

# 44th Annual UCLA Entertainment Symposium

WEBINAR SERIES

School of Law  
**UCLA** Ziffren Institute for Media, Entertainment,  
Technology & Sports Law

**WEDNESDAY, AUGUST 12, 2020**

**5:00p - 5:45p PDT**

## **THE SHIFTING POWER OF INFLUENCERS IN THE AGE OF SOCIAL DISTANCING**

moderator:

**Po Yi**

Partner, Manatt, Phelps & Phillips, LLP

panelists:

**Oren Aks**

Creative Director & Founder, Atomic Milk Media

**Ellie Heisler**

Partner, Nixon Peabody LLP

**D'Angela Proctor**

CEO, Wayfarer Entertainment

## OREN AKS

CREATIVE DIRECTOR & FOUNDER, ATOMIC MILK MEDIA

OREN AKS IS THE FORMER DESIGNER OF JERRY MEDIA BY F\*CKJERRY. BEST KNOWN AS THE CREATIVE DIRECTOR OF FYRE FESTIVAL'S SOCIAL MEDIA AND BRAND IDENTITY, AS WELL AS BEING THE WHISTLEBLOWER FEATURED IN THE HULU DOCUMENTARY "FYRE FRAUD".

TODAY HE RUNS ATOMIC MILK, A DESIGN AND SOCIAL

MEDIA CONSULTANCY BASED OUT OF LA. WORKING CLOSELY WITH BRANDS TO OFFER UNIQUE AND CRAFTED SOLUTIONS AROUND MILLENNIAL LUXURY OFFERINGS, CAMPAIGN IDEATION, LAUNCH STRATEGIES, BRAND POSITIONING & MARKET DIFFERENTIATION. WITH AN EMPHASIS ON NAVIGATING THE SOCIAL LANDSCAPE AND AVOIDING PITFALLS LEGACY BRANDS DON'T ANTICIPATE WHEN EXPLORING NEW STRATEGIES.

## ELLIE HEISLER

PARTNER, NIXON PEABODY LLP

ELLIE HEISLER PROVIDES LEGAL ADVICE TO ENTERTAINMENT, INFLUENCER, FASHION, FOOD AND ADVERTISING INDUSTRY CLIENTS ON BRAND BUILDING, LICENSING, INTELLECTUAL PROPERTY PROTECTION AND OPERATIONS, AND NEGOTIATES TRANSACTIONS AND SETTLEMENTS ON THEIR BEHALF. AS AN ENTREPRENEUR IN THE FOOD SPACE, ELLIE IS UNIQUELY POSITIONED TO

PROVIDE BUSINESS GUIDANCE AND COST-EFFECTIVE STRATEGIES FOR PROTECTING AND GROWING CLIENTS' BUSINESSES, WHILE MITIGATING LIABILITY AS THEY ELEVATE THEIR VISIBILITY. SHE IS WELL-VERSED IN FTC ADVERTISING REGULATIONS AND IS REGULARLY INVITED TO SPEAK ON THE TOPIC AND TRAIN IN-HOUSE COUNSEL AND MARKETING EXECUTIVES.

## D'ANGELA PROCTOR

CEO, WAYFARER ENTERTAINMENT

D'ANGELA PROCTOR IS THE CURRENT CEO OF WAYFARER ENTERTAINMENT. D'ANGELA PROCTOR DESCRIBES HER TITLE AS CHIEF ELEVATION OFFICER, REFLECTING HER PASSION FOR SCALING COMPANIES TO HAVE A GLOBAL IMPACT AND FOR STORYTELLING THAT MOVES AUDIENCES TO POSITIVE SOCIAL CHANGE. PROCTOR IS A MULTI-FACETED C-SUITE EXECUTIVE WHO HAS SUCCESSFULLY STRADDLED THE CREATIVE AND BUSINESS SIDES OF ENTERTAINMENT. WHILE SHE BEGAN HER CAREER AS AN ATTORNEY, PROCTOR MOST RECENTLY SERVED IN A STRATEGIC LEADERSHIP ROLE AT LIONSGATE'S CODEBLACK FILMS.

PROCTOR'S PASSION DID NOT DEVELOP OVERNIGHT AS SHE SERVED AS TV ONE'S HEAD OF ORIGINAL PROGRAMMING FOR OVER FIVE YEARS. AT TV ONE, PROCTOR MAINTAINED THE CREATIVE, FISCAL AND BUSINESS AFFAIRS OVERSIGHT OF 44 ORIGINAL MOVIES, 50 EPISODES OF SCRIPTED COMEDIES, 1000+ HOURS OF NEWS AND PUBLIC AFFAIRS PROGRAMMING, 240 HOURS OF TRUE CRIME & JUSTICE PROGRAMMING, 120 HOURS OF REALITY PROGRAMMING, 5 NAACP IMAGE AWARDS AND A HOST OF OTHER SPECIALS AND PROGRAMMING INITIATIVES.

BEFORE TRANSITIONING TO NETWORK AND STUDIO

EXECUTIVE, PROCTOR WAS A VETERAN OF MUSIC, FILM AND TELEVISION PRODUCTION, HAVING CO-OWNED AND OPERATED STRANGE FRUIT MEDIA FOR OVER 15 YEARS. THERE, SHE DEVELOPED, CREATED AND PRODUCED MUSIC VIDEOS, LIVE MUSIC AND COMEDY RECORDINGS, DOCUMENTARIES, FEATURE FILMS AND TELEVISION SERIES. OF NOTE, PROCTOR EARNED THE 43RD ANNUAL NAACP IMAGE AWARD FOR OUTSTANDING REALITY SERIES IN 2011 WITH SUNDAY BEST AND LATER CREATED OWN'S FIRST FEMALE-CENTRIC DOCU-REALITY SERIES, LOVE IN THE CITY.

BEFORE ENTERING THE MEDIA BUSINESS, PROCTOR PRACTICED LABOR AND EMPLOYMENT DEFENSE LAW AT REED, SMITH, SHAW & MCCLAY IN PITTSBURGH, PENNSYLVANIA, WHERE SHE LITIGATED CASES FOR CLIENTS IN THE BANKING, PUBLIC UTILITIES AND CORPORATE SECTORS. PROCTOR EARNED A BACHELOR OF ARTS DEGREE IN POLITICAL SCIENCE FROM SPELMAN COLLEGE AND A JURIS DOCTORATE AND MASTER OF SCIENCE DEGREE IN LEADERSHIP FROM DUQUESNE UNIVERSITY.

PROCTOR IS BASED IN LOS ANGELES AND HAS A SON, NIKOLAS, WHO ATTENDS MOREHOUSE COLLEGE.

## Po Yi

PARTNER, MANATT, PHELPS & PHILLIPS, LLP

Po Yi is a partner in the New York office of Manatt, Phelps & Phillips, LLP. With over two decades of experience in private practice and in-house, Po provides cross-purpose, multidisciplinary legal counseling on transactional and regulatory matters in advertising, entertainment and digital media. Po works with clients in strategically assessing competitive and regulatory compliance challenges; negotiating business alliances, including sponsorships, tie-in arrangements with

sports and entertainment properties, co-promotion deals, agency agreements and talent deals; and developing and implementing advertising and marketing programs across multiple platforms. She serves clients across a wide range of industry sectors, including financial services, consumer products, retail, hospitality, sports, media and entertainment, and advertising. Po's clients range from major brands to independent agencies and digital media and technology companies.

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## CONTINUING EDUCATION CREDITS

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IN ORDER TO RECEIVE CREDIT, YOU MUST VERIFY YOUR PARTICIPATION. DURING EACH OF THE TWO PRESENTATIONS OF EACH WEEKLY WEBINAR, A UNIQUE CODE WILL BE ANNOUNCED. EACH ATTENDEE WILL THEN NEED TO WRITE DOWN THE CODE FOR THE CORRESPONDING PRESENTATION ON AN ATTENDANCE FORM WHICH WILL BE CIRCULATED ALONG WITH AN EVALUATION PRIOR TO THE EVENT. YOU ARE REQUIRED TO RETURN THE COMPLETED ATTENDANCE FORM TO [EVENTS@LAW.UCLA.EDU](mailto:EVENTS@LAW.UCLA.EDU) WITHIN FIVE DAYS AFTER THE LAST DAY OF THE MONTH IN WHICH THE WEBINAR TAKES PLACE TO RECEIVE YOUR CERTIFICATE OF PARTICIPATORY ATTENDANCE. YOU MAY ALSO RETURN A COMPLETED EVALUATION TO [EVENTS@LAW.UCLA.EDU](mailto:EVENTS@LAW.UCLA.EDU).

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## **OFFICIAL RECORD OF PARTICIPATORY ATTENDANCE FOR CALIFORNIA MCLE**

**PROVIDER:** UCLA SCHOOL OF LAW (provider #1211)

**SUBJECT MATTER/TITLE:** The 44th Annual UCLA Entertainment Symposium Webinar Series

**DATE AND TIME:** Wednesday, August 12, 2020, 5:00 p.m. - 6:35 p.m. PDT

**LOCATION:** Los Angeles, California

**LENGTH OF ACTIVITY:** 1.5 hours

**ELIGIBLE CALIFORNIA MCLE CREDIT:** up to 1.5 hours of general credit

	Presentation	MCLE CODE	Attended (please initial)
5:00 pm - 5:45 pm 45 minutes  0.75 hour of general credit	<b>THE SHIFTING POWER OF INFLUENCERS IN THE AGE OF SOCIAL DISTANCING</b>  Po Yi (Moderator), Oren Aks, Ellie Heisler and D'Angela Proctor	   _____	   _____
5:50 pm - 6:35 pm 45 minutes  0.75 hour of general credit	<b>KEYNOTE ADDRESS</b>  Bryan Lourd interviewed by Ken Ziffren	   _____	   _____

The undersigned attendee affirms that he/she attended the above-referenced session(s) as initialed above.

Attendee Full Name:

Attendee Bar Number:

\_\_\_\_\_

\_\_\_\_\_

Attendee Signature:

Attendee Email Address:

\_\_\_\_\_

\_\_\_\_\_

**Please return completed form to [events@law.ucla.edu](mailto:events@law.ucla.edu) within five days after the last day of the month in which the course takes place.**

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**PROVIDER ADDRESS** 1242 Law Building, Box 951476, Los Angeles, CA 90095-1476  
**TITLE OF ACTIVITY** The 44th Annual UCLA Entertainment Symposium Webinar Series  
**DATE OF OFFERING** Wednesday, August 12, 2020, 5:00 p.m. - 6:35 p.m. PDT  
**SITE** Los Angeles, California

**NAME OF PARTICIPANT (optional)**

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**Please indicate your evaluation of this course by completing the table below**

<b>Question</b>	<b>Yes</b>	<b>No</b>	<b>Comments</b>
Did this program meet your educational objectives?			
Were you provided with substantive written materials?			
Did the course update or keep you informed of your legal responsibilities?			
Did the activity contain significant professional content?			
Was the environment suitable for learning (e.g., temperature, noise, lighting, etc.)?			

