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FTC's New Endorsement Guides Call for Policies and Procedures for Recommendation Marketing through Evolving Social Media Channels by December 2009 and Make Companies and Consumers Responsible for the Content of Sponsored Posts

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Increasingly, marketing is occurring virally, particularly via the Internet, mobile and other evolving media, through word-of-mouth ("WOM"), including by means of the use of product sampling and consumer reviews, comments and recommendations. Product sampling involves distributing products to influential new-media users/authors in the hope that they will positively discuss the product with their followers and friends.

Such so-called recommendation marketing, which may or may not encompass sampling, is well suited for consumer driven social media and can take many forms ranging from paying or encouraging an influencer to write a blog² or post or tweet³ about a brand, motivating consumers to initiate emails that send product listings or other information to friends via "send-to-a-friend" e-mail tools made available to consumers by online merchants or marketers,⁴ displaying a user's name and/or picture in connection with an ad that is directed to the user's friends on a social networking site,⁵ and eliciting product reviews on retail websites.

In one of its more insidious forms, recommendation marketing can involve a marketer paying Internet users to post disingenuous positive product reviews at online retailers or "astroturfing," where advertisers or their agents pretend to be unaffiliated consumers and spread misleading or false information in furtherance of the advertiser's objectives.⁶ For example, last January, it was widely reported in the media that the lead sales rep

of networking-technology manufacturer Belkin was allegedly covertly paying consumers to post positive reviews on Amazon.com and Newegg.com, without regard to whether they used or liked the product, and to mark negative reviews posted by others as "not helpful," and was further counseling them on how to do so and to keep the connection to the company a secret.⁷

The Federal Trade Commission ("FTC" or "Commission"), which regulates both on-line and traditional advertising, has been concerned with the growth of such activities and, after much public comment by industry to its proposals, on October 2, 2009, published new rules that would impact both rogue and good intentioned evolving media marketers. The FTC's new guidance makes it clear that companies that are involved in encouraging a message about their products or services in non-traditional media, such that they are essentially sponsoring the messages, even if by consumers or celebrities, will be responsible as the advertiser for the message. Although the FTC acknowledges the limited ability in social and other evolving media to clear and control these types of messages, it places the burden of the risk on both the sponsor and the speaker. The FTC notes that it has prosecutorial discretion and would likely target the more egregious cases and repeat offenders; however, it also instructs that it expects advertisers to have rules requiring disclosure of material connections and prohibiting the speakers not to make unsubstantiated or

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misleading claims, to train them in these requirements and to monitor them and take appropriate corrective actions if not followed.

Advertisers may be surprised at how little consideration or connection, such as providing free product for a blogger to review, may be enough to trigger a company's responsibility for what the blogger says about the product. The Commission does note in § 255.0, that its finding of deception will depend on specific factual circumstances, suggesting that reasonable efforts, and consumer perception based on Netiquette⁸ may shape enforcement decisions. It has also provided additional examples and commentary to elucidate when would be more or less likely to deem a company a sponsor and a consumer-generated social media message an endorsement for which it is responsible.

In January of 1980, the FTC published its Guides Concerning Use of Endorsements and Testimonials in Advertising (the "Guides"). Although intended as guidance for self-regulation, failure of marketers to comply with the Guides is grounds for the FTC to bring enforcement actions under its authority to regulate "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(1). In January of 2007, the FTC began the process of reviewing and revising the Guides and, in November 2008, it published a proposed version of the new Guides ("Proposed Guides"). The Proposed Guides were in part a response to a growing trend amongst evolving media marketers to get consumers more involved with brands and their promotion, including by means of social media.

The FTC solicited public comment to the Proposed Guides. The comment deadline was later extended and ended on March 2, 2009. Seventeen comments were submitted, most from major advertising-industry organizations. On October 2, 2009, notice of the final revised Guides ("New Guides") was issued by the FTC, making some modifications and additions to the Proposed Guides regarding evolving media and providing commentary on the public comments that had been filed. The New Guides are effective on December 1, 2009, and call for, among other things, advertisers to institute social and evolving media policies and procedures by that time.

This article explores the changes to the Guides, with regard to how the New Guides affect recommendation

and social marketing in evolving media channels and counsels advertisers to enact policies and practices regarding social media that explain, and direct observance of, the principles of the New Guides, monitor for compliance and, where possible, require corrective action for non-compliance.⁹ There are a myriad of other issues, such as vicarious or contributory copyright or trademark infringement, blurring of advertising and editorial, CAN SPAM¹⁰ regulation of commercial e-mail, TCPA¹¹ and MMA¹² regulation of mobile marketing, privacy and data security regulation, constraints on marketing to children and sweepstakes and lottery laws, that should also be incorporated into such policies and practices, but that are beyond the scope of this article.¹³

