

Native Advertising, Influencers, And Endorsements: Where Is the Line Between Integrated Content And Deceptively Formatted Advertising?

BY AMY RALPH MUDGE

IF YOU HAVE READ A MAGAZINE OR SEEN a video online in the last five years, then you have likely encountered “native advertising.” Also known as “content marketing” or “branded content,” native advertising looks like a news story, feature article, product review, entertainment, or other kind of “editorial” content,¹ but a brand marketer may have written the piece or paid for the placement.² Native advertising was looked on as a tool that could both make online marketing more relevant to consumers and also provide much-needed additional advertising revenue to web publishers when readers increasingly were resisting the idea of paying for online content.

At about the same time, use of the related (but different) tool of “influencer marketing” also exploded. This strategy involves identifying individuals with a large following on social media and online and then using them as a channel for marketing to consumers indirectly. Using these marketing tools in an effective and legally compliant way has created challenges, and the prospect of losing credibility with consumers who are surprised to learn they are receiving a marketing message rather than editorial content can spell disaster for brand equity and future consumer engagement.

Not surprisingly, the Federal Trade Commission as consumer watchdog took note of these trends in marketing. In an exercise of good government, the agency did not rush to judgment and begin bringing high-profile enforcement cases. Instead, it engaged with advertisers, publishers, and consumer groups and did its due diligence. Three and a half years ago the FTC held a workshop on native advertising,³ and 15 months ago the FTC issued its Native Advertising Guide.⁴ The Native Advertising Guide builds on advice that the FTC gave in its earlier Endorsement Guides.⁵ Both of these guides provide the FTC’s position that consumers need to know that what they are seeing is actually advertising.

Being able to recognize content as advertising was never really a difficult issue when advertising was delivered via billboards, print ads, and commercial breaks in television and radio programming. Advertising messages commonly were distinguished from other content with lead-ins like “and now a word from our sponsor” or headlines of content being an “Advertorial.” When advertisers provide a message through a celebrity, expert, or person of influence, the sponsorship element might not always be innately understood. The same concerns arise when advertisers create articles and videos and other forms of content that are not manifestly understood as advertising. The guides address both when an advertiser needs to disclose its involvement and how to disclose its involvement.

The Native Advertising Guide

None of the FTC’s business guides are legally binding regulation, but they identify conduct that the FTC staff believes complies with Section 5. The guides typically are not prescriptive; instead, they offer a set of flexible considerations. Even before the change in administration and the Trump imperative for reducing regulatory burdens,⁶ the FTC staff had announced its intention to focus on business education and to refrain from swift enforcement actions (other than obvious cases with clear violations).⁷ Nevertheless, it is not too soon for advertisers to begin adopting best practices and to be ready for the time when education begins to give way to broader and more rigorous enforcement.⁸ Many questions still linger in this area, however, and with the experience of the last 15 months, the FTC should now be able to issue an update to the Native Advertising Guide in the form of FAQs (as it has done with the Endorsement Guides⁹) and to clarify and harmonize these two guides.

Those seeking more thorough background in this topic need look no further than the Enforcement Policy Statement on Deceptively Formatted Advertising (DF Policy Statement).¹⁰ This statement traces the history of the longstanding view that promotional messages not readily identifiable

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as advertising can deceive consumers, who are likely to view such material as unbiased and independent. Messages can include deceptive door openers by traveling salesman, advertorials in newspapers and magazines, infomercials, endorsements, and native advertising. The basic idea is the same: some people may not engage (e.g., may not let the vacuum salesman in the door, read a product review, or watch a program that looks like a talk show) if they know they are receiving a sales pitch. The potential harm to consumers comes from the incorrect belief that the information they believe to be objective and impartial statements about a product or service. If the consumers had known up front the seller was behind the information, they may have disregarded the information or at least treated it with more skepticism—and ultimately not have purchased the product or service on the offered terms or perhaps not purchased it at all.

