

NAB Legal Department Summary of FTC Revised Guidelines on Endorsements and Testimonials in Advertising

- The FTC has announced its final revisions to the guidance it gives to advertisers about endorsement and testimonial ads.
- The Guides address endorsements by consumers, experts, organizations and celebrities and the disclosure of important connections between advertisers and endorsers. Guides were last updated in 1980.
 - Guides in general apply to ads on radio and television, but focus of revised guides is new media and nontraditional contexts and endorsements online in consumer-generated media and outside traditional contexts.
 - Bloggers are major target of new Guides and must disclose compensation from sellers, even keeping free books reviewed on their sites.
- Guides impact on broadcasters:
 - Guides in general apply to ads on radio and television, but FTC enforces against advertisers, not broadcasters (unless they are involved in producing deceptive ads). Requirements about typical consumer experiences may pose challenges for some advertisers, particularly for those presenting atypical consumer experiences (which now must mention what the typical consumer experience would be).
 - New examples in revised Guides about disclosure rules for blogger reviews regarding receipt of free product don't apply to traditional media, which receive free books, CDs and DVDs to review (and keep) because the latter are not considered “endorsements” within the meaning of the Guides.
 - Thus on air reviews/comments by DJs about CDs provided free to radio stations should not be subject to new disclosure requirements aimed at new media,

absent a direct benefit to the DJ from the manufacturer or its agent.

- DJs that are paid to present ads or hype products may need to tell listeners that their talk is a sponsored ad, unless that is obvious, which it typically is.
- On air and online celebrity endorsers may have an obligation to make reasonable inquiry about the basis of what they're saying or they could face enforcement actions by the FTC if they knowingly spread false or unsubstantiated claims or fail to disclose material connections between advertiser and endorser.
 - Celebrities have a duty to disclose their relationships with advertisers when making endorsement outside the context of traditional ads, such as on talk shows or in social media.
- If an employee promotes his employer's product on a message board, he should disclose the fact of his employment.
 - This potentially could apply to comments about broadcaster service posted by the broadcasters' employee on comment boards on online new stories.
- Guides are administrative interpretations of the law intended to help advertisers comply with the FTC Act, but they are not binding law themselves.
- Guides are effective December 1, 2009.