**Please rate the instructor(s) of the course below**

<b>Instructor's Name and Subject Taught</b>	<b>On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below</b>	<b>Rate 1 – 5</b>
Po Yi (Moderator), Oren Aks, Ellie Heisler and D'Angela Proctor	Overall Teaching Effectiveness	
THE SHIFTING POWER OF INFLUENCERS IN THE AGE OF SOCIAL DISTANCING	Knowledge of Subject Matter	
<b>Instructor's Name and Subject Taught</b>	<b>On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below</b>	<b>Rate 1 – 5</b>
Bryan Lourd interviewed by Ken Ziffren	Overall Teaching Effectiveness	
KEYNOTE ADDRESS	Knowledge of Subject Matter	

## **THE SHIFTING POWER OF INFLUENCERS IN THE AGE OF SOCIAL DISTANCING**

### **OUTLINE OF TOPICS/ISSUES**

THE METEORIC RISE OF SOCIAL MEDIA PLATFORMS AS A MARKETING MEDIUM HAS SPAWNED A VIBRANT INDUSTRY OF PAID INFLUENCERS, FROM MAJOR A-LIST CELEBRITIES TO NEWLY MINTED YOUTUBE/INSTAGRAM/TIK TOK CELEBRITIES, SOME OF WHOM ARE MERELY CHILDREN. THESE INFLUENCERS USE THEIR VAST NETWORK OF FANS TO COMMUNICATE MARKETING MESSAGES ON BEHALF OF BRANDS IN A VARIETY OF WAYS. AS THE ECONOMIC ACTIVITY IN MUCH OF THE UNITED STATES (AS WELL AS THE REST OF THE WORLD) HAS COME TO A GRINDING HALT DUE TO THE UNPRECEDENTED GLOBAL PUBLIC HEALTH CRISIS STEMMING FROM COVID-19, MORE AND MORE PEOPLE HAVE BEEN TURNING TO SOCIAL MEDIA FOR NEWS, ENTERTAINMENT, AND SOCIAL ACTIVITY, THEREBY FURTHER STRENGTHENING SOCIAL MEDIA'S DOMINANCE AS A LEADING COMMUNICATION AND MARKETING PLATFORM. WHILE THE INCREASED CONSUMER USE OF SOCIAL MEDIA COUPLED WITH AN ACUTE DROP IN TRADITIONAL MARKETING ACTIVITY AND MARKETING BUDGET HAVE IN THEORY OPENED UP OPPORTUNITIES FOR INFLUENCERS, THE REALITIES OF LIVING THROUGH A GLOBAL PANDEMIC, ECONOMIC UNCERTAINTIES AS WELL AS GREATER AWARENESS AND PUBLIC DEBATE ABOUT SOCIAL JUSTICE HAVE SHIFTED THE WAY BRANDS ARE WORKING WITH INFLUENCERS TO GET THEIR MESSAGES ACROSS. THIS PANEL WILL ADDRESS STRATEGIC AND IP ISSUES AS WELL AS LEGAL/REGULATORY AND PR RISKS FACING INFLUENCERS AND BRANDS THAT WORK WITH INFLUENCERS IN THE POST-COVID ERA. IN PARTICULAR, THE PANEL WILL EXPLORE THE FOLLOWING QUESTIONS: (1) WHO ARE TODAY'S INFLUENCERS AND WHY ARE THEY VALUABLE TO BRANDS IN REACHING THEIR CUSTOMERS? (2) HOW ARE INFLUENCER DEALS STRUCTURED? (3) WHAT ARE THE KEY REGULATORY REQUIREMENTS RELATED TO INFLUENCER ACTIVITY AND HOW ARE BRANDS AND INFLUENCERS ADDRESSING SUCH ISSUES?



# FTC Issues Disclosures Guide for Social Media Influencers

## Advertising Law

November 12, 2019



Po Yi

Advertising, Marketing and Media

In a major outreach campaign to social media influencers, the Federal Trade Commission (FTC) issued a basic disclosures guide, *Disclosures 101 for Social Media Influencers*, and released a series of short videos on YouTube to illustrate the requirements.

This new guide provides simple, user-friendly explanations of the laws regarding deceptive ads, and it provides tips on “when and how to make good disclosures.” As a major focus, the guide describes what a “material connection” means, and reiterates that the influencers have the responsibility to make the required disclosures, that they must be familiar with the FTC’s Endorsement Guides, and must comply with laws against deceptive ads.

Other key areas include:

When to disclose

- Disclosure is required if the influencer has any **financial, employment, personal or family relationship** with a brand.
- **Tags, likes, pins** and similar ways of showing likes are endorsements.
- If posting **outside the United States**, the U.S. law applies if it is **reasonably foreseeable that the post will affect U.S. customers**.

How to disclose

- Place the disclosure where it is hard to miss.
  - Disclosure on an **ABOUT ME or a profile page, at the end of posts or videos**, or anywhere that requires a person to **click MORE** is likely to be missed.
  - Do not place disclosure in a **group of hashtags or links**.
- **Snapchat or Instagram Stories**: Superimpose the disclosure over the picture, and make sure there is enough time for viewers to read it.
- **Video**: Disclosure should be in the video and not just in the description, and preferably in both video and audio forms.

- **Live stream:** Disclosure should be repeated periodically.
- Use **simple and clear language**.

Acceptable	Not Acceptable
"Thanks to ... brand for the free product"	"sp," "spon," "collab" or other abbreviations and shorthand
"advertisement," "ad" and "sponsored"	stand-alone terms such as "thanks" or "ambassador"
#ad or #sponsored (hashtags are not required but are OK to include)	

- Disclosure should be in the same language as the endorsement.
- Using a **platform's disclosure** may not be sufficient.

#### Other general guidance

- Cannot talk about an influencer's experience with a product that the influencer has not tried.
- If the influencer is paid to talk about a product, the influencer cannot say the product is terrific if he or she thought it was terrible.
- Influencer cannot make up claims about a product that would require proof that the advertiser does not have (e.g., scientific proof that a product can treat a health condition).

In a closing note, the guide directs influencers to the [FTC's Endorsement Guides: What People Are Asking](#) for more information and to see helpful examples.

**Why it matters:** For the first time, the FTC guides directly focus on influencer disclosures. By doing so, the FTC seems to acknowledge the importance of educating influencers directly regarding its policy and position on disclosures in hopes that deceptive ads can be avoided. While this new guide is consistent with the existing FTC guides on endorsement, advertisers should take this opportunity to review their current social media influencer policy and make sure that it is consistent with the FTC's new guide.

## FTC SOCIAL MEDIA ACTIONS

Since 2011, the FTC has resolved at least 19 investigations involving social media influencer marketing. In seven of these cases, the FTC entered into consent orders with the companies, with two cases targeting the company's marketing agency, and another targeting two of the company's owners. Each case resolution required compliance and monitoring from the companies but none required any payment of money to consumers. In the other eight cases, the FTC elected not to bring charges against the companies after its investigations.

In April 2017, the FTC sent more than 90 educational letters to social media influencers and marketers concerning their legal disclosure obligations. Subsequently, in September 2017, the FTC sent warning letters to 21 of these social media influencers. To date, no FTC action has been taken directly against an influencer, who has not been an agent and/or employee of the marketer.

Target/Year	Platform	Issue	Outcome
Hyundai Motor America  (Nov. 2011)	Blog	Gift certificates were given to bloggers to encourage them to link to and comment on Hyundai videos and upcoming Super Bowl ads. Some bloggers did not disclose that they had received the certificates.	Closing letter
Hewlett-Packard and Porter Novelli (Sept. 2012)	Blog	Bloggers who received "Tackle the Holidays" gift packs failed to disclose that, along with gift certificates to give away to readers and free printables, they received \$50 gift certificates to keep for themselves in the gift packs.	Closing letter
Nordstrom Rack  (Feb. 2013)	Twitter	For its "TweetUp" campaign, Nordstrom Rack gave gifts to influencers for attending a store opening. Some influencers who posted about the opening did not disclose that they had received gifts.	Closing letter
Village Green Network (VGN) (Feb. 2014)	Blog	VGN is a company that facilitates payments between bloggers and marketers. Some of the bloggers in VGN's network did not adequately disclose that they were compensated to endorse products.	Closing letter
Cole Haan  (Mar. 2014)	Pinterest	For its #Wandering Sole campaign on Pinterest, Cole Haan incentivized consumers to post pictures of its products by entering them in a \$1,000 shopping spree contest without requiring proper disclosure of the contest.	Closing letter
ADT and Alison Rhodes-Jacobson  (Mar./June 2014)	Blog	ADT endorsers represented themselves as independent reviewers while promoting ADT on talks shows, websites, and blog posts without disclosing that they were compensated by the company.	Consent order to ADT Closing letter to Rhodes-Jacobson

Yahoo (Sept. 2014)	In-App Reviews	Yahoo employees who posted reviews of Yahoo apps in the iTunes app store did not disclose that they were employed at Yahoo.	Closing letter
Pedigree Dentastix (Jan. 2015)	Blog	Mars engaged bloggers to promote Dentastix products, but some of the bloggers did not adequately disclose their connections to the company.	Closing letter
Deutsch LA (Mar. 2015)	Twitter	Marketing agency for Sony, Deutsch LA, urged its employees to promote Sony's PlayStation Vita on Twitter without instructing them to disclose their relationship with their client.	Consent order
Microsoft (May 2015)	Twitter	Microsoft's Nokia provided a free trip to Boston, a Lumia phone, and other incentives to influencers who tweeted about the phone's photographic capabilities. A majority of influencers did not adequately disclosure their material connection to the company.	Closing letter
Machinima , Microsoft, and Starcom (Aug. 2015/Mar. 2016)	YouTube	As part of an ad campaign for Microsoft and its ad agency Starcom, the YouTube channel Machinima paid influencers to post YouTube videos endorsing Microsoft's Xbox One system and several games. The influencers failed to adequately disclose that they were being paid for their seemingly objective opinions.	Consent order to Machinima Closing letter to Microsoft and Starcom
Lord & Taylor (May 2016)	Instagram	Lord & Taylor retained 50 fashion influencers to post Instagram pictures of themselves wearing a dress from a new collection, but failed to require the influencers to disclose that they received the dress for free, as well as payment in some instances.	Consent order
Warner Brothers (Nov. 2016)	YouTube & Twitter	Warner Brothers' influencer marketing campaign for the video game, Middle Earth: Shadow of Mordor, failed to adequately disclose that it paid the influencers thousands of dollars to post positive gameplay videos on YouTube and other social media platforms.	Consent order
Various companies and influencers (Apr. 2017)	Instagram	After reviewing numerous Instagram posts by celebrities, athletes, and other influencers, FTC sent more than 90 letters reminding influencers and marketers that influencers must clearly and conspicuously disclose their material connection to brands on social media.	Educational Letters
CSGO Lotto, Martin & Cassell (Sept. 2017)	Youtube Twitter  Twitch  Facebook  Instagram	Trevor "TmarTn" Martin and Thomas "Syndicate" Cassell, two social media influencers who are widely followed in the online gaming community, failed to disclose that they jointly owned the gambling service CSGO Lotto when endorsing the company. They also paid other influencers to promote the site without requiring them to disclose their material connection.	Consent Order

Various influencers (Sept. 2017)	Instagram	The FTC sent warning letters to 21 social media influencers that it had previously contacted regarding disclosure issues on their Instagram posts. The influencers have until Sept. 30, 2017 to inform the FTC whether or not they have a material connection to the brand and if they do, what steps they have taken to clearly and conspicuously disclose that connection.	Warning Letters
Creaxion Corp., Pettit, Inside Publications, LLC of Georgia, & Korotky (2018)	Facebook Instagram  Twitter  Advertorials in online and print publications  Online Reviews	Two Olympic gold medalists who were paid spokespeople for FIT Organic Mosquito Repellent failed to disclose that they were paid thousands of dollars to promote the product. Online consumer reviews did not disclose that reviewers were reimbursed for buying the product or had a relationship with the company promoting the product.	Consent Order
Artist Liquid Labs, Humble Juice Co., Hyde City Vapors, and Solace Vapor (2019)	Facebook Instagram  Twitter	The FTC and FDA sent warning letters to four companies that failed to include statements warning consumers of the health and safety risks associated with nicotine in social media posts advertising flavored e-liquid products. The letters also reminded the companies that social media posts must clearly and conspicuously disclose material connections between influencers and brands.	Warning Letters

Updated 8/29/19



## The FTC's Endorsement Guides: What People Are Asking

**TAGS:** [Advertising and Marketing](#) | [Endorsements, Influencers, and Reviews](#) | [Online Advertising and Marketing](#) | [Credit and Finance](#) | [FinTech](#)

Answers to questions people are asking about the FTC's Endorsement Guides, including information about disclosing material connections between advertisers and endorsers. The brochure also addresses how those established consumer protection principles apply in social media and influencer marketing.

Suppose you meet someone who tells you about a great new product. She tells you it performs wonderfully and offers fantastic new features that nobody else has. Would that recommendation factor into your decision to buy the product? Probably.

Now suppose the person works for the company that sells the product – or has been paid by the company to tout the product. Would you want to know that when you're evaluating the endorser's glowing recommendation? You bet. That common-sense premise is at the heart of the Federal Trade Commission's (FTC) [Endorsement Guides](#).

The Guides, at their core, reflect the basic truth-in-advertising principle that endorsements must be honest and not misleading. An endorsement must reflect the honest opinion of the endorser and can't be used to make a claim that the product's marketer couldn't legally make.

In addition, the Guides say, if there's a connection between an endorser and the marketer that consumers would not expect and it would affect how consumers evaluate the endorsement, that connection should be disclosed. For example, if an ad features an endorser who's a relative or employee of the marketer, the ad is misleading unless the connection is made clear. The same is usually true if the endorser has been paid or given something of value to tout the product. The reason is obvious: Knowing about the connection is important information for anyone evaluating the endorsement.

Say you're planning a vacation. You do some research and find a glowing review on someone's blog that a particular resort is the most luxurious place he has ever stayed. If you knew the hotel had paid the blogger hundreds of dollars to say great things about it or that the blogger had stayed there for several days for free, it could affect how much weight you'd give the blogger's endorsement. The blogger should, therefore, let his readers know about that relationship.

Another principle in the Guides applies to ads that feature endorsements from people who achieved exceptional, or even above average, results. An example is an endorser who says she lost 20 pounds in two months using the advertised product. If the advertiser doesn't have proof

that the endorser's experience represents what people will generally achieve using the product as described in the ad (for example, by just taking a pill daily for two months), then an ad featuring that endorser must make clear to the audience what the generally expected results are.