The cure, according to the FTC, is to make sure that any advertising not readily identifiable as advertising be explicitly labeled as advertising. This does not mean that everything a brand marketer is involved in is advertising. It also does not mean that all advertising requires an “advertising” warning label. In the Native Advertising Guide the FTC has drawn lines designed to explain when advertising might need to be labeled as such:

- (1) Unless advertising is clearly recognizable as advertising, it needs to be expressly identified as advertising. (This same concept appears in the Endorsement Guides as a requirement to disclose any material connection between a brand and an endorser that might not be obvious.)
- (2) Only advertising content that promotes a product or service needs to be identified as advertising. If an advertiser creates material that is promotional in nature but not promoting a product or service, no advertising disclosure is needed.
- (3) If the content includes merely product placement or inclusion of a product or service with no mention of features and benefits of the product and no endorsement of the product, no advertising disclosure is needed.¹¹

These three “simple” rules are easy to say, but putting them into practice is not always so easy. The rules are premised upon a very clear line between advertising for goods and services (biased) and unsponsored content (not biased). But the world really does contain 50 (at least!) shades of grey, particularly as baby boomers and Gen Xers (the very folks who are now creating the rules for the upcoming generations) consume and create content in a very different way than do the millennials, Gen Z/Centennials, and the as yet unnamed next generation (whose members were born with an iPad in hand). What constitutes a “reasonable consumer” online may be very different across the generational divide.

Influencers v. Native Writers

Influencers are the new celebrities: regular people posting videos or pictures of themselves taken with their mobile cam-

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eras. We are all influencers to some extent, because what I say about a product or service, pro or con, might affect the behavior of my few hundred friends on Instagram, Twitter, Facebook, or LinkedIn. For example, I recently visited a local trapeze school with some girlfriends and posted enthusiastically about the experience. Although I paid for my class, a friend of mine works there and taught the class, and I included that information so as to check off my “material connection” box. But I am not going to be able to quit my day job based on potential earnings from occasional endorsements like this.

If I posted more eloquently and more often and attracted a larger following, I might be able to begin earning revenue from YouTube through “pre-roll” videos (that is, the ads that appear before the viewer-selected content begins).¹² These pre-roll ads closely resemble commercial breaks in regular commercial programming, and most viewers will recognize them as ads. If more and more people really liked my videos and tuned in, I might graduate to the next level and enter into sponsorship agreements with brands—not unlike Hollywood celebrities and professional athletes—where I am compensated to create content involving a product or service.

This is where the FTC has said, in more traditional contexts, that a disclosable material connection exists. Although social media influencers are a new breed, they are treated in the same way as bloggers and other endorsers. The Endorsement Guides certainly cover social-media-based product-endorsers.¹³ The Native Advertising Guide provides one example explicitly stating that when a maker of humor videos with a significant social media following creates and uploads a video “for a snack food company to promote its new cracker,” consumers would not expect the video to be advertising, and a disclosure should be made before the consumer views the video.¹⁴

The Native Advertising Guide, by contrast to the Endorsement Guides, is less focused on influencers writing on their own platforms and more focused on advertiser-directed news articles and other content housed on third-party publications. As with many FTC guides for business, the Native Advertising Guide offers many helpful examples. The exam-

ples in the Native Guide describe a variety of real-life circumstances to illustrate the basic principles: articles placed by advertisers in a financial news site, an online health and fitness magazine called *Fitness Life*, a lifestyle magazine called *Styling Home*, an online magazine (*Newsby*) with technology and science articles, and a web-based home improvement show.¹⁵

Should there be a distinction between (1) “influencers” creating and posting videos, photographs, and writings on their own social media pages, and (2) writers or other artists creating content for third-party websites? The Policy Statement says no: “Regardless of the medium in which an advertising or promotional message is disseminated, deception occurs when consumers acting reasonably under the circumstances are misled about its nature or source, and such misleading impression is likely to affect their decisions or conduct regarding the advertised product or advertising.”¹⁶ The FTC Staff has reiterated this view in panel discussions.¹⁷

Careful reading of the Native Advertising Guide and the Endorsement Guides and related FAQs, however, could be interpreted to suggest a more stringent set of rules and recommendations for disclosure of material connections in native advertising than for endorsements in social media. The FTC may have contributed—whether intentionally or unwittingly is not clear—to this view that native advertising and influencer content are different. In 2016, the FTC reached a settlement over allegations that Lord & Taylor paid a fashion magazine to write an article and post on Instagram about a dress and on the same day it paid 50 fashion influencers to wear and post about the same dress. The dress quickly sold out. The FTC alleged that neither the magazine nor the influencers adequately disclosed their paid connection to Lord & Taylor. In its press release announcing the settlement with Lord & Taylor, the FTC separately discussed two activities: (1) labeling the article as native advertising, and (2) identifying the influencer campaign as endorsements:

