

As Temperatures Cool, the FTC Puts Chill on Endorsement Disclosures

By Lori Beam Autumn brings falling leaves and falling temperatures, but this year it also brought the chilling news of a clampdown on social media endorsement practices. This September, just as fall advertising campaigns were kicking off, the FTC: • **Settled the first of its kind action** targeting two individual social media influencers who failed to disclose material information in social media endorsements. • **Sent warning letters** to 21 online social media influencers it had contacted earlier this year regarding the inadequacy of their disclosures in specific Instagram posts. • **Issued updated guidance** on material connection disclosure by updating its Endorsement Guides and including additional FAQs. These latest actions clearly communicate the FTC's intent to continue to make endorsements on social media a high FTC priority despite the change in administration. In the updated guidance, the FTC takes a strict view of compliance. For example, the FTC says the following about when and how to disclose:

- **Book authors** who belong to a group that posts free reviews for each other should disclose their connections to the authors even when there is no monetary payment.
- **Restaurant owners' family and friends** should disclose the receipt of free meals at the restaurant as well as their relationship to the owner if they choose to post about the restaurant.
- **If a company donates to a charity** when people post a product review, the donation arrangement should be disclosed.
- **Tagging a brand** on a posted picture of yourself is an endorsement.
- **On platforms like Twitter** where space is limited, the FTC:

o Favors starting a tweet with #ad.

o Advises against combining company names with the word "ad" at the end of twitter hashtags.

o Instructs not using more ambiguous disclosures like #client, #advisor, #consultant and #ambassador. In the settlement order agreed to by the social media influencers, the influencers must:

o Clearly and conspicuously disclose connections between endorsers and promoted products and services that would have a material impact on consumer choice.

o Provide endorsers with a clear statement of their disclosure responsibilities.

o Maintain a system for monitoring compliance.

o Immediately terminate and cease payment to any endorser who fails to comply.

Advertisers should protect themselves by following all the requirements of the order. Lori Beam is an attorney at Seigfreid Bingham where she chairs the firm's Advertising, Marketing and Promotions practice group. Contact her at lbeam@sb-kc.com or 816-265-4110. * This article is general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.