NATIVE ADVERTISING & SOCIAL INFLUENCERS

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Disclaimer

• My comments reflect my own views and do not necessarily reflect the views of the Commission or any individual Commissioner.
Background on the Endorsement & Testimonial Guides

- The Commission’s Endorsement & Testimonial Guides became effective December 1, 2009.

- The Guides apply to endorsements made in social media.
What is an Endorsement?

• An endorsement means any advertising message that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a person or organization other than the sponsoring advertiser.

• An endorsement can include: 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.
  ▪ Tagging is an endorsement.
Endorsements

- An endorsement must reflect the honest opinions, findings, beliefs, or experience of the endorser.
- An endorsement may not convey any express or implied representation that would be deceptive if made directly by the advertiser.
- 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.
- Endorsers also may be liable for false or misleading statements made in the course of their endorsements.
Material Connections Between Advertisers & Endorsers

- Consumers have a right to know when they are viewing content that is intended to create an interest in buying a product or service if there is a material relationship between the person providing the content and the person selling the product.

- An unexpected relationship between an endorser and an advertiser that could affect the credibility of the endorsement from the perspective of the viewer must be disclosed.

- Examples of such connections include:
  - Seller is compensating endorser;
  - Endorser is an employee or business associate of seller;
  - Endorser is related to seller;
  - Endorser is entered in sweepstakes;
  - Endorser gets free products.
Celebrity Endorsers

- In conventional ads, it’s not necessary for an ad to disclose that a celebrity is being paid, because in that context payment would be understood.

- Outside of conventional ads (on talk shows, social networking sites): the relationship with the advertiser should be disclosed when a celebrity talks up a product because payment isn’t obvious in that context.
Tips for Marketers

• Advertiser should ensure its “influencers” receive guidance/training about need to ensure statements are truthful/substantiated; and

• Advertiser should monitor “influencers” and take steps to halt continued publication of deceptive claims when discovered.
Clear and Conspicuous Disclosures

Does the disclosure standout?
Is it near the focal point?
Is it understandable?
Tips on Disclosures

- Use clear and unambiguous language.
- Place disclosures as close to the focal point as possible.
- Use a font and color that’s easy to read.
- Use a shade that stands out against the background.
- Video ads – insure that disclosure is on the screen long enough to be noticed, read, and understood.
- Audio disclosures – read at a cadence that’s easy for consumers to follow and in words consumers can understand.
@Tweets and other #space-constrained ads

- Even in space-constrained ads, required disclosures must still be clear and conspicuous.
- For example, if a tweet is paid for, it can start with “Ad:” or “#ad” to inform consumers that they’re seeing an ad.
- #sponsored, #promotion may also be appropriate and effective (but not cryptic abbreviations like #spon or #sp).
What Should the Disclosure Say?

• No mandated language.
• Ad, Advertisement, Paid Advertisement, Sponsored Advertising Content, are all good.
• Promoted or Promoted Stories may be ambiguous.
• Presented by, Brought to You by, Promoted by may not be clear.
• Sponsored (influencers).
Clear & Conspicuous Summary

- Disclosures should be *unambiguous*.
  - Don’t use industry jargon, words or phrases that are ambiguous or unfamiliar, unfamiliar icons or abbreviations; and don’t rely simply on a company logo or brand name.

- Disclosures should be placed *where* consumers will look, in the advertising message to which they relate.

- They should *stand out* so consumers will notice and read (or hear) them.
  - In font size and colors consumers can easily read on screen.
The Do’s and Don’ts for Social Media Influencers

**FTC RECOMMENDATIONS**
- Clearly DISCLOSE when you have a financial or family relationship with a brand
- Ensure your sponsorship disclosure is HARD TO MISS

**PRACTICES TO AVOID**
- DON’T ASSUME followers know about all your brand relationships
- Don’t assume disclosures BUILT INTO social media platforms are sufficient

Treat sponsored tags, including tags in pictures, LIKE ANY OTHER endorsement

On image-only platforms like Snapchat, SUPERIMPOSE DISCLOSURES over the images

Don’t rely on disclosures that people will see only if they CLICK “MORE”

Don’t use AMBIGUOUS DISCLOSURES like “Thanks,” #collab, #sp, #spon, or #ambassador

Source: Federal Trade Commission
giulanarandic Can you spot my latest obsession? (Hint: It’s on my heel but you can barely see it!!!) Love high heels. Hate Blisters. Not leaving the house without #CompeedUS in my bag this summer. Check it out @Walgreens #musthave #partner #gsessions

view all 133 comments

teresakiryakoza @chanel509
melis_henry @jan_mir not sure how it works
brig_mo @marykate_no_aslley_
rosellaloduca @akrzezelski heeeee guiltyyyyy
kat_hamilton @laneborgids
4vmygrrrl I need this
mapy0110 Me too 😘😘
tammycruz47 Cute shoes
carolinemanzo

