

Friends, Family and High Blood Pressure - FTC Takes Action Against Undisclosed Family Reviews and Unsubstantiated Claims for Mobile Health App

December 15, 2016 – The TMCA
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In previous posts, we've discussed the Federal Trade Commission's significant enforcement efforts focused on two hot button issues: unsubstantiated health marketing claims and deceptive product endorsements. Once again, both came together in a Complaint and Settlement announced by the agency on December 12, 2016.

The target of the enforcement action was Aura Labs, Inc., which had marketed an Instant Blood Pressure (IBP) mobile app, purported to give blood pressure readings as accurately as a traditional blood pressure "cuff" device. Consumers paid \$3.99 or \$4.99 to download the app; input data on their gender, age, weight and height; and then were instructed to remove outer clothing, place their right index finger over the rear camera lens and light, and place their mobile device against the left side of their chest until a blood pressure measurement was taken

and displayed. The problem? Clinical studies demonstrated that the blood pressure readings generated by the IBP were significantly less accurate than readings taken by a traditional blood pressure cuff.

Aura Labs also ran into trouble with consumer endorsements posted about the product in the Apple App Store and on its website. In the App Store, "Archie" gave the product five stars. Archie was in fact Ryan Archdeacon, the CEO and President of the company. Interestingly, Archie's review was not all glowing. While proclaiming that the product was

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a “breakthrough,” he noted that “there are some kinks to work out” and that users might experience “some connection problems”. While these quality issues were disclosed in the review (albeit not by the company), Archie’s identity as an officer of the company was not. On the “What People Think” portion of Aura Labs’ website, two positive endorsements were posted by relatives of Aura’s co-founder.

The stipulated federal court order settling the matter enjoined Aura Labs from making efficacy claims about the IBP without “competent and reliable scientific evidence” to substantiate the ad claims, misrepresenting that any endorser of the IBP is an independent user or ordinary consumer, and failing to disclose material connections between the endorser and the company. A monetary sanction of almost \$600,000 was imposed and suspended based on the company’s inability to pay (the agency also included one of its typical “avalanche” clauses requiring the full amount to be paid if it is later found that the company had misrepresented its financial condition).

So what can you do to keep your company’s blood pressure in check?

- All advertisers should caution their officers, employees and family members not to post product reviews without full disclosure of their material connection.
- Companies selling health products, apps or services should ensure that their advertising claims are adequately substantiated beforehand and if the science does fit the claim, don’t suggest otherwise.