Lord & Taylor has agreed to settle [FTC] charges that it deceived consumers by paying for native advertisements, including a seemingly objective article in the online publication *Nylon* and a *Nylon* Instagram post, without disclosing that the posts actually were paid promotions. . . . The Commission’s complaint also charges . . . [that] Lord & Taylor paid 50 online fashion “influencers” to post Instagram pictures of themselves wearing the same paisley dress from the new collection In settling the charges, Lord & Taylor is prohibited from misrepresenting that paid ads are from an independent source, and is required to ensure that its influencers clearly disclose when they have been compensated in exchange for their endorsements.¹⁸

Why might this matter? Consider two online videos both sponsored by a luggage company that rate luggage for international travel. One is posted on a travel influencer’s video blog and the other on a website dedicated to luxury travel. In both instances, the FTC would likely conclude that the commercial nature of the content must be disclosed. The FTC has expressed a preference for disclosure in the video itself (as

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opposed to any text box below the video), likely at the beginning or perhaps at the time the advertised product or service is mentioned. If the content is live-streamed such that people may tune in midstream, the disclosure should be repeated in periodic increments.¹⁹ In addition, a material connection disclosure should be made with the content itself, as well as in any URL links provided for posting or sharing in social media or email, social posts, or other drivers or lead-ins to the content, such as content recommendation widget boxes like the “Around the World” or “Suggested for You” boxes that appear at the bottom or the side of many news websites.

But from there, the Endorsement Guide and the Native Advertising Guide seem to part ways in their treatment of the method for making the disclosure. The Endorsement Guides FAQs ask the question, “Is there special wording I have to use to make the disclosure?” The stated answer is “No. The point is to give readers the essential information. A simple disclosure like ‘Company X gave me this product to try . . . will usually be effective.’”²⁰ The Guide adds that the disclosure must be truthful (for example, mentioning more than receipt of free product if the influencer was also paid).²¹ Some language, however, is too ambiguous or incomplete for consumers to understand. For example, when a video game reviewer states that she got a “sneak peek” of the video game without specifically disclosing that she was paid to review the product, the disclosure is misleading. In the specific case of Twitter or other space-constrained platforms, the Endorsement Guides FAQs provide very clear guidance:

The FTC isn’t mandating the specific wording of disclosures. However, the same general principle—that people get the information they need to evaluate sponsored statements—applies across the board, regardless of the advertising medium. The words “Sponsored” and “Promotion” use only 9 characters. “Paid ad” only uses 7 characters. Starting a tweet with “Ad:” or “#ad”—which takes only 3 characters—would likely be effective.²²

The Native Advertising Guide, however, expresses a strong preference for disclosures to include the specific word “ad” or “advertisement.” As the Native Advertising Guide explains, “Terms likely to be understood include ‘Ad,’ ‘Advertisement,’ ‘Paid Advertisement,’ ‘Sponsored Advertising Content,’ or some variation thereof.” The Guide warns advertisers not to “use terms such as ‘Promoted’ or ‘Promoted Stories,’” because in the context of native advertising, those terms “are at best ambiguous and potentially could mislead consumers that

advertising content is endorsed by a publisher site.” Other terms (again, depending on the context), might be similarly unclear. For example, consumers reasonably might “interpret other terms, such as ‘Presented by [X],’ ‘Brought to You by [X],’ ‘Promoted by [X],’ or ‘Sponsored by [X]’ to mean that a sponsoring advertiser funded or ‘underwrote’ but did not create or influence the content.” The Native Advertising Guide also recommends consistency—if a website uses a set of terms to identify advertisements, then it should use the same terms to identify native advertising. Moreover, company logos and names on their own are not likely adequate to signal that content is commercial advertising.²³

So why would disclosures like “promoted” and “sponsored” be understood for purposes of disclosing material connections on Twitter but not necessarily understood when it comes to native advertising on other platforms? One answer probably lies with the definition of the reasonable consumer. The FTC Staff has likely concluded that the general audience for tweets has evolved to appreciate and understand that using “#sponsored” in a post about loving a certain product means that the tweeter received something of value from the product company. If so, then consumers would probably understand a Twitter-based influencer’s use of “#sponsored” for a native ad as a sufficient disclosure of the tweet’s real nature. At the same time, the FTC might not be as confident that visitors to the web-at-large have developed the same understanding that “Sponsored Content” means that a brand advertiser is involved. The agency has not concluded that this will always be the case; rather, at this stage it has advised marketers to proceed with caution if using a form of disclosure with a native ad that does not include some variation of the word “ad.”

