above, the Guides are administrative interpretations of the law intended to help advertisers comply with the FTC Act and not binding law themselves, it is clear that the FTC intends to investigate and pursue allegedly deceptive use of testimonials or endorsements taking into account compliance with the Guides. Indeed, in April 2010, the FTC made public its first investigation involving a company's compliance with its updated Guides in connection with the posting of content by bloggers who had attended a certain event and failed to disclose that they had received gifts for posting blog content about that event. A copy of the FTC’s closing letter may be found at <http://www.ftc.gov/os/closings/100420anntaylorclosingletter.pdf>. It is worth reading as it sheds some light on how the FTC expects companies to comply with the Guides.

Additional information on the revised Guides and the FTC's answers to the most frequently asked questions submitted by advertisers and bloggers, among others, since the FTC issued the revised Guides may be found at <http://www.ftc.gov/bcp/edu/pubs/business/adv/bus71.shtm>.

*This article is intended to serve as a summary of the issues outlined herein for informational purposes only. While it may include some general guidance, it is not intended as, nor is it a substitute for, legal advice.*

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