

# Revised FTC Guides on Use of Endorsements and Testimonials in Advertising in Social Media

Article By:

Dr. Nick Oberheiden

---

The FTC's authority to enforce consumer protection laws and prevent fraudulent practices against consumers has taken a unique and enhanced turn due to the advent of social media platforms.

The agency is authorized to regulate social media platforms, blogs, posts, online articles, endorsements and testimonials, etc. where they contain unfair or deceptive advertising, fraudulent promotions, endorsements, testimonials, or are otherwise materially misleading.

As the nation battles the novel coronavirus and all its negative consequences, the FTC has increased its zeal and investigative efforts into investigating individuals and companies allegedly engaged in unfair and deceptive practices on social media platforms or fraudulent online advertising.

It is critical that all individuals and companies heed FTC guidelines, rules, and regulations and stay up-to-date on new changes because an FTC investigation can lead to significant fines and penalties, injunctions, substantial disgorgement orders, licensure removal, and reputational harm.

## The FTC and “Endorsements”/“Testimonials”

The Federal Trade Commission (“FTC”) is a U.S. government agency that is vested with the authority of enforcing U.S. consumer protection laws, taking action to prohibit anti-competitive behavior in the marketplace, and preventing fraudulent, deceptive, and unfair business practices.

The Federal Trade Commission Act (“FTC Act”) is the primary source of legislative authority that gives the FTC the power to investigate behavior that is likely to harm consumers or obstruct healthy competition. This authority includes and extends to behavior conducted online—such as advertising on social media platforms.

Typical investigations and enforcement proceedings include advertisements that are allegedly not supported by sufficient documentation or evidence; advertisements by companies that promote their product or service as being able to do something; and advertisements that are allegedly untruthful and misleading to the reasonable consumer. Within the past few decades, investigations involving online platforms such as social media have increased.

---

[The FTC defines “endorsement” broadly.](#) An “endorsement” refers to any advertising—including verbal statements, demonstrations, depictions of name, signature, likeness, etc.—that a reasonable consumer would believe to reflect the opinions, findings, or experience of a party other than the sponsoring advertiser. The FTC's Guides on endorsements and testimonials treat the terms “endorsements” and “testimonials” as identical.

As a broad overview, endorsements must reflect the honest opinions, beliefs, or experiences of the endorser. Endorsements must not contain any statements or representations that would be regarded as deceptive by consumers or that cannot be substantiated by appropriate or relevant evidence.

One of the most commonly investigated and litigated topics include endorsed products. The FTC is clear that where the advertisement represents that the endorser uses the product, the endorser must in fact be or have been an actual user of the product at the time of the endorsement.

“Endorsers” can include celebrities, companies, bloggers, influencers, or any individual promoting the product; however, being an endorser is dependent upon whether there is a material connection between the individual/entity and the advertiser. The FTC’s goal is to provide truth in advertising, which is increasingly important for social media advertisements with endorsements.

## **The FTC Guides**

The FTC published a [proposed rule in February 2020](#) for public comment on its revised 2009 Guides regulating endorsements and testimonials in advertising. The FTC Guides aim to provide clarity to individuals and companies utilizing endorsements and testimonials in advertising—including digitalized advertising.

[The FTC has published a tips and advice page](#) that offers a detailed elaboration on its Endorsement Guides, examples, definitions, and information regarding disclosing material connections and how the Guides are intended to apply in social media as well as with influencer marketing.

Important consideration include the following: (1) advertisements with endorsements by consumers should use actual consumers or clearly note that the endorsement is made by individuals who are not consumers; (2) if there is not sufficient substantiation that the endorser’s experience for the product is representative of what the consumer will achieve, there needs to be a conspicuous disclaimer; and (3) any unexpected material connections on social media between the endorsers and advertisers needs to be disclosed.

## **Advertising Prior to and After the FTC’s Guides**

Prior to the FTC’s 2009 Guides on the use of endorsements and testimonials in advertising, the FTC included a “safe harbor” for certain endorsements by individuals who achieve excellent or exceptional results from using the consumer product as long as the individual’s statements were accompanied by a disclaimer that results are not typical.

The dietary supplement industry has heavily relied on this safe harbor, especially when promoting a new product intending to help consumers lose weight. The problem was that consumers relied on the endorser’s statements to the point of expecting to achieve the same results and did not heed the relevant disclaimer of typicality. The FTC therefore removed this safe harbor and mandated that expected results for the average consumer be disclosed.

---

Additionally, prior to the 2009 Guides, any material connections between the endorser and advertiser were not required to be disclosed. For instance, any compensation that the endorser received for promoting a product could be kept secret from consumers.

The FTC Guides now require that any material connection be disclosed. This includes whether the endorser—an actual consumer or celebrity—is compensated. The above revisions were intended to provide greater clarity and fairness to consumers when evaluating a product so they are able to make informed decisions about the product.

## **The FTC’s Position on Advertising on Social Media**

[The FTC offers a special guide for influencers](#) who recommend or endorse products via social media or other online advertising. This is critical as platforms including Twitter and Instagram are increasingly being used to tout products by a variety of individuals from the typical consumer to a celebrity.

The most important disclosure includes whether the influencer has a “material connection” or relationship with the brand. A material connection can include an employment relationship, financial interest such as receiving compensation for the endorsement, or a personal or family connection.

This helps ensure that the influencer’s endorsements are honest, truthful, not deceptive, and are fully compliant with FTC Guides—allowing for consumers or “followers” to absorb all relevant information needed to make their decision on the product. The FTC also makes clear to influencers that where disclaimers are needed, they must be clear and conspicuous and able to be seen and understood by people.

*“The advent of social media platforms and the increased reliance on Twitter and Instagram as a conduit to receive consumer product advice have made it necessary for the FTC to expand its investigative scope to the digital sphere. Individuals promoting a product online need to be aware that the FTC is continuously updating its position as to who and what activities fall under its regulatory authority. Failure to follow some of these basic guidelines could lead to an FTC investigation and enforcement proceeding.” – Dr. Nick Oberheiden, Founding Attorney of Oberheiden P.C.*

## **Conclusion**

The use of social media platforms to engage in online advertising must comply with applicable FTC rules, regulations, and guidelines.

The FTC Guides on the use of endorsements and testimonials on advertising aim to provide clarity to consumers evaluating the merits of a product. This is especially important due to the world’s increasing reliance on digital content. The endorser or influencer must first determine whether their actions are subject to FTC regulation and then whether their statements are appropriately substantiated or use sufficient disclaimers. They must also determine whether any material connections are disclosed.

Following these steps and considering recent FTC updates will reduce the endorser’s or influencer’s liability exposure for unfair and deceptive advertising.

Source URL: <https://natlawreview.com/article/revised-ftc-guides-use-endorsements-and-testimonials-advertising-social-media>