Keeping on my healthy kick in the kitchen tonight with @hellofresh. Since all the fresh ingredients are pre-measured for perfectly portioned meals, I don’t have to think about meal planning and can just start cooking! Love that I have @hellofresh to switch it up when I just don’t have the time to grocery shop and meal prep. Give it a try with my code “FreshCaroline” for $35 off your first healthy week at hellofresh.com!#

fallmoms #healthy #hellofresh #pic #sp
Getting my tooth 4th of July ready! @pearlywhitesaustralia introduced me to coconut & charcoal infused whitening strips! Check out pearlywhitesaustralia.com #sensitiivity

118k likes

18 comments

#selfsassy

babyfacee Handsome my husband sayeekul Tom cruise
arlanegladu @christina.cz
princesstetner Charlie! @alwaysunnyFFx
8paau #23lauri
23lauri @8paau
hiks1967

#thankyou dont quit 4 AGAIN

Add a comment.
jwoww This is some serious fabgoals right here. So in love with my fall box from @fabfitfun. The ModCloth scarf is so cute and cozy and there are so many new beauty products that I can't wait to try like the night serum, eyeshadow palette by Pure Cosmetics, brow gel and so much more! Use code JENNI at www.fabfitfun.com for $10 off if you don't already get their boxes. You will not be disappointed! #fabfitfun #fittpartner

view all 75 comments

nessapnglianan: Jwow is seriously so beautiful 😍
dataawesome@o: You're so beautiful 😘
lesliewilliams2010: Love mine too! Wish we could hang out with our scarves on and sip coffee from our new cups!!! 😍

enchantedyoungreg: @jwoww what kind of
sleepinthegarden My favorite new way to kick the shit out of Sunday. Thank you @understatedleather & @thenisie_footwear.

lilbo.1534 That is cute
abigalltori You inspired me to start aerial yoga! Lks thank you I love it & I really admire you for everything & hope life lets u see into its crazy adventures and its memorizing moments for many years to come. I think you're stellar NOT an odd one out in PLL everyone is beautiful u2 heart u2 love u2 hope you're well and keep going! 😍

ravi2167 Nice
kamielirin Babyyyyy
elle5267 @kamielirin_fn

sarah_smith
Lord & Taylor (2016)


• Lord & Taylor’s campaign promoted their Design Lab collection (March 2015).

• Native advertising & Influencer campaign on Instagram.
• Lord & Taylor contracted Nylon, an online fashion magazine, run an article and post a photo of the paisley dress on Nylon’s Instagram page.

• Lord & Taylor reviewed and approved the paid-for Nylon article.

• Lord & Taylor reviewed and approved the paid-for post.
Every season, there's one collection that you see everywhere—and yet, instead of getting sick of it, you lust after it until one day, you finally cave in and get it for yourself! This time around, we're taking out the guess work and introducing you to spring's must-have line: Lend & Taylor's Design Lab. You've probably already seen the new contemporary line's asymmetric bandana dress everywhere—from Instagram to your favorite blogs to the streets. But Design Lab is filled with many more amazing statement pieces, like street-ready laser cut tanks and fringed kimons.

Click through the gallery to see how your favorite bloggers style their Design Lab pieces.
• Lord & Taylor also recruited a team of 50 fashion influencers.
• Paid them between $1,000 and $4,000 to post photos of themselves in the dress on Instagram on one specified weekend in March 2015.
• Coordinated with Nylon postings.
• No disclosures.
• L&T is prohibited from falsely claiming that an endorser is an independent user or ordinary consumer.

• Material connections must be disclosed.

• L&T is prohibited from falsely claiming that a statement or opinion from an independent or objective publisher or source.

• L&T must monitor its influencers.
CSGO Lotto

FTC alleged:

• Owners endorsed online gaming service CSGO Lotto without disclosing they owned company.

• Paid other well-known influencers thousands of dollars to promote the site on YouTube, Twitch, Twitter, and Facebook, without requiring them to disclose the payments in their social media posts.
Made $13k in about 5 minutes on CSGO betting. Absolutely insane. Reactions here 😂:
youtu.be/_V-dS74WJTw
CRAZY 6 KNIFE WIN!!! (CS:GO Betting):
youtu.be/17qUo330J0M?via @YouTube

CRAZY 6 KNIFE WIN!!! (CS:GO Betting)
OUR LUCK HAS CHANGED!!! 2016 IS THE YEAR OF THE KNIFZ!
Site Used ► CSGO Lotto: https://csgolotto.com
Big thanks to Flux Pavilion for letting me use his music...
youtube.com

RETWEETS: 88  LIKES: 639  Source: 712
• First case against individual influencers.
• 5.7 million views.
• Influencers paid $2,500 - $55,000.
• Prohibited from saying anything negative.
Other recent cases of note

- Deutsch LA
  - FTC alleged that, in connection to an advertising campaign featuring the capabilities of Sony Vita, Deutsch account executive e-mailed employees, encouraging them to tweet about the new product using #game changer. Employees who had not used the product, tweeted about it; failed to instruct employees to disclose connection to Sony.

