

Consumer Protection Group

To: Our Clients and Friends

October 6, 2009

New FTC Advertising Guide Goes Into Effect December 1, 2009

Companies that use endorsements, comparison studies, or customer testimonials in their advertisements should consider the Federal Trade Commission's ("FTC") new Guide Concerning the Use of Endorsements and Testimonials in Advertising. The guide, which was issued on October 5, 2009, will go into effect on December 1, 2009. Although the new guide is not a law, the FTC has indicated that it may initiate investigations, and may bring civil litigation against companies that fail to abide by the guide.

According to the guide, the FTC considers several common advertising practices to be deceptive under Section 5 of the Federal Trade Commission Act. For example, the FTC stated that:

- If a company provides an example of how its products have helped a consumer, the company should disclose the product's typical results and performance. According to the guide, it is not sufficient for the company to indicate simply that a consumer's experience might "not be typical."
- If a company commissions a study by an outside organization concerning its product and wishes to use the results of that study in an advertisement, the company should indicate in the advertisement that it paid for the study.
- If a company's employee posts messages on a discussion board, or a blog, concerning the company's product, the employee should disclose his relationship to the company.
- A company is liable for unsubstantiated statements "made through endorsements, or for failing to disclose material connections between themselves and their endorsers." As an example, the guide indicates that a company can be liable if it sends free samples to a blogger along with a request that the blogger review its product, and the blogger makes misleading statements about the product, or fails to disclose that he or she received a free sample. It is not clear whether the FTC will attempt to apply this type of vicarious liability to companies that solicit product reviews in other media.

For additional information concerning the FTC's new guide, or to ask any other questions concerning federal and state advertising laws, rules, and guidance, feel free to contact [David Zetoony](#) in Washington D.C., at 202-508-6030, or any of our other consumer protection attorneys.

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