

FTC Imposes Multimillion-Dollar Penalties for Deceptive Consumer Reviews; Best Practices Reminders on Endorsements and Testimonials

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In a widely distributed Notice of Penalty Offense (Notice) sent to over 700 companies last year, the Federal Trade Commission (FTC) warned businesses about use of fake endorsements and consumer reviews. “Forewarned should be forearmed” is a continuing reminder to companies to have systems in place to ensure endorsements and reviews comply with FTC guidelines. Companies that are found to be in violation after receiving a “we’re watching you” letter can face civil penalties of up to US\$46,517 per violation.

Recipients of the FTC’s letter included major consumer products companies, retailers, and advertising agencies. Recipients were not accused of any wrongdoing, but they were put “on notice” of their responsibilities under the FTC Act of 1914 (FTC Act) and the FTC’s increased focus on specific advertising practices, particularly endorsements.

Since distributing the Notice, the FTC reached a US\$3.5 million settlement agreement with Hubble, a New York City-based contact lens subscription service that offered existing customers free contacts in exchange for positive reviews on third-party websites. Hubble allegedly failed to disclose this material connection with many of its endorsers—that it offered compensation for many positive product reviews.

The FTC also found fast-fashion company Fashion Nova, LLC in violation of product review and endorsement rules. In March 2022, the FTC ordered Fashion Nova to pay US\$4.2 million in relief for its practice of blocking or deleting negative product reviews that purchasers submitted to its website. The FTC also ordered Fashion Nova to submit compliance reports and notices to ensure the company amends its advertising practices to comply with the FTC Act.

Although notices of penalty offenses are initially distributed as informational warnings, they serve as key indicators that the FTC is interested in policing certain types of advertising. Businesses should take steps to review and audit their use of endorsements, testimonials, and product reviews in their marketing practices. Suggested actions include, but are not limited to:

- Confirm all endorsements and testimonials are truthful and substantiated;
- Disclose connections between endorsers and businesses, including situations where the business provides compensation other than monetary payment—e.g., free product samples or entering the endorser into a sweepstakes or raffle—in exchange for merchandise promotion;
- Confirm endorsers' testimonials do not claim to represent typical or ordinary experiences of all consumers of the businesses product or service; and
- Regularly monitor to remove fake reviews.

As quick reminders to advertising and marketing teams, the following acts and practices are deceptive or unfair under the FTC Act:

- Falsely claiming endorsement by a third party (directly or indirectly);
- Misrepresenting that an endorsement reflects the experiences, views, or opinions of users or purported users;
- Misrepresenting an endorser as an actual, current, or recent user of a product;
- Continuing to advertise an endorsement if the business has reason to believe the endorser no longer subscribes to views expressed in the endorsement;
- Falsely insinuating that the endorser's experience represents consumers' typical and ordinary experience;
- Using an endorsement to make false or misleading product performance claims; and
- Failure to disclose a material connection with an endorser.

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