



New FTC Guidelines for Promoting Products on Social Media

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Social media can be used in a multitude of ways for savvy brands to promote their products. They can loan out a new phone, provide free access to an app, provide free products, etc., in exchange for publicity on social media. While social media has its own methods of operation, the Federal Trade Commission (FTC) guidelines must be taken into account when handling these promotions.

Under Section 5 of the FTC Act, 15 U.S.C. § 45, the FTC is given the power to direct persons and companies away from using unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in affecting commerce. This encompasses advertising and social media.

One of the FTC's main concerns is that consumers may be misguided into believing that an endorsement is the honest opinion of an endorser when in actuality, there is a relationship between an endorser and a company and/or marketing firm that is employed by the company. If a relationship exists or an agreement has been made, the FTC requires that the endorser disclose this information.

It is common practice for companies or advertisers to loan or provide products, services or discounts to individuals who have a broad reach online. For example, a popular electronics reviewer with a blog with hundreds of thousands of followers are often given free products or are loaned the latest products in exchange for posting reviews, videos, pictures of the product or even pictures of themselves using the product on their accounts. The FTC is concerned that consumers will be deceived by these such posts.

As a result, the FTC has released guidelines that advise the endorsers, marketers and companies that they must disclose a relationship if the relationship is not apparent to consumers. (<https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking#contests>) Thus, if a blogger is writing a review, they must disclose whether the product was provided to them by a certain manufacturer or at least disclose their relationship (i.e. if they're sponsored or employed by the manufacturer).

In some forms of social media such as Twitter, Pinterest and Instagram, there is a limited amount of space in which one can post something, which makes disclosing this information more difficult. Further, the FTC has not mandated the specific wording of disclosures. However, it advises that inserting short statements such as "#sponsored", "#promotion", "paid ad" or even "ad," may be enough to disclose a connection between the endorser and company.

Many bloggers and social media users feel that having such tags or wording would make their social media accounts feel non-organic or worse, they would be labeled a "sell-out." While the FTC may choose who they would like to pursue, the guidelines still apply to bloggers and social media users. As a practical matter, the FTC has indicated that their enforcement efforts will focus on the companies and/or marketers whose products are the subject of the blogs.

Thus, while it certainly takes away from their organic publicity, companies should make an effort to advise the bloggers, reviewers and other social media that they must disclose their relationship or if they received a particular item from the company or its marketing firm. Particular hash-tags such as "#sponsored" can be used, or even perhaps much more obvious hash-tags such as "ProvidedToMeBy[insertcompanyname]forfree". Recently, some reviewers have begun to use the term "(Sponsored)" on the titles of their respective videos on YouTube.

Companies and marketers know that they cannot control what is said on social media and that their endorsers may not follow these guidelines, but they must be mindful of these FTC guidelines in order to prevent being subject to an enforcement action by the FTC. The FTC advises that companies educate and instruct endorsers of such guidelines, make periodic attempts to search for what is said and if there is a problem, follow-up on it. Thus, at a minimum, companies should make a concerted effort to expressly communicate to endorsers that they must adequately disclose the relationship to consumers. The companies should then monitor the posts. Further, if the company re-tweets, re-grams, or re-pins an endorsed post, they need to also disclose the relationship.

Thus, companies and marketers should take note of the FTC's guidelines and integrate them into their marketing plans and make the appropriate disclosures.



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