Consumer understanding is paramount in regulating advertising to prevent deception, and the FTC staff at the Native Advertising Workshop appeared frustrated that marketers are not investing in consumer perception research. But quality research is expensive, time-consuming, and difficult to design well. As with Twitter, however, the FTC Staff’s views of what reasonable consumers understand on different social media platforms or websites will evolve. Providing real-time updates in the form of FAQs or other informal business education document is incredibly valuable for the many advertisers seeking to do the right thing.

Finding alternative words for disclosing material connections is critically important, because influencers and content creators hate the word “ad.” When I have shared this sentiment with the FTC Staff, the reaction is negative, and Staff asks “why do they not want to use that word when that is what it is—advertising?” But “ad” suggests a lack of creative control or input and conveys that the content was written and directed entirely by the advertiser. Pre-rolls are ads; content is not. Influencers are more comfortable with a disclosure like “sponsored” or “brought to you by.” YouTube has added functionality when posting videos for creators to include an in video disclosure when something is a “paid pro-

motion.” There is an inconsistency in permitting endorsers to use plain words to describe a material connection in any format but strongly pushing influencers to say “advertising” when the promotion takes the form of native content. Going back to our luggage example, why would it be sufficient for the travel blogger to say in her video “Thanks to Luggage Co. for sending me free trial product and paying for me to make my travel and video possible,” while the video article on the travel website should open with something like “This is Advertising Content”? Surely something more akin to the endorser’s language should be acceptable.

Obvious Advertising v. Not-Obvious Advertising

At the Native Advertising Workshop, consumer groups encouraged the FTC to require disclosure of a material connection any time an advertiser paid for content placement. As noted, the FTC did not accept this invitation and instead created categories where disclosure was not necessary, either because the content was so obviously advertising or because the content did not include a selling message about a product or service. Drawing these lines precisely—making clear when disclosure is required and when it is not—is not as easy as it may seem. Example 1 of the Native Advertising Guide suggests that information placed on a financial news site by a running shoe company with a picture of the shoe, a headline with the company slogan, and a link with an invitation to learn more about the company’s shock absorption is unlikely to require an “advertising” disclosure even if the color, font, and graphics resemble that of the news content on the financial news site. The factors that the FTC cites in support of this conclusion are the use of a company slogan and the fact that the subject matter of the ad differs from the news content. This example raises more questions than it answers. How close or far removed from the news content does the ad need to be before it is not obviously an ad? What if the company slogan was not used, but the name of the company appeared without a slogan?

Similarly the Endorsement Guides FAQs recognize that disclosure might not be necessary when an athlete is so closely associated with a product as a known endorser that no reasonable consumer could fail to recognize the commercial nature of the endorsement. Or similarly that a famous celebrity might be widely known to make his or her fortune charging advertisers to mention or show products in posts—so much so that further disclosure is overkill. (Let’s just call this the Kardashian Principle.) The FTC warns, however, that the burden rests with the advertiser to support the proposition that all or most reasonable consumers understand, without an express disclosure, that the influencer is compensated. Surely in cases where the product is named after the celebrity (such as Air Jordans or Fabletics by Kate Hudson) the connection is obvious. Additional guidance beyond “determining whether followers are aware of a relationship can be tricky in many cases, so we recommend disclosure”²⁴ would be welcome.

If the FTC holds true to its word and, at least in the short term, brings only obvious cases, then the complaints and consent orders will not produce much guidance for advertisers or counselors. A more useful course would be to expand the examples in the Native Advertising Guide and Endorsement Guides. The existing examples are helpful, and adding to these examples either through FAQs or perhaps through warning letters or more detailed educational letters, would provide additional needed clarity.

