

The FTC's Revised Endorsement Guides: What People are Asking

Suppose you meet someone who tells you about a great new product. It performs exactly as advertised and offers fantastic new features. Would that endorsement factor into your decision to buy the product? Probably.

Now suppose you learn that the person works for the company that sells the product – or has been paid by the company to tout the product. Would you want to know that when you're evaluating the endorser's glowing recommendation? You bet. That common-sense premise is at the heart of the **revised Endorsement Guides** issued by the Federal Trade Commission (FTC), the nation's consumer protection agency.

The revised Guides – issued after public comment and consumer research – reflect three basic truth-in-advertising principles:

- Endorsements must be truthful and not misleading;
- If the advertiser doesn't have proof that the endorser's experience represents what consumers will achieve by using the product, the ad must clearly and conspicuously disclose the generally expected results in the depicted circumstances; and
- If there's a connection between the endorser and the marketer of the product that would affect how people evaluate the endorsement, it should be disclosed.

Since the FTC issued the revised Guides, advertisers, ad agencies, bloggers, and others have sent questions to endorsements@ftc.gov. Here are answers to some of the most frequently asked questions.

About the Endorsement Guides

Are the FTC Endorsement Guides new?

The Guides aren't new, but they've recently been updated. It's always been the law that if an ad features an endorser who's a relative or employee of the marketer – or if an endorser has been paid or given something of value to tout the marketer's product – the ad is misleading unless the connection is made clear. The reason is obvious: Knowing about the connection is important information for anyone evaluating the endorsement. Say you're planning a vacation. You do some research and find a glowing review on someone's blog that a certain resort is the most luxurious place they've ever stayed. If you found out that the hotel had paid that blogger to say great things about it or that the blogger had stayed there for a week for free, it could affect how much weight you'd give the blogger's endorsement.

Why did the FTC revise its Endorsement Guides to include social media?

The FTC revised the Guides because truth in advertising is important in all media – including blogs and social networking sites. The FTC regularly reviews its guides and rules to see if they need to be updated. Because the Endorsement Guides were written in 1980, they didn't address social media. The legal principles haven't changed. The FTC revised the examples to show how these standards apply in today's marketing world.

Isn't it common knowledge that some bloggers are paid to tout products or that if you click a link on my site to buy a product, I'll get a commission for that sale?

First, many bloggers who mention products don't receive anything for their reviews and don't get a commission if readers click on a link to buy a product. Second, the financial arrangements between some bloggers and advertisers may be apparent to industry insiders, but not to everyone else who reads a blog. Under the law, an act or practice is deceptive if it misleads "a significant minority" of consumers. So even if some readers are aware of these deals, many readers aren't. That's why disclosure is important.

Has the FTC been getting complaints about deceptive blogs?

No. As it happens, many bloggers and advertisers already are disclosing their ties to each other. Industry associations and self-regulatory groups advocate disclosure, too.

I've read that bloggers who don't comply with the Guides can be fined \$11,000? Is that true?

No. The press reports that said that were wrong. There is no fine for not complying with an FTC guide.

Are you monitoring bloggers?

We're not monitoring bloggers and we have no plans to. If concerns about possible violations of the FTC Act come to our attention, we'll evaluate them case by case. If law enforcement becomes necessary, our focus will be advertisers, not endorsers – just as it's always been.

Do the Guides hold online reviewers to a higher standard than reviewers for paper-and-ink publications?

No. The Guides apply across the board. The issue is – and always has been – whether the audience understands the reviewer’s relationship to the company whose products are being reviewed. If the audience gets the relationship, a disclosure isn’t needed. For a review in a newspaper, on TV, or on a website with similar content, it’s usually clear to the audience that the reviewer didn’t buy the product being reviewed. It’s the reviewer’s job to write his or her opinion and no one thinks they bought the product – for example, a book or movie ticket – themselves. But on a personal blog, a social networking page, or in similar media, the reader may not expect the reviewer to have a relationship with the company whose products are mentioned. Disclosure of that relationship helps readers decide how much weight to give the review.

Don’t these guides violate my First Amendment rights?

If you are acting on behalf of an advertiser, what you are saying is commercial speech – and commercial speech can be regulated under the FTC Act if it’s deceptive.

When do the Guides apply to endorsements?

I’ve heard that every time I mention a product on my blog, I have to say whether I got it for free or paid for it myself. Is that true?

No. If you mention a product you paid for yourself, the Guides aren’t an issue. Nor is it an issue if you get the product for free because a store is giving out free samples to all its

customers. The Guides cover only endorsements that are made on behalf of a sponsoring advertiser. For example, an endorsement would be covered by the Guides if an advertiser – or someone working for an advertiser – pays a blogger or gives a blogger something of value to mention a product, including a commission on the sale of a product. Bloggers receiving free products or other perks with the understanding that they’ll promote the advertiser’s products in their blogs would be covered, as would bloggers who are part of network marketing programs where they sign up to receive free product samples in exchange for writing about them or working for network advertising agencies.

