

Word Of Mouth Marketing: The FTC Speaks Out

Recent Word of Mouth Marketing Guidelines

“Word of mouth marketing” (sometimes referred to as “buzz marketing,” “guerilla marketing,” and “stealth marketing”) is a growing practice that encompasses a wide range of marketing activities in which a marketer encourages and facilitates discussion between and among consumers about the marketer’s products or services. As the Word of Mouth Marketing Association has explained, the practice involves giving consumers a reason to talk about a marketer’s products or services, and facilitating that talk.

Responding to concerns that word of mouth marketing may be a deceptive practice in violation of the Federal Trade Commission Act, the FTC recently issued an opinion letter that provides general guidance as to when there must be a disclosure of the fact that a marketer is paying a sponsored consumer to make claims to other consumers about the marketer’s product.

The FTC’s General Guidance on Word of Mouth Marketing

In providing general guidance as to when one must disclose the fact that a marketer is paying a sponsored consumer to make claims to other consumers about the marketer’s product, the FTC applied the general

Does your business:

- ✓ Pay people to make claims about your products or services to others?
- ✓ Compensate customers for posting comments on your products or services on Web blogs?
- ✓ Reward customers for promoting your products or services to their friends?

Then, read on . . .

principles from its Endorsement Guides to the word of mouth marketing context.

These Endorsement Guides state that “[w]hen there exists a connection between the endorser and seller of the advertised product which might materially affect the weight or credibility of the endorsement ... , such connection must be fully disclosed.” The Opinion Letter further explained that the connection between the seller and the endorser is “likely to have a material effect on the weight or credibility of the endorsement if the connection [between them] is not reasonably expected by the audience.” The FTC concluded as follows:

The relationship between the word of mouth marketer and the endorser should be disclosed if that connection would materially affect the weight or credibility of the

endorsement, *i.e.*, if consumers would not reasonably expect that relationship.

Examples of Deceptive Word of Mouth Marketing Practices

In addition to stating these general principles, the FTC provided two examples of word of mouth marketing contexts where the failure to disclose the relationship between the marketer and the consumer would be deceptive.

In the first example, a sponsored consumer tells his friends about the impressive sound quality of his new cell phone’s speaker phone feature. In the second example, a sponsored consumer raves to her friends about how well her

new dishwasher cleans dishes even when they are not pre-rinsed.

The FTC explained that if the sponsored consumer's friends in each of these (respective) contexts do not know that the sponsored consumer is being paid to talk about the cell phone or the dishwasher and the relationship is not otherwise clear from the context, the sponsored consumer's friends may give greater weight to the sponsored consumer's opinion than they would if there were a disclosure of sponsorship – so the failure to disclose the relationship between the marketer and the sponsored consumer would be deceptive.

Recommended Actions

If you pay or otherwise compensate people to tell others about your products or services, be sure to do the following:

- ✓ Instruct your marketers, in all dealings with third parties (including their peers and friends), to clearly disclose that there is a paid relationship between themselves and your business.

- ✓ Consider providing marketers with a scripted disclosure statement to be conveyed at the beginning of any dealing with another person.
- ✓ Consider issuing these marketers some type of apparel (such as a hat or t-shirt) that clearly identifies your business.
- ✓ Consider providing marketers a written disclosure statement to be included in any written communication (including e-mails and Web postings) with others.

This issue of IP News was contributed by Attorney Faith Kasparian, who works with us in providing technology, licensing and intellectual property services to clients.

The Morse, Barnes-Brown & Pendleton, PC, **Technology Licensing & Intellectual Property Practice** counsels businesses of all sizes on creating, protecting and transferring IP assets, including advice on trademark, copyright, advertising, Internet and technology law.

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