- Machinima
  - FTC alleged that, at request of Microsoft’s agency Starcom, Machinima hired “Influencers” (video bloggers) to produce and upload videos promoting the Xbox One system and several Xbox games; designed to create buzz about the launch.
  - Machinima paid a few Influencers $15K and $30K to produce and upload the videos and a larger group of Influencers within its network $1 for each 1,000 views generated up to $25K.
  - Machinima “allegedly” did not require the “Influencers” to disclose that they had not been paid and some Influencers did not make the disclosures in their videos.

- Trampoline Safety of America
  - FTC alleged that trampoline sellers’ ads featured logos of phony independent trampoline review organizations they owned; owner also posted positive online reviews posing as independent purchaser.
Recent questions of interest

• Do I need to disclose on my Facebook post that my blog post has affiliate links? Or is disclosure on the blog enough?
  ▪ Does the Facebook post itself contain an affiliate or otherwise make an endorsement? Disclose.
  ▪ Does the blog post look like regular content, when in fact it was created at the behest of an advertiser? Disclose.
  ▪ Are you simply adding an affiliate link in order to monetize editorial or entertainment content? No disclosure on the Facebook post required.
• How should influencers disclose free or paid promotions if they are live streaming? What about at the beginning and end? If not, how often should a disclosure be presented? For a written disclosure on a stream, would an overlaid image saying “Sponsored Content,” or “Free game key provided” be enough for that?
  - Can viewers tune in any time? Disclosures at the beginning and end wouldn’t be good enough.
  - If an overlaid disclosure isn’t continuous, it would be best to also have audio disclosures.
  - “Sponsored Content,” or “Free game key provided” are fairly clear disclosures, but the latter wouldn’t be ok if you were also paid.
What is the proper way to disclose an affiliate link on social media? What disclosure do you advise we use for affiliate links since we're not necessarily getting paid?

- “I get paid if you buy here:” should work.
- “Paid link:” right before the link or “(paid link)” right after the link might/should also work.
- Probably not “affiliate link.”
• If a company sends a blogger, streamer, or other influencer something for free without an express requirement to post about it in social media, does he or she need to disclose anything when they tag or otherwise post about it? Do they need to call it an ad? Is #gifted an acceptable disclosure in these cases?
  - It doesn’t matter that you aren’t required to post. Disclose.
  - #gifted is very ambiguous.
What about travel? Is #hosted clear enough if no money has changed hands?

- Free travel is a material connection.
- #hosted is very ambiguous.
- How about “XYZ Resort paid for my trip” or “Thanks to XYZ Resort for the free trip”?
If an influencer is being paid to talk about a product but also receives commission for purchases made through affiliate links on his/her site is it sufficient to just say “this post is sponsored by (Brand)” or is an affiliate link disclosure necessary as well?

- Are the affiliate links all for the identified brand sponsor? If so, then there doesn’t appear to be any need to disclose anything additional.

- If some of the links are unrelated to the brand sponsor, the disclosure would not inform readers/followers of the affiliate nature of those links.
Resources

- Dot Com Disclosures: Information About Online Disclosures

- Guides Concerning the Use of Endorsements and Testimonials in Advertising

- The Revised Endorsement Guides: What People Are Asking (FAQs)

- endorsements@ftc.gov
NAD SOCIAL INFLUENCER ENFORCEMENT
NAD & Social Influencers

- NAD believes that consumers will likely weigh an opinion differently whether it is a paid endorsement or an honest opinion
- Therefore, payment for an endorsement is material and should be disclosed
Kardashians and Fit Tea

- Kardashian sisters post on social media about Fit Tea
NATIVE ADVERTISING
Native Advertising

- Online advertising takes many forms
- Advertising that is made to look like regular content on a specific medium is native advertising
Should You Accept Your Employer's Pension Buyout Offer?

Faced with mounting pension costs and greater volatility, companies are increasingly offering their current and former employees a critical choice: Take a lump sum now or hold on to their pension.

