

FTC to Advertisers: Be Careful with Endorsements

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The federal government has officially put some of the biggest companies across the country on notice when it comes to potentially misleading information contained in their advertisements.

The Federal Trade Commission [announced recently](#) that it has sent a "[Notice of Penalty Offenses](#)" to more than 700 U.S. companies, warning them about how they use endorsements or other misleading practices in advertising to deceive consumers. If the FTC deems that a company is using misleading information in advertising, the company could be subject to a penalty of nearly \$44,000 per violation.

The FTC said in the announcement that the explosion of social media has "blurred the line between authentic content and advertising," and that has led to an "explosion" in deceptive endorsements. The 700 companies warned included a who's who of advertisers you've seen in television, radio and online ads for decades, such as large retailers, food and beverage companies, technology giants, automobile manufacturers and more.

The letter specifically lets the company know it is not being targeted, and the FTC isn't suggesting the companies that received the letter "have engaged in deceptive or unfair conduct." The letter is simply a warning to companies about misleading information in advertising.

Within the letter, the FTC laid out a few examples of what it considers to be misleading information in advertising:

- Falsely claiming an endorsement by a third party
- Misrepresenting whether an endorser is an actual, current, or recent user
- 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 also made available its "[Guides Concerning the Use of Endorsements and Testimonials in Advertising](#)," which lays out three dozen real-life examples the commission would consider illegal advertising.

They include examples such as:

- An employee of a company posting a positive online review of the company or one of its products without disclosing they work for the company
- A social media or blogging "influencer" endorsing a product without disclosing they have received the product for free, or been paid to for their positive review

- Hiring actors for a testimonial advertisement without disclosing in the advertisement that the people are paid actors

While the warning letter only went out to 700 of the country's largest companies (along with the largest advertising firms), it seems that making the blurred lines of social media advertising clearer in the coming years will be a point of emphasis for the FTC. Once the FTC believes it has a hold on the larger companies, the commission could focus on smaller, regional companies. This could especially be true if a business doesn't believe its competitor is playing by the rules and could report the action to the FTC. It's best practice for a company's marketing department, no matter what size the company is, to familiarize itself with FTC endorsement guidelines. The FTC has an "[Endorsement Guide](#)" page on its website for public use.

If you have any questions about the FTC's guidelines for advertising, please contact [David Rattigan](#), [George Werner](#) or any member of the [Barley Snyder Business Practice Group](#).

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