



An FTC Violation in One Hundred and Forty Characters (or Less)

Alan Hartman

There are approximately 800 million people on Facebook. Twitter has about 200 million account holders. Add in all of the bloggers and it becomes crystal clear that social media is more than just a fad. Social media is being used worldwide to connect old acquaintances, make business referrals, and market and advertise products and services. Chances are a vast majority of your employees, customers, potential customers, and competitors access a social media site on a daily basis. Social media is quickly becoming a preferred way for businesses to tout products and services.

The Federal Trade Commission regulates the use of endorsements and testimonials in advertising through its published Guides Concerning the Use of Endorsements and Testimonials in Advertising. These Endorsement Guides, which have been in effect for more than 20 years but were most recently updated in 2009, address endorsements by consumers, experts, organizations, and celebrities. Make no mistake, these Endorsement Guides apply with the same force and effect to social media.

So when your company's receptionist writes on her personal Facebook page a glowing review of the new product your company launched, do you have anything to worry about? The short answer is "yes."

Under the Guides, an endorsement is "any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser." The overriding principle when it comes to endorsements is that they must reflect the honest opinions, findings, beliefs, or experiences of the endorser.

The issue with your receptionist posting a review on her Facebook page is that there is a connection between the endorser, here the receptionist, and the seller of the product, here your company, that might materially affect the weight or credibility of the endorsement. When such a connection exists, it must be disclosed. Your receptionist's employment would likely affect the weight or credibility of her endorsement. Unless your receptionist's employment is clearly and conspicuously disclosed on her page, her post violates the FTC's Endorsement Guides.

While the advantages of being able to so easily communicate a message about your product or service to such a wide demographic are huge, it is important to keep the Endorsement Guides in mind when using endorsements and testimonials for your products or services. An easy way to educate your employees on how to properly use social media for business purposes is to adopt a clear, well-written social media policy. By educating your employees on what they can and cannot say and do, you should be able to avoid violations of FTC regulations.

Go to the FTC's business legal resources page at <http://business.ftc.gov/legal-resources/5/33> for more information. Besides the Endorsement Guides, you will find other information that will help you keep your business on good terms with the FTC.