Advertising Message v. Promotional Message

The FTC provides some examples where the advertiser has created content and is not required to label it as advertising. Example 2 posits a fitness shoe company's placing an article in a health and fitness magazine promoting a list of beautiful places to vacation. The article lists places runners would enjoy visiting, but it does not promote the shoe company's products in any way. The FTC notes that although the company's "sponsorship of an article is a form of advertising," the article itself is not advertising, because it does not promote any [] products." The FTC concludes that "the article does not need to be identifiable as an ad before or after consumers click into it."²⁵ In most cases when an advertiser sponsors something beautiful or hip or interesting but not directly product-related, it is in an effort to build the brand equity and brand identity. The shoe company probably has every interest in letting its customers or potential new customers know that it cares about beautiful vacations and so will make some form of disclosure. The key, however, is that because the law does not require a "material connection" disclosure, the advertiser has much more creative leeway in how to phrase its involvement and where to place the information. The burdens of clarity and conspicuousness do not apply if no disclosure is legally mandated.

Guidance can also be found in FTC advice on "product placement." The FTC has been clear that if there is "mere product placement" or showing a product without promoting it, no disclosure is needed. This is not news; in 2005, the FTC said in a closing letter that not every sponsored product placement without a disclosure is misleading, using as an example the American Idol judges with their ubiquitous Coke cups:

Some products appear in programming because advertisers pay for such placement, while other products appear because of the creative judgment of the program's writers. We are not aware of any empirical data concerning whether consumers distinguish between these two uses of products in programming. . . . Assuming, however, that consumers are not aware when an advertiser has paid for a product to appear in programming . . . it does not appear that failure to identify the placement as advertising violates Section 5 of the FTC Act.²⁶

The FTC explained that "the rationale for disclosing that an advertiser paid for a product placement" is generally absent when all that occurs is the product's placement on-screen without any claims about the product's attributes.

The Native Advertising Guide reaches the same conclusion. There the FTC includes an example involving product placement in a video game where game characters wear a particular clothing brand or drink a beverage brand but do not make objective product claims.²⁷ No disclosure is required. In another example where an "expert" on a home improvement show appears in a video and uses a particular product but does not expressly recommend it, the FTC recommends disclosure of the paid inclusion because consumers may mistake the expert's use of the product as being based on his or her own independent evaluation.²⁸ There is a very fine line between mere product placement and an implied endorsement, and advertisers would benefit from further clarification from the FTC on where to draw this line.

Conclusion

The FTC has made great strides in addressing the rapidly changing use of social media and other forms of non-traditional advertising to reach consumers increasingly leery of—and able to screen out—advertising messages. As marketing evolves, however, and as responsible advertisers work to implement the FTC's guidance, serious questions will arise. The FTC would do well to treat its guidance in these areas as "living, breathing documents" and update them as needed. The time is ripe for additional guidance and for greater harmonization of the general guidance for endorsements and the specific guidance for native advertising. ■

¹ In the advertising world, "editorial" refers to any content that is not some form of advertising. Thus, in a newspaper, it would include all news items, and not just the "editorial" section.

² It has also been defined by a third-party native advertising company, Sharethrough, as "paid media where the ad experience follows the natural form and function of the user experience in which it is placed." SHARETHROUGH, <https://support.sharethrough.com/hc/en-us/articles/204686805-The-Official-Definition-of-Native-Advertising>.

³ Blurred Lines: Advertising or Content?—An FTC Workshop on Native Advertising (Dec. 13, 2013), <https://www.ftc.gov/news-events/events-calendar/2013/12/blurred-lines-advertising-or-content-ftc-workshop-native>.

⁴ Fed. Trade Comm'n, Native Advertising: A Guide for Businesses (Dec. 2015) [hereinafter Native Advertising Guide], <https://www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses>.

⁵ Fed. Trade Comm'n, Guides Concerning the Use of Testimonials and Endorsements in Advertising (Oct. 2009) [hereinafter Endorsement Guides], <http://www.ecfr.gov/cgi-bin/text-dx?c=ecfr&sid=5de11e010afaa51af478dbd337f0cad6&rgn=div5&view=text&node=16:1.0.1.2.2&idno=16>.

⁶ Presidential Executive Order on Enforcing the Regulatory Reform Agenda (Feb. 24, 2017), <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>.