Here are answers to some of our most frequently asked questions from advertisers, ad agencies, bloggers, and others.

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## ABOUT THE ENDORSEMENT GUIDES

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***Do the Endorsement Guides apply to social media?***

Yes. Truth in advertising is important in all media, whether they have been around for decades (like television and magazines) or are relatively new (like blogs and social media).

***Isn't it common knowledge that bloggers are paid to tout products or that if you click a link on a blogger's site to buy a product, the blogger will get a commission?***

No. Some bloggers who mention products in their posts have no connection to the marketers of those products – they don't receive anything for their reviews or get a commission. They simply recommend those products to their readers because they believe in them.

Moreover, the financial arrangements between some bloggers and advertisers may be apparent to industry insiders, but not to everyone else who reads a particular blog. Under the law, an act or

practice is deceptive if it misleads “a significant minority” of consumers. Even if some readers are aware of these deals, many readers aren’t. That’s why disclosure is important.

### ***Are you monitoring bloggers?***

Generally not, but if concerns about possible violations of the FTC Act come to our attention, we evaluate them case by case. If law enforcement becomes necessary, our focus usually will be on advertisers or their ad agencies and public relations firms. Action against an individual endorser, however, might be appropriate in certain circumstances, such as if the endorser has continued to fail to make required disclosures despite warnings.

### ***Does the FTC hold bloggers to a higher standard than reviewers for traditional media outlets?***

No. The FTC Act applies across the board. The issue is – and always has been – whether the audience understands the reviewer’s relationship to the company whose products are being recommended. If the audience understands the relationship, a disclosure isn’t needed.

If you’re employed by a newspaper or TV station to give reviews – whether online or offline – your audience probably understands that your job is to provide your personal opinion on behalf of the newspaper or television station. In that situation, it’s clear that you did not buy the product yourself – whether it’s a book or a car or a movie ticket. On a personal blog, a social networking page, or in similar media, the reader might not realize that the reviewer has a relationship with the company whose products are being recommended. Disclosure of that relationship helps readers decide how much weight to give the review.

### ***What is the legal basis for the Guides?***

The FTC conducts investigations and brings cases involving endorsements made on behalf of an advertiser under Section 5 of the FTC Act, which generally prohibits deceptive advertising.

The Guides are intended to give insight into what the FTC thinks about various marketing activities involving endorsements and how Section 5 might apply to those activities. The Guides themselves don’t have the force of law. However, practices inconsistent with the Guides may result in law enforcement actions alleging violations of the FTC Act. Law enforcement actions can result in orders requiring the defendants in the case to give up money they received from their violations and to abide by various requirements in the future. Despite inaccurate news reports, there are no “fines” for violations of the FTC Act.

## **WHEN DOES THE FTC ACT APPLY TO ENDORSEMENTS?**

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***I’m a blogger. I heard that every time I mention a product on my blog, I have to say whether I got it for free or paid for it myself. Is that true?***

No. If you mention a product you paid for yourself, there isn’t an issue. Nor is it an issue if you get the product for free because a store is giving out free samples to its customers.

The FTC is only concerned about endorsements that are made on behalf of a sponsoring advertiser. For example, an endorsement would be covered by the FTC Act if an advertiser – or



someone working for an advertiser – pays you or gives you something of value to mention a product. If you receive free products or other perks with the expectation that you'll promote or discuss the advertiser's products in your blog, you're covered. Bloggers who are part of network marketing programs, where they sign up to receive free product samples in exchange for writing about them, also are covered.

***What if all I get from a company is a \$1-off coupon, an entry in a sweepstakes or a contest, or a product that is only worth a few dollars? Does that still have to be disclosed?***

The question you need to ask is whether knowing about that gift or incentive would affect the weight or credibility your readers give to your recommendation. If it could, then it should be disclosed. For example, being entered into a sweepstakes or a contest for a chance to win a thousand dollars in exchange for an endorsement could very well affect how people view that endorsement. Determining whether a small gift would affect the weight or credibility of an endorsement could be difficult. It's always safer to disclose that information.

Also, even if getting one free item that's not very valuable doesn't affect your credibility, continually getting free stuff from an advertiser or multiple advertisers could suggest you expect future benefits from positive reviews. If a blogger or other endorser has a relationship with a marketer or a network that sends freebies in the hope of positive reviews, it's best to let readers know about the free stuff.

Even an incentive with no financial value might affect the credibility of an endorsement and would need to be disclosed. The Guides give the example of a restaurant patron being offered the opportunity to appear in television advertising before giving his opinion about a product. Because the chance to appear in a TV ad could sway what someone says, that incentive should be disclosed.

***My company makes a donation to charity anytime someone reviews our product. Do we need to make a disclosure?***

Some people might be inclined to leave a positive review in an effort to earn more money for charity. The overarching principle remains: If readers of the reviews would evaluate them differently knowing that they were motivated in part by charitable donations, there should be a disclosure. Therefore, it might be better to err on the side of caution and disclose that donations are made to charity in exchange for reviews.

***What if I upload a video to YouTube that shows me reviewing several products? Should I disclose that I got them from an advertiser?***

Yes. The guidance for videos is the same as for websites or blogs.

***What if I return the product after I review it? Should I still make a disclosure?***

That might depend on the product and how long you are allowed to use it. For example, if you get free use of a car for a month, we recommend a disclosure even though you have to return it. But even for less valuable products, it's best to be open and transparent with your readers.

***I have a website that reviews local restaurants. It's clear when a restaurant pays for an ad on my website, but do I have to disclose which restaurants give me free meals?***

If you get free meals, you should let your readers know so they can factor that in when they read your reviews.

***I'm opening a new restaurant. To get feedback on the food and service, I'm inviting my family and friends to eat for free. If they talk about their experience on social media, is that something that should be disclosed?***

You've raised two issues here. First, it may be relevant to readers that people endorsing your restaurant on social media are related to you. Therefore, they should disclose that personal relationship. Second, if you are giving free meals to anyone and seeking their endorsement, then their reviews in social media would be viewed as advertising subject to FTC jurisdiction. But even if you don't specifically ask for their endorsement, there may be an expectation that attendees will spread the word about the restaurant. Therefore, if someone who eats for free at your invitation posts about your restaurant, readers of the post would probably want to know that the meal was on the house.

***I have a YouTube channel that focuses on hunting, camping, and the outdoors. Sometimes I'll do a product review. Knife manufacturers know how much I love knives, so they send me knives as free gifts, hoping that I will review them. I'm under no obligation to talk about any knife and getting the knives as gifts really doesn't affect my judgment. Do I need to disclose when I'm talking about a knife I got for free?***

Even if you don't think it affects your evaluation of the product, what matters is whether knowing that you got the knife for free might affect how *your audience* views what you say about the knife. It doesn't matter that you aren't required to review every knife you receive. Your viewers may assess your review differently if they knew you got the knife for free, so we advise disclosing that fact.

***Several months ago a manufacturer sent me a free product and asked me to write about it in my blog. I tried the product, liked it, and wrote a favorable review. When I posted the review, I disclosed that I got the product for free from the manufacturer. I still use the product. Do I have to disclose that I got the product for free every time I mention it in my blog?***

It might depend on what you say about it, but each new endorsement made without a disclosure could be deceptive because readers might not see the original blog post where you said you got the product free from the manufacturer.

***A trade association hired me to be its "ambassador" and promote its upcoming conference in social media, primarily on Facebook, Twitter, and in my blog. The association is only hiring me for five hours a week. I disclose my relationship with the association in my blogs and in the tweets and posts I make about the event during the hours I'm working. But sometimes I get questions about the conference in my off time. If I respond via Twitter when I'm not officially working, do I need to make a disclosure? Can that be solved by placing a badge for the conference in my Twitter profile?***

You have a financial connection to the company that hired you and that relationship exists whether or not you are being paid for a particular tweet. If you are endorsing the conference in your tweets, your audience has a right to know about your relationship. That said, some of your tweets responding to questions about the event might not be endorsements, because they aren't communicating your opinions about the conference (for example, if someone just asks you for a link to the conference agenda).

Also, if you respond to someone's questions about the event via email or text, that person probably already knows your affiliation or they wouldn't be asking you. You probably wouldn't need a disclosure in that context. But when you respond via social media, all your followers see your posts and some of them might not have seen your earlier disclosures.

With respect to posting the conference's badge on your Twitter profile page, a disclosure on a profile page isn't sufficient because many people in your audience probably won't see it. Also, depending upon what it says, the badge may not adequately inform consumers of your connection to the trade association. If it's simply a logo or hashtag for the event, it won't tell consumers of your relationship to the association.

***I'm a blogger and a company wants me to attend the launch of its new product. They will fly me to the launch and put me up in a hotel for a couple of nights. They aren't paying me or giving me anything else. If I write a blog sharing my thoughts about the product, should I disclose anything?***

Yes. Knowing that you received free travel and accommodations could affect how much weight your readers give to your thoughts about the product, so you should disclose that you have a financial relationship with the company.

***I share in my social media posts about products I use. Do I actually have to say something positive about a product for my posts to be endorsements covered by the FTC Act?***

Simply posting a picture of a product in social media, such as on Pinterest, or a video of you using it could convey that you like and approve of the product. If it does, it's an endorsement.

You don't necessarily have to use words to convey a positive message. If your audience thinks that what you say or otherwise communicate about a product reflects your opinions or beliefs about the product, and you have a relationship with the company marketing the product, it's an endorsement subject to the FTC Act.

Of course, if you don't have any relationship with the advertiser, then your posts simply are not subject to the FTC Act, no matter what you show or say about the product. The FTC Act covers only endorsements made on behalf of a sponsoring advertiser.

***If I post a picture of myself to Instagram and tag the brand of dress I'm wearing, but don't say anything about the brand in my description of the picture, is that an endorsement? And, even if it is an endorsement, wouldn't my followers understand that I only tag the brands of my sponsors?***

Tagging a brand you are wearing is an endorsement of the brand and, just like any other endorsement, could require a disclosure if you have a relationship with that brand. Some influencers only tag the brands of their sponsors, some tag brands with which they don't have relationships, and some do a bit of both. Followers might not know why you are tagging a dress and some might think you're doing it just because you like the dress and want them to know.

***Say a car company pays a blogger to write that he wants to buy a certain new sports car and he includes a link to the company's site. But the blogger doesn't say he's going to actually buy the car – or even that he's driven it. Is that still an endorsement subject to the FTC's Endorsement Guides?***

Yes, an endorsement can be aspirational. It's an endorsement if the blogger is explicitly or implicitly expressing his or her views about the sports car (e.g., "I want this car"). If the blogger was paid, it should be disclosed.

***I'm a book author and I belong to a group where we agree to post reviews in social media for each other. I'll review someone else's book on a book review site or a bookstore site if he or she reviews my book. No money changes hands. Do I need to make a disclosure?***

It sounds like you have a connection that might materially affect the weight or credibility of your endorsements (that is, your reviews), since bad reviews of each others' books could jeopardize the arrangement. There doesn't have to be a monetary payment. The connection could be friendship, family relationships, or strangers who make a deal.

***My Facebook page identifies my employer. Should I include an additional disclosure when I post on Facebook about how useful one of our products is?***

It's a good idea. People reading your posts in their news feed – or on your profile page – might not know where you work or what products your employer makes. Many businesses are so diversified that readers might not realize that the products you're talking about are sold by your company.

***A famous athlete has thousands of followers on Twitter and is well-known as a spokesperson for a particular product. Does he have to disclose that he's being paid every time he tweets about the product?***

It depends on whether his followers understand that he's being paid to endorse that product. If they know he's a paid endorser, no disclosure is needed. But if a significant portion of his followers don't know that, the relationship should be disclosed. Determining whether followers are aware of a relationship could be tricky in many cases, so we recommend disclosure.

***A famous celebrity has millions of followers on Twitter. Many people know that she regularly charges advertisers to mention their products in her tweets. Does she have to disclose when she's being paid to tweet about products?***

It depends on whether her followers understand that her tweets about products are paid endorsements. If a significant portion of her followers don't know that, disclosures are needed. Again, determining that could be tricky, so we recommend disclosure.

***I'm a video blogger who lives in London. I create sponsored beauty videos on YouTube. The products that I promote are also sold in the U.S. Am I under any obligation to tell my viewers that I have been paid to endorse products, considering that I'm not living in the U.S.?***

To the extent it is reasonably foreseeable that your YouTube videos will be seen by and affect U.S. consumers, U.S. law would apply and a disclosure would be required. Also, the U.K. and many other countries have similar laws and policies, so you'll want to check those, too.