“Companies are offering these buyouts as a way to shrink the size of their pension plans, which ultimately reduces the impact of that pension plan on the company’s financials,” says John Beck, senior vice president for benefits consulting at Fidelity Investments. “From an employee’s perspective, the decision comes down to a trade-off between an income stream and a pile of money that’s made available to them today.”
Places Nobody Wants To Be On Thanksgiving

Posted: 11/23/2013 8:40 am EST  Updated: 11/23/2013 9:12 am EST

134  44  12  32  54

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Woman Going To Take Quick Break After Filling Out Name, Address On Tax Forms

RUSHLAND, PA—After chipping away at her 2013 income tax return Thursday evening by entering her full name and current address into the appropriate boxes, Christine Brooks, 26, announced her intention to take a quick break. "I hate to stop the momentum I've built up since I started sucking my teeth into this 1040, but it's important to clear your head from time to time so you don't end up making any careless mistakes," said Brooks while attempting to unwind.
NAD NATIVE ADVERTISING ENFORCEMENT
Joyus in *People* Magazine

- May 2016, NAD Case #5956
- Joyus showcases new products in video segments and allows people to purchase them through the videos
- “Stuff We Love” is a section in *People* magazine online that uses Joyus videos to promote products

**WATCH: This Mask Fits Every Face Shape (and Won't Budge!)**

Joyus Register now to get 10% off + Free shipping on orders over $50

*Kelley Drye*
Joyus in *People* Magazine

- NAD claimed that consumers were not able to tell that the videos were promoting the sale of products *before* viewing them.
SlimFast in *Star* Magazine

- December 2016, NAD Case #6039
- *Star* Magazine cover and article promoted SlimFast
- Both were designed to look like an editorial
- Article was entitled: “Snack Your Way to Slim”
- Content was actually advertising for SlimFast
SlimFast in *Star* Magazine

- NAD says that third parties who market a product are held to the same standard as the advertiser itself
- *Star* and SlimFast voluntarily discontinued the ads in response to the NAD inquiry
SEC & FINRA ENFORCEMENT
SEC & Native Advertising

- SEC brought enforcement actions against 27 firms and individuals for fraudulent promotion of stocks in April of this year
Paid-For Investment Advice

- Article on an investment research site suggested investing in a pharmaceutical product

Following The Latest In Alzheimer's Research As An Investor

Feb. 24, 2014 10:12 AM CT | 10 comments | Includes: AXL, PXL, JAL, LLY, NVS, PFE, PM, RHHBY

(Editors' Note: This article covers a stock trading at less than $1 per share and/or with less than a $100 million market cap. Please be aware of the risks associated with these stocks.)

The race to find the “next-generation” drug as a symptomatic or disease modification treatment for Alzheimer's is in full swing. Various organizations are funding millions of dollars in research to come up with a way to stifle this chronic disease that is costing billions of dollars a year in treatment and care. As an investor, it is always important to be abreast of the latest research. One never knows when it might make a good investment.

We have a huge challenge in the United States with Alzheimer's. There are two factors that contribute to the increase of this disease. The first is the advancement of medicine as a whole. Diseases that had been terminal in the past, like HIV, are no longer terminal but now have become “chronic” in nature. This leads to longer life. Secondly, since Alzheimer’s is a chronic condition that correlates with the older population, the baby boomers in the United States are now entering their golden years. Between the two, people are living longer. An older population also increases the probability that Alzheimer's will continue to increase naturally.

What is happening in Alzheimer's?
FINRA & New Technology

• FINRA has recently provided guidance about native advertising
ASA ENFORCEMENT
Advertising Standards Authority

- Enforces the Committee of Advertising Practice (CAP) Advertising Codes
- Responds to consumer complaints and business challenges
- Monitors ads and conducts research to identify how to protect consumers
ASA & Social Influencers

• Disclosures:
  • Use of “#ad” is likely a sufficient disclosure
  • Placement matters
ASA Enforcement: Keith Chegwin & Publishers Clearing House

• Keith Chegwin tweeted a link to a Publishers Clearing House sweepstakes without a disclosure

Keith Chegwin
@thekeithchegwin

Just a quickie: Log on to pchprizes.co.uk 4 Your chance 2 win £100k plus Win £2,500 a week 4 life. Have a go X
ASA & Native Advertising

• Advertising vs. Sponsorship

• Disclosures:
  ▪ Insufficient: “Sponsored,” “Recommended by,” “Brand Publisher”
  ▪ Sufficient: “Paid for Ad,” “Ad Link,” “Ad,” or “Advertisement Feature”

• Placement matters
ASA Enforcement: *Telegraph* & Michelin Tyre

- December 2015, ASA Complaint #A15-311916
- Advertorial on *Telegraph* website provided a video comparing Michelin tires to a “budget” brand
ASA Enforcement: *Telegraph* & Michelin Tyre

- ASA noted that there were “several references” to association with Michelin.
- However, ASA said they were insufficient to identify the content specifically as an ad.
- ASA said that Michelin should use labels “other than ‘sponsored’ or ‘in association with’” for future advertorials.
QUESTIONS?

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