What if all I get from the company is a \$1-off coupon, or if the product is only worth a few dollars? Do I still have to disclose?

Here’s another way to think of it: While getting one item that’s not very valuable for free may not affect the credibility of what you say, sometimes continually getting free stuff from an advertiser or multiple advertisers is enough to suggest an expectation of future benefits from positive reviews. If you have a relationship with a marketer who’s sending you freebies in the hope you’ll write a positive review, it’s best if your readers know you got the product for free.

What if I upload a video that shows me using different products? Do I have to disclose whether I bought them myself or got them from an advertiser?

The guidance for videos is the same as for websites or blogs.

What if I return the product after I review it? Should I still make a disclosure?

That may depend on the product and how long you are allowed to use it. For example, if you get free use of a car for a month, a disclosure is recommended even if you return it. But even for less valuable products, it's best to be open and transparent with your readers.

I have a website that reviews local restaurants. It's clear when a restaurant pays for an ad on my website, but do I have to disclose which restaurants give me free meals?

If you get free meals, it's best to let your readers know so they can factor that in when they read your reviews. Some readers might conclude that if a restaurant gave you a free meal because it knew you were going to write a review, you might have gotten special food or service.

Several months ago a manufacturer sent me a free product and asked me to write about it in my blog. I tried the product, liked it, and wrote a favorable review. When I posted the review, I disclosed that I got the product for free from the manufacturer. I still use the product. Do I have to disclose that I got the product for free every time I mention it in my blog?

It probably depends on how much you say about it. A casual remark like "I use X brand food processor" may not raise an issue under the Guides, but each new positive endorsement made without a disclosure could be deceptive.

My Facebook page identifies the company I work for. Should I include an additional disclosure when I talk about how great our products are?

It's a good idea. People reading that discussion on your Facebook page might not know who you work for and what products the company makes. And many businesses are so diversified that readers might not realize the products you're talking about are sold by your company.

A famous athlete has thousands of followers on Twitter and is well-known as a spokesperson for a particular product. Does he have to disclose that he's being paid every time he tweets about the product?

It depends on whether his readers understand he's being paid to endorse that product. If they know he's a paid endorser, no disclosure is needed. But if a significant number of his readers don't know that, a disclosure would be needed. Determining whether followers are aware of a relationship could be tricky in many cases, so a disclosure is recommended.

How should I make the disclosure?

Is there special language I have to use to make the disclosure?

No. The point is to give readers the information. Your disclosure could be as simple as "Company X gave me this product to try . . ."

Do I have to hire a lawyer to help me write a disclosure?

No. What matters is effective communication, not legalese. A disclosure like "Company X sent me [name of product] to try, and I think it's great" gives your readers the information they need. Or, at the start of a short video, you might say, "Some of the products I'm going to use in this video were sent to me by their manufacturers." That gives the necessary heads-up to your viewers.

Would a single disclosure on my home page that “many of the products I discuss on this site are provided to me free by their manufacturer” be enough?

A single disclosure doesn't really do it because people visiting your site might read individual reviews or watch individual videos without seeing the disclosure on your home page.

Would a button that says DISCLOSURE, LEGAL, or something like that be sufficient disclosure?

No. A button isn't likely to be sufficient. How often do you click on those buttons when you visit someone else's site? If you provide the information as part of your message, your audience is less likely to miss it.

What about a platform like Twitter? How can I make a disclosure when my message is limited to 140 characters?

The FTC isn't mandating the specific wording of disclosures. However, the same general principle – that people have the information they need to evaluate sponsored statements – applies across the board, regardless of the advertising medium. A hashtag like “#paid ad” uses only 8 characters. Shorter hashtags – like “#paid” and “#ad” – also might be effective.

How do the Guides apply to affiliate or network marketing?

I have a small network marketing business: advertisers pay me to distribute their products to members of my network who then try the product for free. How do the revised Guides affect me?

It's a good practice to tell participants in your network that if they get products through your

program, they should make it clear they got them for free. It also makes sense to advise your clients – the advertisers – that when they give free samples to your members, they should remind them of the importance of disclosing the relationship when members of your network praise their products. You might consider putting a program in place to check periodically whether your members are making these disclosures.

I'm an affiliate marketer with links to an online retailer on my website. When people click on those links and buy something from the retailer, I earn a commission. What do I have to disclose? Where should the disclosure be?