⁷ See, e.g., Amy Mudge & Laura Sullivan, A Virtual Fireside Chat with the FTC on Native Advertising (Feb. 11, 2016), http://www.americanbar.org/tools/digitalassetabstract.html/content/dam/aba/multimedia/antitrust_law/20160211_at1601122_mo.mp3 (audio file, available for ABA Section of Antitrust Law members).

⁸ The FTC has, however, introduced a new form of business education just for influencers. On April 19, 2017, the FTC Staff announced it had sent "educational letters" directly to 90 influencers and marketers reminding them of the need to clearly and conspicuously disclose material connections. Press Release, Fed. Trade Comm'n, FTC Staff Reminds Influencers and

- Brands to Clearly Disclose Relationship, <https://www.ftc.gov/news-events/press-releases/2017/04/ftc-staff-reminds-influencers-brands-clearly-disclose>.
- ⁹ Fed. Trade Comm'n, The FTC's Endorsement Guides: What People Are Asking (May 2015) [hereinafter Endorsement Guides FAQs], <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking>.
- ¹⁰ Enforcement Policy Statement on Deceptively Formatted Advertising (Dec. 2015) [hereinafter DF Policy Statement], https://www.ftc.gov/system/files/documents/public_statements/896923/151222deceptiveenforcement.pdf.
- ¹¹ Native Advertising Guide, *supra* note 4, examples 1–2, 10. See also DF Policy Statement, *supra* note 10, at 12–13, 15 n.66.
- ¹² See, e.g., *Back to Video Basics: What Is Pre-Roll?* BRIGHTROLL (Apr. 19, 2016) (“Pre-roll video ads are a powerful tool that all advertisers should consider using when building a video campaign. When viewers click a link or load a video, they do so with intention and active engagement—and before their chosen video plays, that attention is focused on whatever message occupies the player.”), <https://brightroll.com/blog/back-video-basics-what-pre-roll>.
- ¹³ Endorsement Guides, *supra* note 5, at 255.0(b) (“[A]n endorsement means 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.”).
- ¹⁴ Native Advertising Guide, *supra* note 4, example 16.
- ¹⁵ *Id.* examples 1, 2, 3, 6, & 8. The Guide offers several other examples of native content, including paid search results, example 17, and advertising messages within video games, examples 9–11.
- ¹⁶ DF Policy Statement, *supra* note 10, at 2.
- ¹⁷ Richard Cleland, Assistant Dir., Div. of Advertising Practices, Fed. Trade Comm'n, Remarks, 2016 ANA/BAA Marketing Law Conf., All About Native Advertising: The Experts' Views (Nov. 10, 2016), <http://www.ana.net/miccontent/showvideo/id/v-baalaw-nov16-expertsviews>.
- ¹⁸ Press Release, Fed. Trade Comm'n, Lord & Taylor Settles FTC Charges It Deceived Consumers Through Paid Article in an Online Fashion Magazine and Paid Instagram Posts by 50 “Fashion Influencers” (Mar. 16, 2016), <https://www.ftc.gov/news-events/press-releases/2016/03/lord-taylor-settles-ftc-charges-it-deceived-consumers-through>.
- ¹⁹ See Endorsement Guides FAQs, *supra* note 9, at 11, 13; Native Advertising Guide, *supra* note 4, at 8–11.
- ²⁰ Endorsement Guides FAQs, *supra* note 9, at 10 n.8.
- ²¹ *Id.* at 10–11.
- ²² *Id.* at 12. In its recent education letters sent to influencers, the FTC Staff suggested in its sample letter that #partner and #Thanks[Brand] were ambiguous, as well as that material connection disclosures used in a series of hashtags or only present after one clicks “more” are likely not clear and conspicuous.
- ²³ Native Advertising Guide, *supra* note 4, at 11.
- ²⁴ Endorsement Guides FAQs, *supra* note 9, at 7.
- ²⁵ Native Advertising Guide, *supra* note 4, at example 2.
- ²⁶ Letter to Gary Ruskin, Exec. Dir., Commercial Alert, from Mary K. Engle, Assoc. Dir., Advertising Practices, Fed. Trade Comm'n (Feb. 10, 2005), https://www.ftc.gov/system/files/documents/advisory_opinions/letter-commercial-alert-applying-commission-policy-determine-case-case-basis-whether-particular/050210productplacemen.pdf.
- ²⁷ Native Advertising Guide, *supra* note 4, example 10.
- ²⁸ *Id.* example 12.