



FTC Announces Revised Guides on the Use of Endorsement and Testimonials in Advertising

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On October 5, 2009, the Federal Trade Commission (FTC) announced changes to its Guides Concerning the Use of Endorsements and Testimonials in Advertising ("Guides") that will take effect on December 1, 2009. Under the revised Guides, advertisements that depict consumer experiences that are atypical will be required to conspicuously disclose the actual expected results. The precursor to the Guides, in contrast, allowed advertisers to discuss atypical results as long as a disclaimer (such as "results not typical") was included in the advertisement.

The Guides also require the disclosure of "material connections" between advertisers and endorsers, including in blogging and "word-of-mouth" contexts. For example, if a blogger is paid to endorse a product on his or her blog, that material connection must be disclosed in the endorsement.

In addition, the Guides expressly provide that both advertisers and endorsers may be liable for false or unsubstantiated claims made in an endorsement or for failure to disclose material connections between the advertiser and endorser. The Guides also provide that celebrities must disclose their relationships with advertisers when making endorsements outside the context of traditional ads, such as in social media.

Because endorsements and testimonial are widely used in the marketing of goods and services, the new Guides represent important regulatory changes. This is particularly the case as advertising practices continue to trend toward new media platforms, such as social networking and blogging.

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