Let's assume that you're endorsing a product or service on your site and you have links to a company that pays you commissions on sales. If you disclose the relationship clearly and conspicuously on your site, readers can decide how much weight to give your endorsement. In some instances, where the link is embedded in the product review, a single disclosure may be adequate. When the product review has a clear and conspicuous disclosure of your relationship – and the reader can see both the product review and the link at the same time – readers have the information they need. If the product review and the link are separated, the reader may lose the connection.

As for where to place a disclosure, the guiding principle is that it has to be clear and conspicuous. Putting disclosures in obscure places – for example, buried on an ABOUT US or GENERAL INFO page, behind a poorly labeled hyperlink or in a terms of service agreement – isn't good enough. The average person who visits your site must be able to notice your disclosure, read it and understand it.

It's clear that what's on my website is a paid advertisement, not my own endorsement or review of the product. Do I still have to disclose that I get a commission if people click through my website to buy the product?

If it's clear that what's on your site is a paid advertisement, you don't have to make additional disclosures. But what's clear to you may not be clear to everyone visiting your site, and the FTC evaluates ads from the perspective of reasonable consumers.

Our company runs a social media marketing network. We understand we're responsible for monitoring our network. What kind of monitoring program do we need? Will we be liable if someone in our network says something false about our product?

Advertisers need to have reasonable programs in place to train and monitor members of their network. The scope of the program depends on the risk that deceptive practices by network participants could cause consumer harm – either physical injury or financial loss. For example, a network devoted to the sale of health products may require more supervision than a network promoting, say, a new line of handbags. Here are some core elements every program should include:

1. Given an advertiser's responsibility for substantiating objective product claims, explain to members of your network what can – and can't – be said about the product;
2. Set up a reasonable monitoring program to check out what your people are saying about your product; and
3. Follow up if you find questionable practices.

It would be unrealistic to say you had to be aware of every single statement made by a member of your network. But it's up to you to make an effort to know where your people are talking about your product. It's unlikely that the activity of a rogue blogger would be the basis of a law enforcement action if your company has a reasonable training and monitoring program.

What do I need to know about the Guides?

What are the essential things I need to know about using endorsements in advertising?

The most important principle is that an endorsement has to represent the accurate experience and opinion of the endorser:

- You can't talk about your experience with a product if you haven't tried it.
- If you were paid to try a product and you thought it was terrible, you can't say it's terrific.
- You can't make claims about a product that would require proof you don't have. For example, you can't say a product will cure a particular disease if there isn't scientific evidence to prove that's true.

In our ads we want to feature endorsements from consumers who achieved the best results with our product. Can we do that under the revised Guides?

Testimonials claiming specific results usually will be interpreted to mean that the endorser's experience is what others can expect. Statements like "Results not typical" or "Individual results may vary" won't change that interpretation. That leaves advertisers with two choices:

1. Have adequate proof to back up the claim that the results shown in the ad are typical, or
2. Clearly and conspicuously disclose the generally expected performance in the circumstances shown in the ad.

How would this principle apply in a real ad?

The revised Guides include a lot of examples with practical advice for marketers. Suppose an ad features an endorsement from “Mary G.” who says, “I lost 50 pounds in 6 months with WeightAway.” This ad likely conveys that Mary G.’s experience is typical of what consumers will achieve by using the product. If consumers can’t expect to get those results, the ad likely would mislead consumers unless it makes clear what consumers can expect to lose in similar circumstances – for example, “Most women who use WeightAway for six months lose at least 15 pounds.”

Our company website includes testimonials from customers who used our product during the past few years and mentions the results they got. We can’t figure out now what the “generally expected results” were then. What should we do? Do we have to remove those testimonials?

There are two issues here. First, according to the Guides, if your ad (in this case, your website) says or implies that the endorser uses the product in question, you can run the ad only as long as you have good reason to believe the endorser still uses the product. If you’re using endorsements that are a few years old, it’s your obligation to make sure the claims still are accurate. If your product has changed, it’s best to get new endorsements.

Second, assuming the claims are still accurate, if your product is the same as it was when the endorsements were given, you probably can use a disclosure based on the results consumers generally achieve now.

Where can I find out more?

The revised Guides offer more than 35 examples of how they apply in practical settings. The FTC also has produced to-the-point **video clips** discussing some of the issues on marketers’ minds. Questions? Send them to **endorsements@ftc.gov**. We’ll address the most common ones in future FAQs.

For More Information

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair practices in the marketplace and to provide information to businesses to help them comply with the law. To file a complaint or get free information on consumer issues, visit **ftc.gov** or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. Watch a new video, *How to File a Complaint*, at **ftc.gov/video** to learn more. The FTC enters consumer complaints into the **Consumer Sentinel Network**, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

Your Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to **www.sba.gov/ombudsman**.

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