

From FCC to FTC: Regulation of Online Endorsements and Testimonials

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While most broadcasters are familiar with the Federal Communications Commission's (FCC's) rules prohibiting payola and plugola, and regulating the identification of sponsored content, many may not realize that an entirely different federal agency takes over when content moves from over-the-air broadcasts to online platforms. The Federal Trade Commission's (FTC's) Bureau of Consumer Protection is broadly tasked with protecting consumers against unfair, deceptive or fraudulent practices in the marketplace. While the FTC's goals are generally consonant with the policies underlying the FCC's payola, plugola and sponsorship identification rules, broadcasters with online presences should be aware of this separate regulatory regime.

Since 1980, the FTC has published Endorsement Guides (the Guides) outlining the agency's interpretation of consumer protection laws relating to the use of endorsements and testimonials in advertising. In late 2009, the FTC revised the Guides to account for new media platforms, including blogs, Twitter and other social media. Following the release of the revised Guides, the FTC received numerous inquiries, and so in mid-2010, the agency compiled a list of Frequently Asked Questions to clarify certain aspects of the revised Guides.

Generally speaking, a disclosure should be made whenever the person endorsing, reviewing or giving a testimonial of a product received some form of compensation for the statement. For example, in a product review, a blogger should disclose *in the online review* that he or she received a free sample of the product being reviewed. Similarly, celebrities, such as on-air talent, who give online endorsements should disclose *as part of the online endorsement* any relationship with the product manufacturer or provider of the

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endorsed service.

These disclosures do not need to be lengthy, but they must be present. While this should not present a problem in the context of posts to a blog or a social media platform, such as Facebook, disclosures may be tricky within the context of services, such as Twitter, that place limits on the length of individual posts. For these types of services, the FTC has suggested that the use of meaningful but brief hash tags might be effective disclosures. For example, a radio talk-show host might preface a tweet about an upcoming concert with tags such as #paid_ad, #paid, or #ad if the host or the station received some form of compensation for the promotion.

Given the FCC's regulation of payola, plugola and sponsorship identification, broadcasters should already be familiar with the concepts outlined in the FTC's Guides and the related FAQ. The key, then, is to remember that consumer-protective regulations apply both on and off the air.