## **PRODUCT PLACEMENTS**

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***What does the FTC have to say about product placements on television shows?***

Federal Communications Commission law (FCC, not FTC) requires TV stations to include disclosures of product placement in TV shows.

The FTC has expressed the opinion that under the FTC Act, product placement (that is, merely showing products or brands in third-party entertainment content – as distinguished from sponsored content or disguised commercials) doesn't require a disclosure that the advertiser paid for the placement.

***What if the host of a television talk show expresses her opinions about a product – let's say a videogame – and she was paid for the promotion? The segment is entertainment, it's humorous, and it's not like the host is an expert. Is that different from a product placement and does the payment have to be disclosed?***

If the host endorses the product – even if she is just playing the game and saying something like “wow, this is awesome” – it's more than a product placement. If the payment for the endorsement isn't expected by the audience and it would affect the weight the audience gives the endorsement, it should be disclosed. It doesn't matter that the host isn't an expert or the segment is humorous as long as the endorsement has credibility that would be affected by knowing about the payment. However, if what the host says is obviously an advertisement – think of an old-time television show where the host goes to a different set, holds up a cup of coffee, says “Wake up with ABC Coffee. It's how I start my day!” and takes a sip – a disclosure probably isn't necessary.

## **ENDORSEMENTS BY INDIVIDUALS ON SOCIAL NETWORKING SITES**

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***Many social networking sites allow you to share your interests with friends and followers by clicking a button or sharing a link to show that you're a fan of a particular business, product, website or service. Is that an "endorsement" that needs a disclosure?***

Many people enjoy sharing their fondness for a particular product or service with their social networks.

If you write about how much you like something you bought on your own and you're not being rewarded, you don't have to worry. However, if you're doing it as part of a sponsored campaign

or you're being compensated – for example, getting a discount on a future purchase or being entered into a sweepstakes for a significant prize – then a disclosure is appropriate.

***I am an avid social media user who often gets rewards for participating in online campaigns on behalf of brands. Is it OK for me to click a “like” button, pin a picture, or share a link to show that I’m a fan of a particular business, product, website or service as part of a paid campaign?***

Using these features to endorse a company's products or services as part of a sponsored brand campaign probably requires a disclosure.

We realize that some platforms – like Facebook's "like" buttons – don't allow you to make a disclosure. Advertisers shouldn't encourage endorsements using features that don't allow for clear and conspicuous disclosures. Whether the Commission may take action would depend on the overall impression, including whether consumers take "likes" to be material in their decision to patronize a business or buy a product.

However, an advertiser buying fake "likes" is very different from an advertiser offering incentives for "likes" from actual consumers. If "likes" are from non-existent people or people who have no experience using the product or service, they are clearly deceptive, and both the purchaser and the seller of the fake "likes" could face enforcement action.

***I posted a review of a service on a website. Now the marketer has taken my review and changed it in a way that I think is misleading. Am I liable for that? What can I do?***

No, you aren't liable for the changes the marketer made to your review. You could, and probably should, complain to the marketer and ask them to stop using your altered review. You also could file complaints with the FTC, your local consumer protection organization, and the Better Business Bureau.

## **HOW SHOULD I DISCLOSE THAT I WAS GIVEN SOMETHING FOR MY ENDORSEMENT?**

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***Is there special wording I have to use to make the disclosure?***

No. The point is to give readers the essential information. A simple disclosure like "Company X gave me this product to try . . ." will usually be effective.

***Do I have to hire a lawyer to help me write a disclosure?***

No. What matters is effective communication. A disclosure like "Company X gave me [name of product], and I think it's great" gives your readers the information they need. Or, at the start of a short video, you might say, "The products I'm going to use in this video were given to me by their manufacturers." That gives the necessary heads-up to your viewers.

***Do I need to list the details of everything I get from a company for reviewing a product?***

No. What matters is whether the information would have an effect on the weight readers would give your review. So whether you got \$100 or \$1,000 you could simply say you were “paid.” (That wouldn’t be good enough, however, if you’re an employee or co-owner.) And if it is something so small that it would not affect the weight readers would give your review, you may not need to disclose anything.

***When should I say more than that I got a product for free?***

It depends on whether you got something else from the company. Saying that you got a product for free suggests that you didn’t get anything else.

For example, if an app developer gave you their 99-cent app for free for you to review it, that information might not have much effect on the weight that readers give to your review. But if the app developer also gave you \$100, knowledge of that payment would have a much greater effect on the credibility of your review. So a disclosure that simply said you got the app for free wouldn’t be good enough, but as discussed above, you don’t have to disclose exactly how much you were paid.

Similarly, if a company gave you a \$50 gift card to give away to one of your readers and a second \$50 gift card to keep for yourself, it wouldn’t be good enough only to say that the company gave you a gift card to give away.

***I’m doing a review of a videogame that hasn’t been released yet. The manufacturer is paying me to try the game and review it. I was planning on disclosing that the manufacturer gave me a “sneak peek” of the game. Isn’t that enough to put people on notice of my relationship to the manufacturer?***

No, it’s not. Getting early access doesn’t mean that you got paid. Getting a “sneak peek” of the game doesn’t even mean that you get to keep the game. If you get early access, you can say that, but if you get to keep the game or are paid, you should say so.

***Would a single disclosure on my home page that “many of the products I discuss on this site are provided to me free by their manufacturers” be enough?***

A single disclosure on your home page doesn’t really do it because people visiting your site might read individual reviews or watch individual videos without seeing the disclosure on your home page.

***If I upload a video to YouTube and that video requires a disclosure, can I just put the disclosure in the description that I upload together with the video?***

No, because consumers can easily miss disclosures in the video description. Many people might watch the video without even seeing the description page, and those who do might not read the disclosure. The disclosure has the most chance of being clear and prominent if it’s included in the video itself. That’s not to say that you couldn’t have disclosures in both the video and the description.

***What about a disclosure in the description of an Instagram post?***

When people view Instagram streams on most smartphones, longer descriptions (currently more than two lines) are truncated, with only the beginning lines displayed. To see the rest, you have to click “more.” If an Instagram post makes an endorsement through the picture or the beginning lines of the description, any required disclosure should be presented without having to click “more.”

***Would a button that says DISCLOSURE, LEGAL, or something like that which links to a full disclosure be sufficient?***

No. A hyperlink like that isn’t likely to be sufficient. It does not convey the importance, nature, and relevance of the information to which it leads and it is likely that many consumers will not click on it and therefore will miss necessary disclosures. The disclosures we are talking about are brief and there is no space-related reason to use a hyperlink to provide access to them.

***The social media platform I use has a built-in feature that allows me to disclose paid endorsements. Is it sufficient for me to rely on that tool?***

Not necessarily. Just because a platform offers a feature like that is no guarantee it’s an effective way for influencers to disclose their material connection to a brand. It still depends on an evaluation of whether the tool clearly and conspicuously discloses the relevant connection. One factor the FTC will look to is placement. The disclosure should catch users’ attention and be placed where they aren’t likely to miss it. A key consideration is how users view the screen when using a particular platform. For example, on a photo platform, users paging through their streams will likely look at the eye-catching images. Therefore, a disclosure placed above a photo may not attract their attention. Similarly, a disclosure in the lower corner of a video could be too easy for users to overlook. Second, the disclosure should use a simple-to-read font with a contrasting background that makes it stand out. Third, the disclosure should be worded in a way that’s understandable to the ordinary reader. Ambiguous phrases are likely to be confusing. For example, simply flagging that a post contains paid content might not be sufficient if the post mentions multiple brands and not all of the mentions were paid. The big-picture point is that the ultimate responsibility for clearly disclosing a material connection rests with the influencer and the brand – not the platform.

***How can I make a disclosure on Snapchat or in Instagram Stories?***

You can superimpose a disclosure on Snapchat or Instagram Stories just as you can superimpose any other words over the images on those platforms. The disclosure should be easy to notice and read in the time that your followers have to look at the image. In determining whether your disclosure passes muster, factors you should consider include how much time you give your followers to look at the image, how much competing text there is to read, how large the disclosure is, and how well it contrasts against the image. (You might want to have a solid background behind the disclosure.) Keep in mind that if your post includes video and you include an audio disclosure, many users of those platforms watch videos without sound. So they won’t hear an audio-only disclosure. Obviously, other general disclosure guidance would also apply.



***What about a platform like Twitter? How can I make a disclosure when my message is limited to 140 characters?***

The FTC isn't mandating the specific wording of disclosures. However, the same general principle – that people get the information they need to evaluate sponsored statements – applies across the board, regardless of the advertising medium. The words “Sponsored” and “Promotion” use only 9 characters. “Paid ad” only uses 7 characters. Starting a tweet with “Ad:” or “#ad” – which takes only 3 characters – would likely be effective.

***You just talked about putting “#ad” at the beginning of a social media post. What about “#ad” at or near the end of a post?***

We're not necessarily saying that “#ad” has to be at the beginning of a post. The FTC does not dictate where you have to place the “#ad.” What the FTC will look at is whether it is easily noticed and understood. So, although we aren't saying it has to be at the beginning, it's less likely to be effective in the middle or at the end. Indeed, if #ad is mixed in with links or other hashtags at the end, some readers may just skip over all of that stuff.

***What if we combine our company name, “Cool Styllé” with “ad” as in “#coolstyllead”?***

There is a good chance that consumers won't notice and understand the significance of the word “ad” at the end of a hashtag, especially one made up of several words combined like “#coolstyllead.” Disclosures need to be easily noticed and understood.

***Is it good enough if an endorser says “thank you” to the sponsoring company?***

No. A “thank you” to a company or a brand doesn't necessarily communicate that the endorser got something for free or that they were given something in exchange for an endorsement. The person posting in social media could just be thanking a company or brand for providing a great product or service. But “Thanks XYZ for the free product” or “Thanks XYZ for the gift of ABC product” would be good enough – if that's all you got from XYZ. If that's too long, there's “Sponsored” or “Ad.”

***What about saying, “XYZ Company asked me to try their product”?***

Depending on the context of the endorsement, it might be clear that the endorser got the product for free and kept it after trying it. If that isn't clear, then that disclosure wouldn't be good enough. Also, that disclosure might not be sufficient if, in addition to receiving a free product, the endorser was paid.

***I provide marketing consulting and advice to my clients. I'm also a blogger and I sometimes promote my client's products. Are “#client” “#advisor” and “#consultant” all acceptable disclosures?***

Probably not. Such one-word hashtags are ambiguous and likely confusing. In blogs, there isn't an issue with a limited number of characters available. So it would be much clearer if you say something like, “I'm a paid consultant to the marketers of XYZ” or “I work with XYZ brand”(where XYZ is a brand name).

Of course, it's possible that that some shorter message might be effective. For example, something like "XYZ\_Consultant" or "XYZ\_Advisor" might work. But even if a disclosure like that is clearer, no disclosure is effective if consumers don't see it and read it.

***Would "#ambassador" or "#[BRAND]\_Ambassador" work in a tweet?***

The use of "#ambassador" is ambiguous and confusing. Many consumers are unlikely to know what it means. By contrast, "#XYZ\_Ambassador" will likely be more understandable (where XYZ is a brand name). However, even if the language is understandable, a disclosure also must be prominent so it will be noticed and read.

***I'm a blogger, and XYZ Resort Company is flying me to one of its destinations and putting me up for a few nights. If I write an article sharing my thoughts about the resort destination, how should I disclose the free travel?***

Your disclosure could be just, "XYZ Resort paid for my trip" or "Thanks to XYZ Resort for the free trip." It would also be accurate to describe your blog as "sponsored by XYZ Resort."

***The Guides say that disclosures have to be clear and conspicuous. What does that mean?***

To make a disclosure "clear and conspicuous," advertisers should use plain and unambiguous language and make the disclosure stand out. Consumers should be able to notice the disclosure easily. They should not have to look for it. In general, disclosures should be:

- close to the claims to which they relate;
- in a font that is easy to read;
- in a shade that stands out against the background;
- for video ads, on the screen long enough to be noticed, read, and understood;
- for audio disclosures, read at a cadence that is easy for consumers to follow and in words consumers will understand.

A disclosure that is made in both audio and video is more likely to be noticed by consumers. Disclosures should not be hidden or buried in footnotes, in blocks of text people are not likely to read, or in hyperlinks. If disclosures are hard to find, tough to understand, fleeting, or buried in unrelated details, or if other elements in the ad or message obscure or distract from the disclosures, they don't meet the "clear and conspicuous" standard. With respect to online disclosures, FTC staff has issued a guidance document, "[.com Disclosures: How to Make Effective Disclosures in Digital Advertising](#)," which is available on [ftc.gov](#).

