

FTC Swats Public Relations Firm and Publisher for Misleading Olympic-Themed Mosquito Repellant Product Endorsements and Native Advertisements

Article By:

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On November 20, 2018, the United States Federal Trade Commission (“FTC”) proposed two FTC consent orders against two Georgia-based companies, Creaxion Corporation (“Creaxion”) and Inside Publications, LLC (“Inside”) and their principals^[1] concerning the promotion and advertising of Health Pro Brands, Inc.’s new FIT Organic mosquito repellant during the 2016 Zika virus outbreak and allegations that they had misrepresented paid athletes’ endorsements as independent consumer opinions and commercial advertising as independent journalistic content.^[2] The proposed FTC consent orders prohibited Creaxion and Inside from making any false representations in the future and required that they ensure all endorsers disclose all material connections going forward and monitor compliance by any endorsers.

Creaxion proposed a launch campaign for Health Pro Brands, Inc.’s new FIT Organic mosquito repellant which highlighted the mosquito-borne Zika virus and the upcoming 2016 Brazil Summer Olympic Games. As part of the campaign, Creaxion collaborated with Inside, which is the publisher of *Inside Gymnastics Magazine*, to promote the mosquito repellant and secure Olympic athletes, including U.S. gymnast Carly Patterson, as endorsers and influencers. According to the FTC complaint, Creaxion and Inside engaged two Olympic gold medalists who were paid several thousand dollars as endorsers.^[3] The Olympic athletes posted social media endorsements for the mosquito repellant without properly disclosing that they were paid to do so. Creaxion and Inside also drafted, reviewed and monitored selected social media posts of advertorials. Inside also reported the endorsements in *Inside Gymnastics Magazine* without proper disclosures. Inside also, without proper disclosures, ran paid native advertisements in *Inside Gymnastics Magazine* for the mosquito repellant which were disguised as feature news stories or articles for its readers. The complaint further alleged that Creaxion and Inside reimbursed their respective employees and “friends” for the purchase and online reviews of the mosquito repellant, without disclosing the payment of consideration and their relationship to Creaxion and Inside.

The proposed FTC consent orders prohibit Creaxion and Inside and their principals from doing the following: (i) misrepresenting the status of any endorser or reviewer of a product or service, including misrepresenting that the endorser or reviewer as an independent user or ordinary consumer; (ii) making any representation about any endorser of a product or service without clearly and conspicuously disclosing any unexpected material connection between the endorser and anyone

affiliated with the product or service; and (iii) misrepresenting paid commercial or native advertising as a statement of opinion from an independent or objective publisher or source. Creaxion and Inside also are required by the consent orders to take steps to ensure that influencers going forward comply with the disclosure and endorsement provisions of the FTC orders and the FTC's *Guides Concerning the Use of Endorsements and Testimonials in Advertising* ("Endorsement Guides"), including clearly notifying endorsers of their disclosure obligations, creating a monitoring system to ensure compliance with the FTC Endorsement Guides and terminating endorsers who do not comply with such requirements.

Best Practices Takeaways:

- **The FTC Is Taking Action:** The FTC is taking action against improper use of influencers and native advertising, without proper disclosures;
- **Clear And Conspicuous Disclosures Are Required:** Any U.S. endorser of a product is required to clearly and conspicuously disclose any material connection with anyone affiliated with the product or service. (A disclosure is "material" if knowing about the consideration given or connection to the endorser affects "the weight or credibility" that readers or viewers give to the endorsement);
- **Native Advertising Requires Disclosures:** Any use of paid advertising or native advertising in the U.S. must include a disclosure of any material consideration provided;
- **Influencer Agreements Must Require Compliance:** Any influencer agreement regarding a U.S. advertising campaign should include contractual provisions requiring compliance with the FTC Endorsement Guides and providing for termination if there is a breach; and
- **Training and Guidance of Employees Is Necessary:** Advertising and public relations agencies should have specific training and guidance relating to the FTC Endorsement Guides to ensure employees, vendors, and client personnel do not improperly post social media endorsements without proper disclosures.

[1] In re Creaxion Corp., Mark Petit, Inside Publications, LLC of Georgia and Christopher Korotky, https://www.ftc.gov/system/files/documents/cases/172_3066_cre-ip_combined_aapc.pdf

[2] <https://www.ftc.gov/news-events/press-releases/2018/11/pr-firm-publisher-settle-ftc-allegations>.

[3] https://www.ftc.gov/system/files/documents/cases/172_3066_cre-ip_complaint.pdf.

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