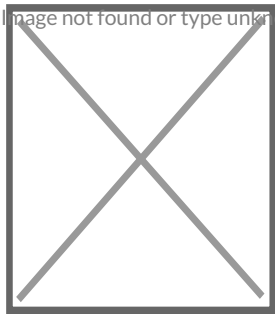


# The Business of Endorsements

Image not found or type unknown



By Benjamin W. Karpf, Bouhan Falligant LLP

## ***Special to Business in Savannah***

Social media has changed the way businesses of all sizes market their products and services. Today, it is much easier for businesses to use the opinions of ordinary consumers for promotion. Individuals can also have an outsize influence on certain markets. For example, think about a review posted by a social media “influencer” in a niche market, so-called “mommy bloggers” discussing the latest products they use in their family life, or a celebrity gushing over a new item of clothing in a Facebook post.

Will it make a difference to consumers if reviewers, bloggers, and celebrities are getting free products or monetary compensation in exchange for their reviews or “likes”? The Federal Trade Commission (FTC) thinks so. If your business uses social media to market itself, or if you are active on social media and receive free products or compensation in exchange for endorsements or reviews, you need to be familiar with the FTC's Endorsement Guides.

The FTC is an independent agency of the U.S. government. Its mission is the promotion of consumer protection and the prevention of anti-competitive business practices. One of its longstanding enforcement activities is the regulation of advertising. The general principle that an advertisement can't be deceptive flows from the FTC's authority under the Federal Trade Commission Act to regulate deceptive trade practices. The FTC can enforce its regulations through fines and orders governing future conduct.

With the rise of social media and the ordinary person as a marketing vehicle, it is no longer enough to think about the truth of an advertiser's claims. We must take a step back and ask if a consumer can tell that something on social media is an advertisement in the first place. An advertisement on television or radio or in a newspaper or magazine is usually

obvious from its context and needs no special disclaimer. Similarly, if a famous athlete appears on TV for 30 seconds during a commercial break of your favorite show and talks about her love for a new car, the FTC is comfortable assuming that the viewers understand the athlete is a paid endorser.

But what of posts on social media? That's where the Endorsement Guides come in.

If you write a blog on food and local restaurants, and a new café gives you a complimentary meal, should you disclose that fact if you tweet about their food, like their Facebook page, or even post a picture of their signature dessert on Pinterest or Instagram? The Guides contain a series of scenarios that are designed to answer those questions and more.

The scenarios and the FTC's guidelines follow the common sense principle that if the connection between a business and an endorser is not clear, a disclosure is likely appropriate. The FTC also provides guidance on how a disclosure should be made. The disclosure for an endorsement made on Twitter, where the whole post is limited to 140 characters, would look different than a disclosure made for a video review of a toy or a game made on a video platform like YouTube, where a lengthy disclosure could be made at the beginning, end, or even during the video.

Despite the clear guidelines issued by the FTC — complete with specific social media scenarios for what is and is not acceptable — many marketers are not aware of the basic rules. In short, endorsers, whether a celebrity or an everyday person with a platform on the Internet, likely must disclose if they're getting compensated in some way or receiving services or products from a company in exchange for a review or endorsement.

Companies that use social media to promote their products also have obligations. If your company's paid endorser fails to disclose that relationship, or if your employees post reviews of your business on Yelp or a similar site without disclosing their employment status, you could be held responsible.

The FTC is keeping up with the times. Be sure your business does, too.

---

*Benjamin W. Karpf is a partner at Bouhan Falligant LLP. His practice focuses on intellectual property litigation, advising clients on matters related to copyright law, the Internet, mobile devices, social media and related technology, the clearance, and prosecution of trademarks and service marks, and general business matters. He can be reached at 912-644-5740 or [bwkarpf@bouhan.com](mailto:bwkarpf@bouhan.com).*

## Practice Areas

- Intellectual Property & Technology