***Where in my blog should I disclose that my review is sponsored by a marketer? I've seen some say it at the top and others at the bottom. Does it matter?***

Yes, it matters. A disclosure should be placed where it easily catches consumers' attention and is difficult to miss. Consumers may miss a disclosure at the bottom of a blog or the bottom of a page. A disclosure at the very top of the page, outside of the blog, might also be overlooked by consumers. A disclosure is more likely to be seen if it's very close to, or part of, the endorsement to which it relates.

***I've been paid to endorse a product in social media. My posts, videos, and tweets will be in Spanish. In what language should I disclose that I've been paid for the promotion?***

The connection between an endorser and a marketer should be disclosed in whatever language or languages the endorsement is made, so your disclosures should be in Spanish.

***I guess I need to make a disclosure that I've gotten paid for a video review that I'm uploading to YouTube. When in the review should I make the disclosure? Is it ok if it's at the end?***

It's more likely that a disclosure at the end of the video will be missed, especially if someone doesn't watch the whole thing. Having it at the beginning of the review would be better. Having multiple disclosures during the video would be even better. Of course, no one should promote a link to your review that bypasses the beginning of the video and skips over the disclosure. If YouTube has been enabled to run ads during your video, a disclosure that is obscured by ads is not clear and conspicuous.

***I'm getting paid to do a videogame playthrough and give commentary while I'm playing. The playthrough – which will last several hours – will be live streamed. Would a disclosure at the beginning of the stream be ok?***

Since viewers can tune in any time, they could easily miss a disclosure at the beginning of the stream or at any other single point in the stream. If there are multiple, periodic disclosures throughout the stream people are likely to see them no matter when they tune in. To be cautious, you could have a continuous, clear and conspicuous disclosure throughout the entire stream.

## **OTHER THINGS FOR ENDORSERS TO KNOW**

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***Besides disclosing my relationship with the company whose product I'm endorsing, what are the essential things I need to know about endorsements?***

The most important principle is that an endorsement has to represent the accurate experience and opinion of the endorser:

- You can't talk about your experience with a product if you haven't tried it.
- If you were paid to try a product and you thought it was terrible, you can't say it's terrific.

You can't make claims about a product that would require proof the advertiser doesn't have. The Guides give the example of a blogger commissioned by an advertiser to review a new body lotion. Although the advertiser does not make any claims about the lotion's ability to cure skin conditions and the blogger does not ask the advertiser whether there is substantiation for the claim, she writes that the lotion cures eczema. The blogger is subject to liability for making claims without having a reasonable basis for those claims.

## **SOCIAL MEDIA CONTESTS**

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***My company runs contests and sweepstakes in social media. To enter, participants have to send a Tweet or make a pin with the hashtag, #XYZ\_Rocks. ("XYZ" is the name of my product.) Isn't that enough to notify readers that the posts were incentivized?***

No, it is likely that many readers would not understand such a hashtag to mean that those posts were made as part of a contest or that the people doing the posting had received something of value (in this case, a chance to win the contest prize). Making the word “contest” or “sweepstakes” part of the hashtag should be enough. However, the word “sweeps” probably isn’t, because it is likely that many people would not understand what that means.

## ONLINE REVIEW PROGRAMS

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***My company runs a retail website that includes customer reviews of the products we sell. We believe honest reviews help our customers and we give out free products to a select group of our customers for them to review. We tell them to be honest, whether it’s positive or negative. What we care about is how helpful the reviews are. Do we still need to disclose which reviews were of free products?***

Yes. Knowing that reviewers got the product they reviewed for free would probably affect the weight your customers give to the reviews, even if you didn’t intend for that to happen. And even assuming the reviewers in your program are unbiased, your customers have the right to know which reviewers were given products for free. It’s also possible that the reviewers may wonder whether your company would stop sending them products if they wrote several negative reviews – despite your assurances that you only want their honest opinions – and that could affect their reviews. Also, reviewers given free products might give the products higher ratings on a scale like the number of stars than reviewers who bought the products. If that’s the case, consumers may be misled if they just look at inflated average ratings rather than reading individual reviews with disclosures. Therefore, if you give free products to reviewers you should disclose next to any average or other summary rating that it includes reviewers who were given free products.

***My company, XYZ, operates one of the most popular multi-channel networks on YouTube. We just entered into a contract with a videogame marketer to pay some of our network members to produce and upload video reviews of the marketer’s games. We’re going to have these reviewers announce at the beginning of each video (before the action starts) that it’s “sponsored by XYZ” and also have a prominent simultaneous disclosure on the screen saying the same thing. Is that good enough?***

Many consumers could think that XYZ is a neutral third party and won’t realize from your disclosures that the review was really sponsored (and paid for) by the videogame marketer, which has a strong interest in positive reviews. If the disclosure said, “Sponsored by [name of the game company],” that would be good enough.

## SOLICITING ENDORSEMENTS

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***My company wants to contact customers and interview them about their experiences with our service. If we like what they say about our service, can we ask them to allow us to quote them in our ads? Can we pay them for letting us use their endorsements?***

Yes, you can ask your customers about their experiences with your product and feature their comments in your ads. If they have no reason to expect compensation or any other benefit before they give their comments, there’s no need to disclose your payments to them.

However, if you've given these customers a reason to expect a benefit from providing their thoughts about your product, you should disclose that fact in your ads. For example, if customers are told in advance that their comments might be used in advertising, they might expect to receive a payment for a positive review, and that could influence what they say, even if you tell them that you want their honest opinion. In fact, even if you tell your customers that you aren't going to pay them but that they might be featured in your advertising, that opportunity might be seen as having a value, so the fact that they knew this when they gave the review should be disclosed (e.g., "Customers were told in advance they might be featured in an ad.").

***I'm starting a new Internet business. I don't have any money for advertising, so I need publicity. Can I tell people that if they say good things about my business on Yelp or Etsy, I'll give them a discount on items they buy through my website?***

It's not a good idea. Endorsements must reflect the honest opinions or experiences of the endorser, and your plan could cause people to make up positive reviews even if they've never done business with you. However, it's okay to invite people to post reviews of your business after they've actually used your products or services. If you're offering them something of value in return for these reviews, tell them in advance that they should disclose what they received from you. You should also inform potential reviewers that the discount will be conditioned upon their making the disclosure. That way, other consumers can decide how much stock to put in those reviews.

***A company is giving me a free product to review on one particular website or social media platform. They say that if I voluntarily review it on another site or on a different social media platform, I don't need to make any disclosures. Is that true?***

No. If you received a free or discounted product to provide a review somewhere, your connection to the company should be disclosed everywhere you endorse the product.

***Does it matter how I got the free product to review?***

No, it doesn't. Whether they give you a code, ship it directly to you, or give you money to buy it yourself, it's all the same for the purpose of having to disclose that you got the product for free. The key question is always the same: If consumers knew the company gave it to you for free (or at a substantial discount), might that information affect how much weight they give your review?

***My company wants to get positive reviews. We are thinking about distributing product discounts through various services that encourage reviews. Some services require individuals who want discount codes to provide information allowing sellers to read their other reviews before deciding which reviewers to provide with discount codes. Other services send out offers of a limited number of discount codes and then follow up by email to see whether the recipients have reviewed their products. Still others send offers of discount codes to those who previously posted reviews in exchange for discounted products. All of these services say that reviews are not required. Does it matter which service I choose? I would prefer that recipients of my discount codes not have to disclose that they received discounts.***

Whichever service you choose, the recipients of your discount codes need to disclose that they received a discount from you to encourage their reviews. Even though the services might say that a review is not “required,” it’s at least implied that a review is expected.

## WHAT ARE AN ADVERTISER'S RESPONSIBILITIES FOR WHAT OTHERS SAY IN SOCIAL MEDIA?

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***Our company uses a network of bloggers and other social media influencers to promote our products. We understand we’re responsible for monitoring our network. What kind of monitoring program do we need? Will we be liable if someone in our network says something false about our product or fails to make a disclosure?***

Advertisers need to have reasonable programs in place to train and monitor members of their network. The scope of the program depends on the risk that deceptive practices by network participants could cause consumer harm – either physical injury or financial loss. For example, a network devoted to the sale of health products may require more supervision than a network promoting, say, a new fashion line. Here are some elements every program should include:

1. Given an advertiser’s responsibility for substantiating objective product claims, explain to members of your network what they can (and can’t) say about the products – for example, a list of the health claims they can make for your products, along with instructions not to go beyond those claims;
2. Instruct members of the network on their responsibilities for disclosing their connections to you;
3. Periodically search for what your people are saying; and
4. Follow up if you find questionable practices.

It’s unrealistic to expect you to be aware of every single statement made by a member of your network. But it’s up to you to make a reasonable effort to know what participants in your network are saying. That said, it’s unlikely that the activity of a rogue blogger would be the basis of a law enforcement action if your company has a reasonable training, monitoring, and compliance program in place.

***Our company’s social media program is run by our public relations firm. We tell them to make sure that what they and anyone they pay on our behalf do complies with the FTC’s Guides. Is that good enough?***

Your company is ultimately responsible for what others do on your behalf. You should make sure your public relations firm has an appropriate program in place to train and monitor members of its social media network. Ask for regular reports confirming that the program is operating properly and monitor the network periodically. Delegating part of your promotional program to an outside entity doesn’t relieve you of responsibility under the FTC Act.

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## WHAT ABOUT INTERMEDIARIES?

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***I have a small network marketing business. Advertisers pay me to distribute their products to members of my network who then try the product for free. How do the principles in the Guides affect me?***

You should tell the participants in your network that if they endorse products they have received through your program, they should make it clear they got them for free. Advise your clients – the advertisers – that if they provide free samples directly to your members, they should remind them of the importance of disclosing the relationship when they talk about those products. Put a program in place to check periodically whether your members are making those disclosures, and to deal with anyone who isn't complying.

***My company recruits “influencers” for marketers who want them to endorse their products. We pay and direct the influencers. What are our responsibilities?***

Like an advertiser, your company needs to have reasonable programs in place to train and monitor the influencers you pay and direct.

## WHAT ABOUT AFFILIATE OR NETWORK MARKETING?

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***I’m an affiliate marketer with links to an online retailer on my website. When people read what I’ve written about a particular product and then click on those links and buy something from the retailer, I earn a commission from the retailer. What do I have to disclose? Where should the disclosure be?***

If you disclose your relationship to the retailer clearly and conspicuously on your site, readers can decide how much weight to give your endorsement.

In some instances – like when the affiliate link is embedded in your product review – a single disclosure may be adequate. When the review has a clear and conspicuous disclosure of your relationship and the reader can see both the review containing that disclosure and the link at the same time, readers have the information they need. You could say something like, “I get commissions for purchases made through links in this post.” But if the product review containing the disclosure and the link are separated, readers may not make the connection.

As for where to place a disclosure, the guiding principle is that it has to be clear and conspicuous. The closer it is to your recommendation, the better. Putting disclosures in obscure places – for example, buried on an ABOUT US or GENERAL INFO page, behind a poorly labeled hyperlink or in a “terms of service” agreement – isn't good enough. Neither is placing it below your review or below the link to the online retailer so readers would have to keep scrolling after they finish reading. Consumers should be able to notice the disclosure easily. They shouldn't have to hunt for it.

***Is “affiliate link” by itself an adequate disclosure? What about a “buy now” button?***



Consumers might not understand that “affiliate link” means that the person placing the link is getting paid for purchases through the link. Similarly, a “buy now” button would not be adequate.

***What if I’m including links to product marketers or to retailers as a convenience to my readers, but I’m not getting paid for them?***

Then there isn’t anything to disclose.

***Does this guidance about affiliate links apply to links in my product reviews on someone else’s website, to my user comments, and to my tweets?***

Yes, the same guidance applies anytime you endorse a product and get paid through affiliate links.

***It’s clear that what’s on my website is a paid advertisement, not my own endorsement or review of the product. Do I still have to disclose that I get a commission if people click through my website to buy the product?***

If it’s clear that what’s on your site is a paid advertisement, you don’t have to make additional disclosures. Just remember that what’s clear to you may not be clear to everyone visiting your site, and the FTC evaluates ads from the perspective of reasonable consumers.

## **EXPERT ENDORSERS MAKING CLAIMS OUTSIDE OF TRADITIONAL ADVERTISEMENTS**

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***One of our company’s paid spokespersons is an expert who appears on news and talk shows promoting our product, sometimes along with other products she recommends based on her expertise. Your Guides give an example of a celebrity spokesperson appearing on a talk show and recommend that the celebrity disclose her connection to the company she is promoting. Does that principle also apply to expert endorsers?***

Yes, it does. Your spokesperson should disclose her connection when promoting your products outside of traditional advertising media (in other words, on programming that consumers won’t recognize as paid advertising). The same guidance also would apply to comments by the expert in her blog or on her website.

