

Advertising Law Alert -- FTC Warns Brands and Ad Industry Regarding Reviews and Endorsements

10.14.2021 By [Kyle-Beth Hilfer](#)

The Federal Trade Commission (FTC) [warned](#) over 700 advertisers and agencies regarding deceptive reviews and endorsements.



In a [“Notice of Penalty Offenses,”](#) the FTC is signaling that it intends to regulate the use of reviews and endorsements. The Notice reminds recipients that those who violate the law face civil penalties of up to \$43,792 per violation. The [list of recipients](#) is diverse and represents a broad cross section of American brands and agencies. At the same time, the Notice clearly states that the over 700 recipients had not necessarily engaged in unlawful practices.

Citing the agency’s [Endorsement & Testimonial Guides](#), the FTC’s Notice lists examples of unlawful conduct:

- Falsely claiming an endorsement by a third party
- Failing to disclose a material connection with an endorser
- Misrepresenting whether an endorser is an actual, current, or recent user
- Using an endorsement without good reason to believe that the endorser still holds those views
- Using an endorsement to make deceptive performance claims
- Failing to disclose an unexpected material connection with an endorser
- Misrepresenting that the experience of endorsers represents consumers’ typical or ordinary experience

The FTC's letter and previous enforcement actions remind the industry that endorsers come in different shapes. A customer posting a review in exchange for a gift or sweepstakes entry is an endorser with a material connection to the brand. Likewise, the brand is responsible for the content put out by its agencies, employees, and influencers.

The Notice makes it difficult for any recipient to claim that it did not have knowledge that fake online reviews and misleading endorsements are against the law. Thus, the Notice served the purpose of paving the way for the FTC to use its Penalty Offense Authority, pursuant to Section 5 of the FTC Act. It can be used as evidence that any of the recipients had actual knowledge of the law.

Takeaway

Every company, whether or not it received this Notice of Penalty Offenses, should audit its online and social media review and endorsement marketing activities, including those conducted by agencies, influencers, or vendors. That audit should also include a close look of how the brand is interacting with customer reviews.

If you have questions about how the FTC's recent action might affect your advertising campaigns, contact [Kyle-Beth Hilfer](#) or your CLL attorney.

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Kyle-Beth Hilfer has over thirty years' experience providing legal counsel to advertising, marketing, promotions, intellectual property, and new media clients. Leveraging her deep understanding of branding, Kyle-Beth ensures regulatory compliance for her clients' advertising and marketing campaigns.