

Bloggers Beware FTC Warns, Then Fires

The FTC (Federal Trade Commission) “closing letter” to AnnTaylor Stores was like Gunsmoke’s Marshall Dillon shooting a warning at online marketers and bloggers: you’d better take FTC’s revised Endorsement Guides seriously. They require advertisers to disclose “material connections” with endorsers.

The Guide’s examples include a manufacturer who sends a new video game to a blogger, who reviews it favorably. The Guides say “the blogger should clearly and conspicuously disclose that he received the gaming system free of charge.”

FTC investigated AnnTaylor because it gave gifts to bloggers who attended the review of its summer 2010 collection, and some of them failed to disclose that when they blogged about it. FTC didn’t investigate the individual bloggers, but examined whether AnnTaylor had taken sufficient steps to prevent or correct their failure to disclose this “material connection.”

Only 31 bloggers attended the preview, and each was promised a gift card worth up to \$500 if they posted coverage of the event within 24 hours.

FTC closed the investigation without making AnnTaylor sign a consent agreement, because: the preview was the only one AnnTaylor ever held; only a few bloggers were involved, and some of them did disclose they had been given gift cards; and AnnTaylor later adopted a written policy stating that it would never again give gifts to bloggers without first telling them they were expected to disclose this in their blog.

In its closing letter, FTC said it expected that AnnTaylor “will both honor that written policy and take reasonable steps to monitor bloggers’ compliance with the obligation to disclose gifts they receive.”

This issue arises often in affiliate marketing, where a company’s affiliates endorse its products in their blogs. FTC’s closing letter demonstrates that marketers should have a written policy governing disclosures by affiliates, and monitor them to determine whether the policy is observed or ignored.



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In August 2010, FTC moved from warning to enforcement. In a settlement with a PR agency that used its employees to blog positive “customer” reviews for the video games of the agency’s client, FTC signaled that it will hold advertisers and their “hired guns” responsible for postings that do not disclose the blogger’s connection with the company whose products are touted. The agency did not have to pay money, but it agreed to an administrative order against endorsements promoting advertisers without disclosing material connections

between endorser and advertiser.

Now that FTC has followed its warning with action, there will likely be further enforcement affecting blogs. And FTC clearly is targeting advertisers and their agents, not individual bloggers, for failing to disclose compensation and other connections between endorser and advertiser.

The FTC message was clear: “Companies, including public relations firms involved in online marketing, need to abide by long-held principles of truth in advertising,” said Mary Engle, Director of FTC’s Division of Advertising Practices. “Advertisers should not pass themselves off as ordinary consumers touting a product, and endorsers should make it clear when they have financial connections to sellers.”

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