## **EMPLOYEE ENDORSEMENTS**

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***I work for a terrific company. Can I mention our products to people in my social networks? How about on a review site? My friends won’t be misled since it’s clear in my online profiles where I work.***

If your company allows employees to use social media to talk about its products, you should make sure that your relationship is disclosed to people who read your online postings about your company or its products. Put yourself in the reader’s shoes. Isn’t the employment relationship something you would want to know before relying on someone else’s endorsement? Listing your



employer on your profile page isn't enough. After all, people who just read what you post on a review site won't get that information.

People reading your posting on a review site probably won't know who you are. You definitely should disclose your employment relationship when making an endorsement.

***On her own initiative and without us asking, one of our employees used her personal social network simply to “like” or “share” one of our company’s posts. Does she need to disclose that she works for our company?***

Whether there should be any disclosure depends upon whether the “like” or “share” could be viewed as an advertisement for your company. If the post is an ad, then employees endorsing the post should disclose their relationship to the company. With a share, that's fairly easy to do, “Check out my company's great new product ....” Regarding “likes,” see what we said above about “likes.”

***Our company’s policy says that employees shouldn’t post positive reviews online about our products without clearly disclosing their relationship to the company. All of our employees agree to abide by this policy when they are hired. But we have several thousand people working here and we can’t monitor what they all do on their own computers and other devices when they aren’t at work. Are we liable if an employee posts a review of one of our products, either on our company website or on a social media site and doesn’t disclose that relationship?***

It wouldn't be reasonable to expect you to monitor every social media posting by all of your employees. However, you should establish a formal program to remind employees periodically of your policy, especially if the company encourages employees to share their opinions about your products. Also, if you learn that an employee has posted a review on the company's website or a social media site without adequately disclosing his or her relationship to the company, you should remind them of your company policy and ask them to remove that review or adequately disclose that they're an employee.

***What about employees of an ad agency or public relations firm? Can my agency ask our employees to spread the buzz about our clients’ products?***

First, an ad agency (or any company for that matter) shouldn't ask employees to say anything that isn't true. No one should endorse a product they haven't used or say things they don't believe about a product, and an employer certainly shouldn't encourage employees to engage in such conduct.

Moreover, employees of an ad agency or public relations firm have a connection to the advertiser, which should be disclosed in all social media posts. Agencies asking their employees to spread the word must instruct those employees about their responsibilities to disclose their relationship to the product they are endorsing, e.g., “My employer is paid to promote [name of product],” or simply “Advertisement,” or when space is an issue, “Ad” or “#ad.”

***My company XYZ wants to tell our employees what to disclose in social media. Is “#employee” good enough?***

Consumers may be confused by “#employee.” Consumers would be more likely to understand “#XYZ\_Employee.” Then again, if consumers don’t associate your company’s name with the product or brand being endorsed, that disclosure might not work. It would be much clearer to use the words “my company” or “employer’s” in the body of the message. It’s a lot easier to understand and harder to miss.

## USING TESTIMONIALS THAT DON’T REFLECT THE TYPICAL CONSUMER EXPERIENCE

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***We want to run ads featuring endorsements from consumers who achieved the best results with our company’s product. Can we do that?***

Testimonials claiming specific results usually will be interpreted to mean that the endorser’s experience reflects what others can also expect. Statements like “Results not typical” or “Individual results may vary” won’t change that interpretation. That leaves advertisers with two choices:

1. Have adequate proof to back up the claim that the results shown in the ad are typical, or
2. Clearly and conspicuously disclose the generally expected performance in the circumstances shown in the ad.

***How would this principle about testimonialists who achieved exceptional results apply in a real ad?***

The Guides include several examples with practical advice on this topic. One example is about an ad in which a woman says, “I lost 50 pounds in 6 months with WeightAway.” If consumers can’t generally expect to get those results, the ad should say how much weight consumers can expect to lose in similar circumstances – for example, “Most women who use WeightAway for six months lose at least 15 pounds.”

***Our company website includes testimonials from some of our more successful customers who used our product during the past few years and mentions the results they got. We can’t figure out now what the “generally expected results” were back then. What should we do? Do we have to remove those testimonials?***

There are two issues here. First, according to the Guides, if your website says or implies that the endorser currently uses the product in question, you can use that endorsement only as long as you have good reason to believe the endorser does still use the product. If you’re using endorsements that are a few years old, it’s your obligation to make sure the claims still are accurate. If your product has changed, it’s best to get new endorsements.

Second, if your product is the same as it was when the endorsements were given and the claims are still accurate, you probably can use the old endorsements if the disclosures are consistent with what the generally expected results are now.

***Where can I find out more?***

The Guides offer more than 35 examples involving various endorsement scenarios. Questions? Send them to [endorsements@ftc.gov](mailto:endorsements@ftc.gov). We may address them in future FAQs.

The FTC works to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint or get free information on consumer issues, visit [ftc.gov](http://ftc.gov) or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. Watch a video, [How to File a Complaint](#), at [consumer.ftc.gov/media](http://consumer.ftc.gov/media) to learn more. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

## YOUR OPPORTUNITY TO COMMENT

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The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman).

September 2017

**FEDERAL TRADE COMMISSION**  
**16 CFR Part 255**

**Guides Concerning the Use of Endorsements and Testimonials in Advertising**

\* \* \* \*

This document includes only the text of the Revised Endorsement and Testimonial Guides. To learn more, read the Federal Register Notice at [www.ftc.gov/opa/2009/10/endortest.shtm](http://www.ftc.gov/opa/2009/10/endortest.shtm).

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**§ 255.0 Purpose and definitions.**

(a) The Guides in this part represent administrative interpretations of laws enforced by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. Specifically, the Guides address the application of Section 5 of the FTC Act (15 U.S.C. 45) to the use of endorsements and testimonials in advertising. The Guides provide the basis for voluntary compliance with the law by advertisers and endorsers. Practices inconsistent with these Guides may result in corrective action by the Commission under Section 5 if, after investigation, the Commission 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 Commission will use in evaluating endorsements and testimonials, together with examples illustrating the application of those principles. The Guides do not purport to cover every possible use of endorsements in advertising. Whether a particular endorsement or testimonial is deceptive will depend on the specific factual circumstances of the advertisement at issue.

(b) For purposes of this part, an endorsement means 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. The party whose opinions, beliefs, findings, or experience the message appears to reflect will be called the endorser and may be an individual, group, or institution.

(c) The Commission intends to treat endorsements and testimonials identically in the context of its enforcement of the Federal Trade Commission Act and for purposes of this part. The term endorsements is therefore generally used hereinafter to cover both terms and situations.

(d) For purposes of this part, the term product includes any product, service, company or industry.

(e) For purposes of this part, an expert is an individual, group, or institution possessing, as a result of experience, study, or training, knowledge of a particular subject, which knowledge is superior to what ordinary individuals generally acquire.

**Example 1:** A film critic's review of a movie is excerpted in an advertisement. When so used, the review meets the definition of an endorsement because it is viewed by readers as a statement of the critic's own opinions and not those of the film producer, distributor, or exhibitor. Any alteration in or quotation from the text of the review that does not fairly reflect its substance would be a violation of the standards set by this part because it would distort the endorser's opinion. [See § 255.1(b).]

**Example 2:** A TV commercial depicts two women in a supermarket buying a laundry detergent. The women are not identified outside the context of the advertisement. One comments to the other how clean her brand makes her family's clothes, and the other then comments that she will try it because she has not been fully satisfied with her own brand. This obvious fictional dramatization of a real life situation would not be an endorsement.

**Example 3:** In an advertisement for a pain remedy, an announcer who is not familiar to consumers except as a spokesman for the advertising drug company praises the drug's ability to deliver fast and lasting pain relief. He purports to speak, not on the basis of his own opinions, but rather in the place of and on behalf of the drug company. The announcer's statements would not be considered an endorsement.

**Example 4:** A manufacturer of automobile tires hires a well-known professional automobile racing driver to deliver its advertising message in television commercials. In these commercials, the driver speaks of the smooth ride, strength, and long life of the tires. Even though the message is not expressly declared to be the personal opinion of the driver, it may nevertheless constitute an endorsement of the tires. Many consumers will recognize this individual as being primarily a racing driver and not merely a spokesperson or announcer for the advertiser. Accordingly, they may well believe the driver would not speak for an automotive product unless he actually believed in what he was saying and had personal knowledge sufficient to form that belief. Hence, they would think that the advertising message reflects the driver's personal views. This attribution of the underlying views to the driver brings the advertisement within the definition of an endorsement for purposes of this part.

**Example 5:** A television advertisement for a particular brand of golf balls shows a prominent and well-recognized professional golfer practicing numerous drives off the tee. This would be an endorsement by the golfer even though she makes no verbal statement in the advertisement.

**Example 6:** An infomercial for a home fitness system is hosted by a well-known entertainer. During the infomercial, the entertainer demonstrates the machine and states that it is the most effective and easy-to-use home exercise machine that she has ever tried. Even if she is reading from a script, this statement would be an endorsement, because consumers are likely to believe it reflects the entertainer's views.

**Example 7:** A television advertisement for a housewares store features a well-known female comedian and a well-known male baseball player engaging in light-hearted banter about products each one intends to purchase for the other. The comedian says that she will buy him a Brand X, portable, high-definition television so he can finally see the strike zone. He says that he will get her a Brand Y juicer so she can make juice with all the fruit

and vegetables thrown at her during her performances. The comedian and baseball player are not likely to be deemed endorsers because consumers will likely realize that the individuals are not expressing their own views.

**Example 8:** A consumer who regularly purchases a particular brand of dog food decides one day to purchase a new, more expensive brand made by the same manufacturer. She writes in her personal blog that the change in diet has made her dog's fur noticeably softer and shinier, and that in her opinion, the new food definitely is worth the extra money. This posting would not be deemed an endorsement under the Guides.

Assume that rather than purchase the dog food with her own money, the consumer gets it for free because the store routinely tracks her purchases and its computer has generated a coupon for a free trial bag of this new brand. Again, her posting would not be deemed an endorsement under the Guides.

Assume now that the consumer joins a network marketing program under which she periodically receives various products about which she can write reviews if she wants to do so. If she receives a free bag of the new dog food through this program, her positive review would be considered an endorsement under the Guides.

## **§ 255.1 General considerations.**

(a) Endorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser. Furthermore, an endorsement may not convey any express or implied representation that would be deceptive if made directly by the advertiser. [See §§ 255.2(a) and (b) regarding substantiation of representations conveyed by consumer endorsements.]

(b) The endorsement message need not be phrased in the exact words of the endorser, unless the advertisement affirmatively so represents. However, the endorsement may not be presented out of context or reworded so as to distort in any way the endorser's opinion or experience with the product. An advertiser may use an endorsement of an expert or celebrity only so long as it has good reason to believe that the endorser continues to subscribe to the views presented. An advertiser may satisfy this obligation by securing the endorser's views at reasonable intervals where reasonableness will be determined by such factors as new information on the performance or effectiveness of the product, a material alteration in the product, changes in the performance of competitors' products, and the advertiser's contract commitments.

(c) When the advertisement represents that the endorser uses the endorsed product, the endorser must have been a bona fide user of it at the time the endorsement was given. Additionally, the advertiser may continue to run the advertisement only so long as it has good reason to believe that the endorser remains a bona fide user of the product. [See § 255.1(b) regarding the "good reason to believe" requirement.]

(d) Advertisers are subject to liability for false or unsubstantiated statements made through endorsements, or for failing to disclose material connections between themselves and their endorsers [see § 255.5]. Endorsers also may be liable for statements made in the course of their endorsements.

**Example 1:** A building contractor states in an advertisement that he uses the advertiser's exterior house paint because of its remarkable quick drying properties and durability. This endorsement must comply with the pertinent requirements of Section 255.3 (Expert Endorsements). Subsequently, the advertiser reformulates its paint to enable it to cover exterior surfaces with only one coat. Prior to continued use of the contractor's endorsement, the advertiser must contact the contractor in order to determine whether the contractor would continue to specify the paint and to subscribe to the views presented previously.

**Example 2:** A television advertisement portrays a woman seated at a desk on which rest five unmarked computer keyboards. An announcer says, "We asked X, an administrative assistant for over ten years, to try these five unmarked keyboards and tell us which one she liked best." The advertisement portrays X typing on each keyboard and then picking the advertiser's brand. The announcer asks her why, and X gives her reasons. This endorsement would probably not represent that X actually uses the advertiser's keyboard at work. In addition, the endorsement also may be required to meet the standards of Section 255.3 (expert endorsements).

