

Revised FTC Guidelines

February 24, 2010



On December 1, 2009, the Federal Trade Commission (“FTC”) revised its “Guides Concerning the Use of Endorsements and Testimonials in Advertising” (the “Guidelines”), which had not been updated since 1980. The revisions were made to address the many new forms of media being used by advertisers and endorsers. Some of these revisions create potential liability for employers whose employees make statements on blogs or online message boards.

The Guidelines specifically provide that “blogs” and “online message boards,” if used to engage in unfair or deceptive trade practices in advertising, may subject both the advertisers (*i.e.* the seller of the advertised product) and the endorsers (*i.e.* persons conveying an opinion, finding, belief or experience about a product or service) to substantial liability. Specifically, an employer now faces potential liability for an online “endorsement” made by an employee that fails to disclose the employee/employer relationship, or which makes unsubstantiated statements concerning the employer’s products or services.

While the extent of liability will be based on the facts and circumstances of each case, the potential liability for both an advertiser/employer and endorser/employee could be as high as a civil fine of \$16,000 per violation. Significantly, the FTC also has indicated that an advertiser/employer’s lack of control over the statements made via blogs, online message boards and social networking sites “would not automatically disqualify” that statement from being deemed an “endorsement” within the meaning of the Guidelines. Therefore, it is possible that employers could face liability even if they did not sponsor or approve of an employee’s online endorsement.

To mitigate or eliminate potential liability under the Guidelines, employers must be proactive in drafting policies and procedures intended to avoid engaging in unfair or deceptive trade practices. We strongly recommend that all employers develop a social media policy that clearly states how employees must comply with the Guidelines, or that strictly prohibits employees from posting any endorsements of the employer’s products or services online. The Guidelines state that such policies will be looked upon favorably by the FTC if there are violations.



For additional information or assistance in drafting a social media policy, please contact [Melanie Webber](#) or [Joe Brennan](#) of [Millisor + Nobil](#) (800/800-8806).

This article was written to provide accurate information, however, is not intended as legal advice.

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