The New Guides

SECTION 255.0 AND 255.1 – Purpose and General Considerations

A significant revision to the introductory sections of the Guides is the addition of § 255.1(d), which the FTC notes was added to "explicitly recogniz[e] two principles that the FTC's law enforcement activities have already made clear. The first is that advertisers are subject to liability for false or unsubstantiated statements made through endorsements, or for failing to disclose material connections between themselves and their endorsers. The second is that endorsers may also be subject to liability for their statements." The Commission added a New Example 5, specifically to illustrate the application of these enforcement principles to evolving media. It involves an advertiser that participates in a blog-promotion service. The service matches up its customers' products with bloggers, who write about the products on their personal sites. The advertiser gives a blogger a new body lotion and asks that she write about it on her blog. This connection is seen by the FTC as enough to create advertiser responsibility for the blogger's posts, as the FTC illustrates:

"Although the advertiser does not make any specific claims about the lotion's ability to cure skin conditions and the blogger does not ask the advertiser whether there is substantiation for the claim, in her review the blogger writes that the lotion cures eczema and recommends the product to her [readers]." Because of this posting "the advertiser is subject to liability for false or unsubstantiated statements made through the blogger's endorsement. The blogger is also subject to liability for misleading or

unsubstantiated representations made in the course of her endorsement. The blogger is also liable if she fails to disclose clearly and conspicuously that she is being paid for her services.”

This example should greatly concern any marketer engaging in sampling or recommendation marketing that is not tightly controlled. The final paragraph of New Example 5 suggests some ways sampling and engagement of consumers via evolving media channels should, in the FTC’s opinion, be conducted: “In order to limit its potential liability, the advertiser should ensure that the advertising service provides guidance and training to its bloggers concerning the need to ensure that statements they make are truthful and substantiated. The advertiser should also monitor bloggers who are being paid to promote its products and take steps necessary to halt the continued publication of deceptive representations when they are discovered.” That epilogue, however, is not a safe-harbor for advertisers who implement education and monitoring programs. Rather, the FTC will look at the totality of the circumstances in determining whether to bring an action.

Further, in its responses to the comments to the Proposed Rules, the Commission outlined a “construct for analyzing whether or not consumer-generated content falls within the definition of and endorsement. . . . such that the speaker’s comment can be considered ‘sponsored’ and therefor an ‘advertising message.’” The FTC will ask: “In disseminating positive statements about a product or service, is the speaker: (1) acting solely independently, in which case there is no endorsement, or (2) acting on behalf of the advertiser or its agent, such that the speaker’s statement is an “endorsement” that is part of an overall marketing campaign?” To make this determination, it will inquire, without limitation as to:

- Whether the speaker is compensated by the advertiser or its agent;
- Whether the product or service in question was provided for free by the advertiser;
- The terms of any agreement;
- The language of the relationship;
- The previous receipt of products or services from the same or similar advertisers;
- The likelihood of future receipt of such products or services; and
- The value of the items or services received.

The FTC’s commentary suggests a “spectrum”, where a blogger’s one time receipt of a low value product would likely not be treated as an endorsement, but if the product had a high value or the blogger routinely was sent product to review, sponsorship would be likely found. And if any payment is made, sponsorship is certain. A New Example 8 gives some examples where no sponsorship exists such as a blogger who buys dog food herself, in one instance with a coupon she got at the grocery register for a free trial bag, and then blogs about the product without encouragement of the manufacturer. However, it finds sponsorship where the blogger joined a network marketing program that sends influencers products from a variety of companies to review, and she gets a free sample of dog food and then blogs about it. And, as noted above, if there is enough to deem sponsorship, “[a]n advertiser’s lack of control over the specific statement made via these new forms of consumer-generated media would not automatically disqualify that statement from being deemed an ‘endorsement’ within the meaning of the Guides.”

The Proposed Guides and the final New Guides also clarified celebrity spokesperson liability if the endorser makes statements, even if scripted and contractually required to be read, he personally makes contrary to “what he observed with his own eyes, not for things outside of his control” or that he should know are exceptional or unlikely.

Section 255.2 – Consumer Endorsements

The section on consumer endorsements and testimonials is the most heavily amended section in the Guides. The New Guides require advertisers employing consumer endorsers to “possess and rely upon adequate substantiation, including, when appropriate, competent and reliable scientific evidence, to support efficacy claims made through endorsements, just as the advertiser would be required to do if it had made the representation itself.” Anecdotal evidence about the individual experience of consumers is not sufficient to substantiate claims, and if the consumer’s message is deemed a sponsored message, the advertiser is responsible for what is said.

This section and its examples are primarily concerned with products whose general efficacy and typicality are capable of being discerned (weight-loss and hair-treatment drugs and an energy-saving device). The last example added to this section involves an advertisement

showing on-the-spot assessments of a movie from viewers leaving the theatre. The reason no typicality message would need to be conveyed is that the patrons' statements would be understood to be the subjective personal opinions of only three people. However, the Commission cross references to § 255.5 and notes that if the consumers were offered free movie tickets to make the comments, that arrangement must be disclosed.