**Example 3:** An ad for an acne treatment features a dermatologist who claims that the product is "clinically proven" to work. Before giving the endorsement, she received a write-up of the clinical study in question, which indicates flaws in the design and conduct of the study that are so serious that they preclude any conclusions about the efficacy of the product. The dermatologist is subject to liability for the false statements she made in the advertisement. The advertiser is also liable for misrepresentations made through the endorsement. [See Section 255.3 regarding the product evaluation that an expert endorser must conduct.]

**Example 4:** A well-known celebrity appears in an infomercial for an oven roasting bag that purportedly cooks every chicken perfectly in thirty minutes. During the shooting of the infomercial, the celebrity watches five attempts to cook chickens using the bag. In each attempt, the chicken is undercooked after thirty minutes and requires sixty minutes of cooking time. In the commercial, the celebrity places an uncooked chicken in the oven roasting bag and places the bag in one oven. He then takes a chicken roasting bag from a second oven, removes from the bag what appears to be a perfectly cooked chicken, tastes the chicken, and says that if you want perfect chicken every time, in just thirty minutes, this is the product you need. A significant percentage of consumers are likely to believe the celebrity's statements represent his own views even though he is reading from a script. The celebrity is subject to liability for his statement about the product. The advertiser is also liable for misrepresentations made through the endorsement.

**Example 5:** A skin care products advertiser participates in a blog advertising service. The service matches up advertisers with bloggers who will promote the advertiser's products on their personal blogs. The advertiser requests that a blogger try a new body lotion and write a review of the product on her blog. Although the advertiser does not make any specific claims about the lotion's ability to cure skin conditions and the blogger does not ask the advertiser whether there is substantiation for the claim, in her review the blogger writes that the lotion cures eczema and recommends the product to her blog readers who suffer from this condition. The advertiser is subject to liability for misleading or unsubstantiated

representations made through the blogger's endorsement. The blogger also is subject to liability for misleading or unsubstantiated representations made in the course of her endorsement. The blogger is also liable if she fails to disclose clearly and conspicuously that she is being paid for her services. [See § 255.5.]

In order to limit its potential liability, the advertiser should ensure that the advertising service provides guidance and training to its bloggers concerning the need to ensure that statements they make are truthful and substantiated. The advertiser should also monitor bloggers who are being paid to promote its products and take steps necessary to halt the continued publication of deceptive representations when they are discovered.

## **§ 255.2 Consumer endorsements.**

(a) An advertisement employing endorsements by one or more consumers about the performance of an advertised product or service will be interpreted as representing that the product or service is effective for the purpose depicted in the advertisement. Therefore, the advertiser must possess and rely upon adequate substantiation, including, when appropriate, competent and reliable scientific evidence, to support such claims made through endorsements in the same manner the advertiser would be required to do if it had made the representation directly, *i.e.*, without using endorsements. Consumer endorsements themselves are not competent and reliable scientific evidence.

(b) An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation.<sup>1</sup>

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<sup>1</sup> The Commission tested the communication of advertisements containing testimonials that clearly and prominently disclosed either "Results not typical" or the stronger "These testimonials are based on the experiences of a few people and you are not likely to have similar results." Neither disclosure adequately reduced the communication that the experiences depicted are generally representative. Based upon this research, the Commission believes that similar disclaimers regarding the limited applicability of an endorser's experience to what consumers may generally expect to achieve are unlikely to be effective.

Nonetheless, the Commission cannot rule out the possibility that a strong disclaimer of typicality could be effective in the context of a particular advertisement. Although the Commission would have the burden of proof in a law enforcement action, the Commission notes that an advertiser possessing reliable empirical testing demonstrating that the net impression of its advertisement with such a disclaimer is non-deceptive will avoid the risk of the initiation of such an action in the first instance.



(c) Advertisements presenting endorsements by what are represented, directly or by implication, to be “actual consumers” should utilize actual consumers in both the audio and video, or clearly and conspicuously disclose that the persons in such advertisements are not actual consumers of the advertised product.

**Example 1:** A brochure for a baldness treatment consists entirely of testimonials from satisfied customers who say that after using the product, they had amazing hair growth and their hair is as thick and strong as it was when they were teenagers. The advertiser must have competent and reliable scientific evidence that its product is effective in producing new hair growth.

The ad will also likely communicate that the endorsers’ experiences are representative of what new users of the product can generally expect. Therefore, even if the advertiser includes a disclaimer such as, “Notice: These testimonials do not prove our product works. You should not expect to have similar results,” the ad is likely to be deceptive unless the advertiser has adequate substantiation that new users typically will experience results similar to those experienced by the testimonialists.

**Example 2:** An advertisement disseminated by a company that sells heat pumps presents endorsements from three individuals who state that after installing the company’s heat pump in their homes, their monthly utility bills went down by \$100, \$125, and \$150, respectively. The ad will likely be interpreted as conveying that such savings are representative of what consumers who buy the company’s heat pump can generally expect. The advertiser does not have substantiation for that representation because, in fact, less than 20% of purchasers will save \$100 or more. A disclosure such as, “Results not typical” or, “These testimonials are based on the experiences of a few people and you are not likely to have similar results” is insufficient to prevent this ad from being deceptive because consumers will still interpret the ad as conveying that the specified savings are representative of what consumers can generally expect. The ad is less likely to be deceptive if it clearly and conspicuously discloses the generally expected savings and the advertiser has adequate substantiation that homeowners can achieve those results. There are multiple ways that such a disclosure could be phrased, *e.g.*, “the average homeowner saves \$35 per month,” “the typical family saves \$50 per month during cold months and \$20 per month in warm months,” or “most families save 10% on their utility bills.”

**Example 3:** An advertisement for a cholesterol-lowering product features an individual who claims that his serum cholesterol went down by 120 points and does not mention having made any lifestyle changes. A well-conducted clinical study shows that the product reduces the cholesterol levels of individuals with elevated cholesterol by an average of 15% and the advertisement clearly and conspicuously discloses this fact. Despite the presence of this disclosure, the advertisement would be deceptive if the advertiser does not have adequate substantiation that the product can produce the specific results claimed by the endorser (*i.e.*, a 120-point drop in serum cholesterol without any lifestyle changes).

**Example 4:** An advertisement for a weight-loss product features a formerly obese woman. She says in the ad, “Every day, I drank 2 WeightAway shakes, ate only raw vegetables, and exercised vigorously for six hours at the gym. By the end of six months, I had gone from 250 pounds to 140 pounds.” The advertisement accurately describes the woman’s

experience, and such a result is within the range that would be generally experienced by an extremely overweight individual who consumed WeightAway shakes, only ate raw vegetables, and exercised as the endorser did. Because the endorser clearly describes the limited and truly exceptional circumstances under which she achieved her results, the ad is not likely to convey that consumers who weigh substantially less or use WeightAway under less extreme circumstances will lose 110 pounds in six months. (If the advertisement simply says that the endorser lost 110 pounds in six months using WeightAway together with diet and exercise, however, this description would not adequately alert consumers to the truly remarkable circumstances leading to her weight loss.) The advertiser must have substantiation, however, for any performance claims conveyed by the endorsement (*e.g.*, that WeightAway is an effective weight loss product).

If, in the alternative, the advertisement simply features “before” and “after” pictures of a woman who says “I lost 50 pounds in 6 months with WeightAway,” the ad is likely to convey that her experience is representative of what consumers will generally achieve. Therefore, if consumers cannot generally expect to achieve such results, the ad should clearly and conspicuously disclose what they can expect to lose in the depicted circumstances (*e.g.*, “most women who use WeightAway for six months lose at least 15 pounds”).

If the ad features the same pictures but the testimonialist simply says, “I lost 50 pounds with WeightAway,” and WeightAway users generally do not lose 50 pounds, the ad should disclose what results they do generally achieve (*e.g.*, “most women who use WeightAway lose 15 pounds”).

**Example 5:** An advertisement presents the results of a poll of consumers who have used the advertiser’s cake mixes as well as their own recipes. The results purport to show that the majority believed that their families could not tell the difference between the advertised mix and their own cakes baked from scratch. Many of the consumers are actually pictured in the advertisement along with relevant, quoted portions of their statements endorsing the product. This use of the results of a poll or survey of consumers represents that this is the typical result that ordinary consumers can expect from the advertiser’s cake mix.

**Example 6:** An advertisement purports to portray a “hidden camera” situation in a crowded cafeteria at breakfast time. A spokesperson for the advertiser asks a series of actual patrons of the cafeteria for their spontaneous, honest opinions of the advertiser’s recently introduced breakfast cereal. Even though the words “hidden camera” are not displayed on the screen, and even though none of the actual patrons is specifically identified during the advertisement, the net impression conveyed to consumers may well be that these are actual customers, and not actors. If actors have been employed, this fact should be clearly and conspicuously disclosed.

**Example 7:** An advertisement for a recently released motion picture shows three individuals coming out of a theater, each of whom gives a positive statement about the movie. These individuals are actual consumers expressing their personal views about the movie. The advertiser does not need to have substantiation that their views are representative of the opinions that most consumers will have about the movie. Because the consumers’ statements would be understood to be the subjective opinions of only three people, this advertisement is not likely to convey a typicality message.

If the motion picture studio had approached these individuals outside the theater and offered them free tickets if they would talk about the movie on camera afterwards, that arrangement should be clearly and conspicuously disclosed. [See § 255.5.]

### **§ 255.3 Expert endorsements.**

(a) Whenever an advertisement represents, directly or by implication, that the endorser is an expert with respect to the endorsement message, then the endorser's qualifications must in fact give the endorser the expertise that he or she is represented as possessing with respect to the endorsement.

(b) Although the expert may, in endorsing a product, take into account factors not within his or her expertise (*e.g.*, matters of taste or price), the endorsement must be supported by an actual exercise of that expertise in evaluating product features or characteristics with respect to which he or she is expert and which are relevant to an ordinary consumer's use of or experience with the product and are available to the ordinary consumer. This evaluation must have included an examination or testing of the product at least as extensive as someone with the same degree of expertise would normally need to conduct in order to support the conclusions presented in the endorsement. To the extent that the advertisement implies that the endorsement was based upon a comparison, such comparison must have been included in the expert's evaluation; and as a result of such comparison, the expert must have concluded that, with respect to those features on which he or she is expert and which are relevant and available to an ordinary consumer, the endorsed product is at least equal overall to the competitors' products. Moreover, where the net impression created by the endorsement is that the advertised product is superior to other products with respect to any such feature or features, then the expert must in fact have found such superiority. [See § 255.1(d) regarding the liability of endorsers.]

**Example 1:** An endorsement of a particular automobile by one described as an "engineer" implies that the endorser's professional training and experience are such that he is well acquainted with the design and performance of automobiles. If the endorser's field is, for example, chemical engineering, the endorsement would be deceptive.

**Example 2:** An endorser of a hearing aid is simply referred to as "Doctor" during the course of an advertisement. The ad likely implies that the endorser is a medical doctor with substantial experience in the area of hearing. If the endorser is not a medical doctor with substantial experience in audiology, the endorsement would likely be deceptive. A non-medical "doctor" (*e.g.*, an individual with a Ph.D. in exercise physiology) or a physician without substantial experience in the area of hearing can endorse the product, but if the endorser is referred to as "doctor," the advertisement must make clear the nature and limits of the endorser's expertise.

**Example 3:** A manufacturer of automobile parts advertises that its products are approved by the "American Institute of Science." From its name, consumers would infer that the "American Institute of Science" is a bona fide independent testing organization with expertise in judging automobile parts and that, as such, it would not approve any automobile part without first testing its efficacy by means of valid scientific methods. If the American Institute of Science is not such a bona fide independent testing organization

(e.g., if it was established and operated by an automotive parts manufacturer), the endorsement would be deceptive. Even if the American Institute of Science is an independent bona fide expert testing organization, the endorsement may nevertheless be deceptive unless the Institute has conducted valid scientific tests of the advertised products and the test results support the endorsement message.

**Example 4:** A manufacturer of a non-prescription drug product represents that its product has been selected over competing products by a large metropolitan hospital. The hospital has selected the product because the manufacturer, unlike its competitors, has packaged each dose of the product separately. This package form is not generally available to the public. Under the circumstances, the endorsement would be deceptive because the basis for the hospital's choice – convenience of packaging – is neither relevant nor available to consumers, and the basis for the hospital's decision is not disclosed to consumers.

**Example 5:** A woman who is identified as the president of a commercial "home cleaning service" states in a television advertisement that the service uses a particular brand of cleanser, instead of leading competitors it has tried, because of this brand's performance. Because cleaning services extensively use cleansers in the course of their business, the ad likely conveys that the president has knowledge superior to that of ordinary consumers. Accordingly, the president's statement will be deemed to be an expert endorsement. The service must, of course, actually use the endorsed cleanser. In addition, because the advertisement implies that the cleaning service has experience with a reasonable number of leading competitors to the advertised cleanser, the service must, in fact, have such experience, and, on the basis of its expertise, it must have determined that the cleaning ability of the endorsed cleanser is at least equal (or superior, if such is the net impression conveyed by the advertisement) to that of leading competitors' products with which the service has had experience and which remain reasonably available to it. Because in this example the cleaning service's president makes no mention that the endorsed cleanser was "chosen," "selected," or otherwise evaluated in side-by-side comparisons against its competitors, it is sufficient if the service has relied solely upon its accumulated experience in evaluating cleansers without having performed side-by-side or scientific comparisons.

