FTC to Brands: We Will Not Tolerate Fake Reviews and Other Misleading Endorsements – Monetary Penalties Are Coming

October 15, 2021 – The TMCA
by Fara Sunderji

Earlier this week the FTC announced that it had sent more than 700 Notice of Penalty Offense letters to major advertisers, leading retailers, large consumer product companies and major ad agencies to put everyone on notice that fake consumer reviews and other misleading endorsements will not be tolerated. The letters also placed the recipients on notice that significant civil penalties will be imposed on those who use these deceptive tactics. In fact, the letters referenced the FTC's power to impose fines up to $43,792 **per violation**. To be clear, just because a business received a letter does not mean the FTC suspects any wrong doing. The FTC suspects that fake reviews and other misleading endorsement are widespread, especially on social media. Fresh from the 2021 NAD conference, we did not find this announcement surprising at all. Readers of our blog will know that consumer reviews have been a focus of both the FTC and the NAD for many years.

Whether your brand received one of these letters or not, the FTC wants you to know that it will not tolerate any of the following:

falsely claiming an endorsement by a third party

misrepresenting whether an endorser is an actual, current, or recent user

continuing to use an endorsement without good reason to believe that the endorser continues to subscribe to the views presented

misrepresenting that an endorsement represents the experience, views, or opinions of users or purported users

using an endorsement to make deceptive performance claims

Related People

- Fara Sunderji

Related Capabilities

- Trademark, Copyright + Advertising
- Intellectual Property Litigation

failing to disclose an unexpected material connection with an endorser

misrepresenting that the experience of endorsers represents consumers' typical or ordinary experience

The FTC also specifically stated that "positive consumer reviews are a type of endorsement, so such reviews can be unlawful, *e.g.*, when they are fake or when a material connection is not adequately disclosed." While much is unknown about what will happen in 2022, it is highly likely that we will be seeing an FTC crackdown on false and misleading reviews with the steep monetary penalties.