



Legal Advice on Using the New Media

New rules give guidance on how to avoid liability when using social media and other new technologies.

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The Federal Trade Commission (FTC) recently provided guidance on what's legal and what's not when it comes to new media such as blogs, online discussion boards, and social networking Web sites. The advice comes in the form of final revisions to the FTC's "Guides Concerning the Use of Endorsements and Testimonials in Advertising" (the Guides). These revisions give hypothetical examples that are very useful.

Standards to Consider when Using Endorsements

Like many nonprofits, you may sometimes endorse the products and services of third-party companies, both to generate revenue for your organization and to provide benefits—tailored products and services, discounted prices, and the like—to your organization's members and supporters. These provisions are often referred to as affinity relationships. Perhaps you also occasionally have other people endorse your organization's programs and services. In both cases, failing to comply with FTC standards for these marketing tools can subject you to liability.

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Have You Disclosed Connections?

If an endorser with whom your organization has a "material connection" makes a favorable statement about your organization through traditional marketing or a new-media channel, you must disclose the relationship. A material connection exists if your organization provides compensation or free services to the endorser.

The revised Guides give examples of when you need to provide disclosures in the context of new-media marketing. In deciding whether a disclosure is warranted, the central issues are whether the audience would reasonably expect that your organization's relationship with the endorser exists and whether knowledge of the relationship would affect the endorsement's credibility. Consider, for example, the following set of circumstances:

An online message board is designated for discussions by people looking for jobs. Someone named Stevo posts messages encouraging people to attend networking events held by the ABC organization. The message board community has no idea that this person is actually an ABC employee.

If readers knew that Stevo was employed by the ABC organization, that knowledge would likely affect the weight or credibility of his comments. Therefore, Stevo should clearly and conspicuously disclose his relationship to the ABC orga-

nization. Your organization should consider including such a requirement in your social networking policy (applicable to your organization's employees, board members, and other volunteer leaders) and your employee handbook.

Likewise, you should disclose material connections when your organization is the endorser, as illustrated by the following example:

A nonprofit organization maintains a blog where a meeting planner discusses sightseeing opportunities and restaurants in cities where the organization's upcoming meetings will be held. Her entries also mention special promotions (such as airline, hotel, and rental car discounts) offered by companies who participate in the organization's affinity programs. Blog readers wouldn't reasonably expect this relationship between the endorsed companies and the organization. Thus, the blog should point out that relationship. This should be easy to accomplish without the need for a formal legal-sounding disclaimer. For example, the blogger can simply say something like, "This month, the organization's rental car partner, company X, is offering a special discount on weekend rentals" or "Because X is the official hotel of our organization, you can get a free room upgrade when you make your reservation by calling this number."

Of course, the same principles apply when the endorsement is made

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through a traditional media channel. For instance:

On a TV talk show, an older celebrity comments that he's a member of an organization of senior citizens, that he often takes advantage of its discounts, and that he purchases its endorsed insurance and financial products. He then encourages viewers to join the organization. He doesn't disclose that he has a contractual relationship with the organization and has agreed to promote it in his public appearances. Knowledge of this relationship would likely affect the credibility viewers give to the celebrity's endorsement. Without a clear and conspicuous disclosure that the celebrity has been engaged as a spokesperson, this endorsement is likely to be deceptive. Once again, it should be relatively easy for the celebrity to make the required disclosure by saying something like the following: "I've always been concerned about how hard it is for many older Americans to make ends meet, so the X Organization has asked me to help it tell seniors how they can save money if they join the organization."

How Can You Cushion Your Risk?

The FTC recognizes that your organization doesn't have complete control of content made through word-of-mouth and user-generated media, such as blogs, street teams, and social networking sites. None-

theless, the FTC takes the position that you may be liable for deceptive statements if you initiated the process that led to the endorsements—by, for example, providing free products to bloggers or individuals enrolled in your word-of-mouth marketing programs.

If you've established policies and procedures relating to new-media endorsers, however, the FTC will consider that fact and probably be more lenient when deciding whether to prosecute you. It would be a good idea for you to have a written policy, for example, that you will monitor any endorsers and take measures if they fail to comply with the law.

In the past, statements such as "Results will vary" were sufficient.

Other Standards under the Revised Guides

The Guides provide other standards, as discussed below.

Have You Disclosed Generally-Expected Results?

The amendments to the Guides eliminate a "safe harbor" that has long allowed organizations to use testimonials reporting success with a product or service as long as they

disclosed the limited applicability of the endorser's experience. In the past, statements such as "Results will vary" or "Results not typical" were sufficient. Now, however, such "typicality disclaimers" may not be enough. Instead, you must clearly disclose the results that consumers can generally expect when using the product or service. Without such a general statement, the FTC believes consumers will think the endorser's experience is typical when it's not.

Is Your Whole Organization on the Same Page?

Under the Guides, an endorsement "must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization." The FTC notes that your board needn't participate in the process. However, a single staff person's decision concerning an endorsement may not be enough to ensure that the process reflects the organization's collective judgment. The best idea may be to adopt written standards you can use when deciding whether your organization will provide an endorsement. ■

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- The New Marketing Model for Nonprofits (Vol. 22, No. 6)
- Mama Said Never Put All Your Eggs in One Basket: Boards, Strategic Thinking, & the Need for Diversified Revenue (Vol. 19, No. 4)
- How to Make Social-Media Fundraising Work for You (Vol. 27, No. 2)
- Is It Time to Consider New Ways to Communicate? (Vol. 25, No. 4)

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