**Example 6:** A medical doctor states in an advertisement for a drug that the product will safely allow consumers to lower their cholesterol by 50 points. If the materials the doctor reviewed were merely letters from satisfied consumers or the results of a rodent study, the endorsement would likely be deceptive because those materials are not what others with the same degree of expertise would consider adequate to support this conclusion about the product's safety and efficacy.

#### **§ 255.4 Endorsements by organizations.**

Endorsements by organizations, especially expert ones, are viewed as representing the judgment of a group whose collective experience exceeds that of any individual member, and whose judgments are generally free of the sort of subjective factors that vary from individual to individual.

Therefore, an organization's endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization. Moreover, if an organization is represented as being expert, then, in conjunction with a proper exercise of its

expertise in evaluating the product under § 255.3 (expert endorsements), it must utilize an expert or experts recognized as such by the organization or standards previously adopted by the organization and suitable for judging the relevant merits of such products. [See § 255.1(d) regarding the liability of endorsers.]

**Example:** A mattress seller advertises that its product is endorsed by a chiropractic association. Because the association would be regarded as expert with respect to judging mattresses, its endorsement must be supported by an evaluation by an expert or experts recognized as such by the organization, or by compliance with standards previously adopted by the organization and aimed at measuring the performance of mattresses in general and not designed with the unique features of the advertised mattress in mind.

### **§ 255.5 Disclosure of material connections.**

When there exists a connection between the endorser and the seller of the advertised product 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. For example, when an endorser who appears in a television commercial is neither represented in the advertisement as an expert nor is known to a significant portion of the viewing public, then the advertiser should clearly and conspicuously disclose either the payment or promise of compensation prior to and in exchange for the endorsement or the fact that the endorser knew or had reason to know or to believe that if the endorsement favored the advertised product some benefit, such as an appearance on television, would be extended to the endorser. Additional guidance, including guidance concerning endorsements made through other media, is provided by the examples below.

**Example 1:** A drug company commissions research on its product by an outside organization. The drug company determines the overall subject of the research (*e.g.*, to test the efficacy of a newly developed product) and pays a substantial share of the expenses of the research project, but the research organization determines the protocol for the study and is responsible for conducting it. A subsequent advertisement by the drug company mentions the research results as the “findings” of that research organization. Although the design and conduct of the research project are controlled by the outside research organization, the weight consumers place on the reported results could be materially affected by knowing that the advertiser had funded the project. Therefore, the advertiser’s payment of expenses to the research organization should be disclosed in this advertisement.

**Example 2:** A film star endorses a particular food product. The endorsement regards only points of taste and individual preference. This endorsement must, of course, comply with § 255.1; but regardless of whether the star’s compensation for the commercial is a \$1 million cash payment or a royalty for each product sold by the advertiser during the next year, no disclosure is required because such payments likely are ordinarily expected by viewers.

**Example 3:** During an appearance by a well-known professional tennis player on a television talk show, the host comments that the past few months have been the best of her career and during this time she has risen to her highest level ever in the rankings. She responds by attributing the improvement in her game to the fact that she is seeing the ball

better than she used to, ever since having laser vision correction surgery at a clinic that she identifies by name. She continues talking about the ease of the procedure, the kindness of the clinic's doctors, her speedy recovery, and how she can now engage in a variety of activities without glasses, including driving at night. The athlete does not disclose that, even though she does not appear in commercials for the clinic, she has a contractual relationship with it, and her contract pays her for speaking publicly about her surgery when she can do so. Consumers might not realize that a celebrity discussing a medical procedure in a television interview has been paid for doing so, and knowledge of such payments would likely affect the weight or credibility consumers give to the celebrity's endorsement. Without a clear and conspicuous disclosure that the athlete has been engaged as a spokesperson for the clinic, this endorsement is likely to be deceptive. Furthermore, if consumers are likely to take away from her story that her experience was typical of those who undergo the same procedure at the clinic, the advertiser must have substantiation for that claim.

Assume that instead of speaking about the clinic in a television interview, the tennis player touts the results of her surgery – mentioning the clinic by name – on a social networking site that allows her fans to read in real time what is happening in her life. Given the nature of the medium in which her endorsement is disseminated, consumers might not realize that she is a paid endorser. Because that information might affect the weight consumers give to her endorsement, her relationship with the clinic should be disclosed.

Assume that during that same television interview, the tennis player is wearing clothes bearing the insignia of an athletic wear company with whom she also has an endorsement contract. Although this contract requires that she wear the company's clothes not only on the court but also in public appearances, when possible, she does not mention them or the company during her appearance on the show. No disclosure is required because no representation is being made about the clothes in this context.

**Example 4:** An ad for an anti-snoring product features a physician who says that he has seen dozens of products come on the market over the years and, in his opinion, this is the best ever. Consumers would expect the physician to be reasonably compensated for his appearance in the ad. Consumers are unlikely, however, to expect that the physician receives a percentage of gross product sales or that he owns part of the company, and either of these facts would likely materially affect the credibility that consumers attach to the endorsement. Accordingly, the advertisement should clearly and conspicuously disclose such a connection between the company and the physician.

**Example 5:** An actual patron of a restaurant, who is neither known to the public nor presented as an expert, is shown seated at the counter. He is asked for his "spontaneous" opinion of a new food product served in the restaurant. Assume, first, that the advertiser had posted a sign on the door of the restaurant informing all who entered that day that patrons would be interviewed by the advertiser as part of its TV promotion of its new soy protein "steak." This notification would materially affect the weight or credibility of the patron's endorsement, and, therefore, viewers of the advertisement should be clearly and conspicuously informed of the circumstances under which the endorsement was obtained.

Assume, in the alternative, that the advertiser had not posted a sign on the door of the restaurant, but had informed all interviewed customers of the “hidden camera” only after interviews were completed and the customers had no reason to know or believe that their response was being recorded for use in an advertisement. Even if patrons were also told that they would be paid for allowing the use of their opinions in advertising, these facts need not be disclosed.

**Example 6:** An infomercial producer wants to include consumer endorsements for an automotive additive product featured in her commercial, but because the product has not yet been sold, there are no consumer users. The producer’s staff reviews the profiles of individuals interested in working as “extras” in commercials and identifies several who are interested in automobiles. The extras are asked to use the product for several weeks and then report back to the producer. They are told that if they are selected to endorse the product in the producer’s infomercial, they will receive a small payment. Viewers would not expect that these “consumer endorsers” are actors who were asked to use the product so that they could appear in the commercial or that they were compensated. Because the advertisement fails to disclose these facts, it is deceptive.

**Example 7:** A college student who has earned a reputation as a video game expert maintains a personal weblog or “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.

**Example 8:** An online message board designated for discussions of new music download technology is frequented by MP3 player enthusiasts. They 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. Therefore, the poster should clearly and conspicuously disclose her relationship to the manufacturer to members and readers of the message board.

**Example 9:** A young man signs up to be part of a “street team” program in which points are awarded each time a team member talks to his or her friends about a particular advertiser’s products. Team members can then exchange their points for prizes, such as concert tickets or electronics. These incentives would materially affect the weight or credibility of the team member’s endorsements. They should be clearly and conspicuously disclosed, and the advertiser should take steps to ensure that these disclosures are being provided.

# Disclosures 101

for

Social Media

Influencers





# Do you work with brands to recommend or endorse products?

If so, you need to comply with the law when making these recommendations.

One key is to make a good disclosure of your relationship to the brand.

This brochure from FTC staff gives tips on when and how to make good disclosures.

The FTC works to stop deceptive ads, and its Endorsement Guides go into detail about how advertisers and endorsers can stay on the right side of the law.

If you endorse a product through social media, your endorsement message should make it obvious when you have a relationship (“material connection”) with the brand. A “material connection” to the brand includes a personal, family, or employment relationship or a financial relationship – such as the brand paying you or giving you free or discounted products or services.

Telling your followers about these kinds of relationships is important because it helps keep your recommendations honest and truthful, and it allows people to weigh the value of your endorsements.

As an influencer, it's **your responsibility** to make these disclosures, to be familiar with the Endorsement Guides, and to comply with laws against deceptive ads. Don't rely on others to do it for you.



# When to Disclose

- ▶ Disclose when you have any **financial, employment, personal, or family relationship** with a brand.
  - » Financial relationships aren't limited to money. Disclose the relationship if you got anything of value to mention a product.
  - » If a brand gives you free or discounted products or other perks and then you mention one of its products, make a disclosure even if you weren't asked to mention *that* product.
  - » Don't assume your followers already know about your brand relationships.
  - » Make disclosures even if you think your evaluations are unbiased.
- ▶ Keep in mind that tags, likes, pins, and similar ways of showing you like a brand or product are endorsements.
- ▶ If posting from abroad, U.S. law applies if it's reasonably foreseeable that the post will affect U.S. consumers. Foreign laws might also apply.
- ▶ If you have no brand relationship and are just telling people about a product you bought and happen to like, you don't need to declare that you **don't** have a brand relationship.

# How to Disclose

Make sure people will **see and understand** the disclosure.

► Place it so it's **hard to miss**.

- » The disclosure should be placed with the endorsement message itself.
- » Disclosures are likely to be missed if they appear only on an ABOUT ME or profile page, at the end of posts or videos, or anywhere that requires a person to click MORE.
- » Don't mix your disclosure into a group of hashtags or links.



- » If your endorsement is in a *picture* on a platform like Snapchat and Instagram Stories, superimpose the disclosure over the picture and make sure viewers have enough time to notice and read it.

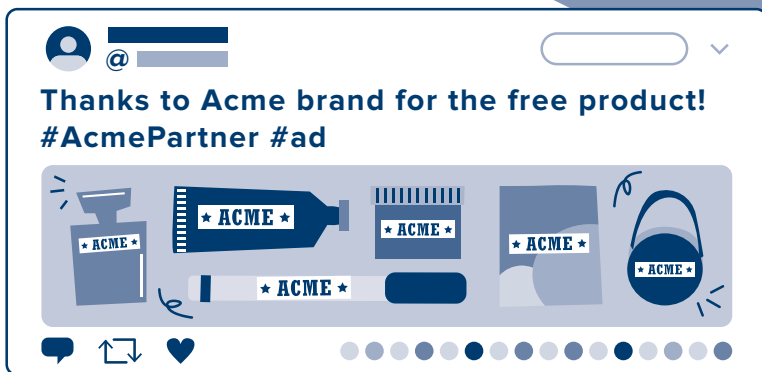


- » If making an endorsement in a *video*, the disclosure should be in the video and not just in the description uploaded with the video. Viewers are more likely to notice disclosures made in both audio and video. Some viewers may watch without sound and others may not notice superimposed words.



- » If making an endorsement in a *live stream*, the disclosure should be repeated periodically so viewers who only see part of the stream will get the disclosure.





- ▶ Use **simple and clear** language.
  - » Simple explanations like “Thanks to Acme brand for the free product” are often enough if placed in a way that is hard to miss.
  - » So are terms like “advertisement,” “ad,” and “sponsored.”
  - » On a space-limited platform like Twitter, the terms “AcmePartner” or “Acme Ambassador” (where Acme is the brand name) are also options.
  - » It’s fine (but not necessary) to include a hashtag with the disclosure, such as #ad or #sponsored.
  - » Don’t use vague or confusing terms like “sp,” “spon,” or “collab,” or stand-alone terms like “thanks” or “ambassador,” and stay away from other abbreviations and shorthand when possible.
- ▶ The disclosure should be in the same language as the endorsement itself.
- ▶ Don’t assume that a platform’s disclosure tool is good enough, but consider using it in addition to your own, good disclosure.

# What Else to Know

- ▶ You can't talk about your experience with a product you haven't tried.
- ▶ If you're paid to talk about a product and thought it was terrible, you can't say it's terrific.
- ▶ You can't make up claims about a product that would require proof the advertiser doesn't have – such as scientific proof that a product can treat a health condition.





## FOR MORE INFORMATION

Have more questions? The FTC's Endorsement Guides: What People Are Asking is an FTC staff publication that answers many questions about the use of endorsements, including in social media, with many helpful examples.

**[FTC.gov/influencers](https://www.ftc.gov/influencers)**



FEDERAL TRADE COMMISSION

[business.ftc.gov](https://business.ftc.gov)

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