



Alert

Consumer Protection Group

To: Our Clients and Friends

May 2, 2011

FTC Brings String of Lawsuits Against the Use of “Advertorials” and Affiliate Advertising

The Federal Trade Commission (“FTC”) recently filed suit against 10 operators of advertorial websites that promote acai berry weight loss products. The websites are affiliate advertisers that earn commissions by steering consumers to a seller’s website where the consumer can purchase the products promoted on the affiliate’s site. The FTC alleges that these websites mislead consumers by posing as objective news outlets and failing to disclose the site’s financial connections with the sellers of the products featured in their “reports.”

All of these sites use an “advertorial” format to promote the seller’s products. An advertorial is an advertisement that appears to be a news report. This is permissible if the financial incentives for the report are disclosed to consumers in a clear and conspicuous manner. But, the FTC alleges that these websites went too far and misled consumers by posing as objective, independent news outlets. In many instances the connection to the sellers were not disclosed, and when there were disclosures, the FTC alleges that the disclosures were inadequate.

This set of lawsuits also marks the second time in less than two months that the FTC has targeted affiliate advertising programs. Now more than ever, it is important for affiliate advertisers to check their compliance with FTC regulations. Disclaimers in small print, hidden at the bottom of websites will not protect an affiliate advertiser from FTC charges. Some best practices for affiliate advertisers include:

- Disclosing the connection between affiliates and the seller in a clear and prominent way,
- Monitoring affiliates’ content to ensure that it complies with FTC regulations, and
- Terminating affiliates that violate FTC regulations.

If you would like further information on how to comply with FTC regulations on the use of advertorials or affiliate advertising programs, feel free to contact [Josh James](#) or [David Zetoon](#) in Washington D.C., at 202-508-6000; [Rebecca Nelson](#) in St. Louis, at 314-259-2000; or [Andrew Klungness](#) in Santa Monica, at 310-576-2100.

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