

To: Our Clients and Friends

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FTC Guidance On How To Incentivize Bloggers

Surveys confirm what most retailers already know -- traditional advertising (*e.g.*, television, direct mail, and print) are on the decline, and new media (*e.g.*, blogs and viral marketing) are on the rise. One of the advantages of new media is that it permits others to help advertise a retailer's products. This is also one of its greatest challenges. Retailers often struggle with the loss of control that they have over others, such as bloggers, when they talk about the retailer's products.

Lack of control can be particularly problematic in light of the Federal Trade Commission's ("FTC") rules, regulations, and guidelines. For example, the FTC takes the position that if a company provides bloggers with a gift, such as a free product or a gift certificate, that fact must be disclosed by the blogger to consumers. If the blogger fails to disclose that they have a "material connection" to the company the company could be liable.

Last month the FTC provided some guidance with how companies can comply with this obligation. According to a letter released by the FTC, Hyundai Motor America's advertising agency provided bloggers with gift certificates as an incentive to talk about Hyundai's forthcoming Super Bowl ad. Although some bloggers disclosed that they had received free gift certificates, others did not.

Although the FTC investigated Hyundai, they ultimately decided not to initiate an enforcement action. The staff's decision provides insight into how to avoid liability when incentivizing bloggers. Specifically, a retailer that provides incentives (either directly or through an ad agency) should:

1. Create a social media policy that requires that employees that provide incentives to bloggers instruct the bloggers to disclose that they received compensation,
2. Require media or advertising agencies used by the company to have the same policy,
3. Monitor some, or all, of the bloggers that are provided with compensation; if a blogger is discovered that does not disclose that he received compensation, inform the blogger of his obligation and/or stop working with that blogger.

If you would like further information on how to comply with laws effecting social media, or the privacy of consumers or employees, feel free to contact [David Zetony](#) in Washington D.C., at 202-508-6030.

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