The New Guides also do away with the current safe harbor provided by disclaimers of typicality. The prior Guides allowed advertisers that use non-representative consumer testimonials to "clearly and conspicuously disclose the limited applicability of the endorser's experience to what consumers may generally expect to achieve." That is, a clear and conspicuous disclosure that "results are not typical" sheltered the advertiser from liability. The New Guides require that, when a testimonial conveys that the endorser's results are what consumers can generally expect to achieve and the advertiser does not possess adequate substantiation for that claim, the advertiser must "clearly and conspicuously disclose the generally expected performance in the depicted circumstances." In its response to comments, the Commission noted that this is not intended to require a mathematical average but rather extrapolated generally expected results under the whatever circumstances are depicted based on substantiation. It also notes that that a "Results Not Typical" disclosure does not itself violate the Guides, but that it will review the overall net impression of the ad, and likely consumer perception of the ad as a whole, to determine if a consumer would appreciate the generally expected results.

These requirements can be met by an advertiser that is selecting and publishing consumer endorsements. However, evolving media gives advertisers a myriad of new ways to harness consumer reviews and endorsements regardless of whether they were originally procured or solicited by the advertiser, such as posting or linking to the results of a Twitter public feed search or a Facebook fan page message feed on the advertiser's website, each of which Wm. Wrigley Jr. Company has done with Skittles.com. When the advertiser is posting or linking to such consumer comments on third party sites, as opposed to editorially selecting individual consumer comments to publish, the advertiser may lack the ability to control the consumer posts, making compliance in such circumstances practically impossible. Even where the

advertiser is paying or otherwise motivating consumers to blog, tweet, e-mail or text, it lacks the ability to review the substance prior to publication and, in many instances, will not even have the ability to see what was published. Nonetheless, such comments, when deemed by the Commission to be messages "that consumers are likely to believe reflect the opinions, beliefs, findings or experiences of a party other than the sponsoring advertiser..." but, nonetheless, deemed "sponsored", are the responsibility of that sponsoring advertiser. And as the New Example 5 in § 255.1(d) above points out, the FTC may hold the advertiser and the consumer liable for such claims; particularly if the advertiser did not exercise best efforts to control, prevent and rectify the misleading, unsubstantiated or otherwise legally insufficient statements of the consumer.

Section 255.5 – Disclosure of Material Connections

This rule requires that material connections between the endorser and the seller of a promoted product be disclosed when they "might materially affect the weight and credibility of the endorsement (i.e., the connection is not reasonably expected by the audience)." While the substance of this section remains unchanged, the Proposed Guides sought to add new examples to clarify the scope of the rule, including application to sampling and otherwise engaging consumers via social and other evolving media and regarding a celebrity's use of non-traditional media. In its commentary, the Commission solicited comments about these examples particularly regarding "the expectations held by consumers as to the relationships that exist between advertisers and endorsers and these new marketing contexts." These generated significant comments and the New Guides revised one example, to "clarify that in the case of endorsements disseminated by consumer-generated media, the relationship between the advertiser and the endorser may not be apparent" and to make the sponsoring advertiser's "obligations more apparent." Also, the Commission added an additional hypothetical to an example regarding celebrity endorsers, who are not required to disclose a material connection such as being a paid spokesperson in traditional advertising as such would be reasonably expected by consumers, and to further elaborate that when speaking about a product on talk shows, in social media or in other contexts less clearly an ad, that a disclosure of the connection is

required and both the celebrity and the advertiser are responsible for disclosure omissions and misstatements. The FTC noted in its response to comments it could exercise prosecutorial discretion where a talk show edited out the disclosure or an advertiser had good rules and training and the celebrity simply slipped up.

New Example 7 imagines a college student who makes a name for himself as a video-game expert and is followed by readers on his personal blog who are interested in his gaming experiences. The manufacturer of a new video game system, as it has in the past, sends the blogger a free product and asks him to review it on his blog. He does. Because, the FTC supposes, “his relationship to the advertiser is not inherently obvious, readers are unlikely to know he has received the video game system free of charge in exchange for his review of the product, and given the [unstated] value of the [product], this fact likely would materially affect the credibility they attach to his [what he says about it]. Accordingly, the blogger should clearly and conspicuously disclose that he received the gaming system [for free]. The manufacturer should advise him at the time it provides the gaming system that this connection should be disclosed, and it should have procedures in place to try to monitor his postings for compliance.” The use of the video game industry is interesting since that industry relies heavily on consumer-generated reviews and it is common practice to send hardware and software products to gamer – bloggers to even travel them on “press junkets” to launch parties and industry events. The Commission in response to comments acknowledged that in traditional print, TV and radio it does not require reviewers to disclose the media outlet received the product for free, but opined that new media was different because the reviewer itself is the media outlet and the beneficiary of the free product, a fact consumers might want to know to weigh credibility. Not discussed is a common practice by bloggers that do disclose that they received free product or consideration to fail to disclose that they do not post reviews when they do not have favorable things to say about a product, information consumers may also arguably want to know. Further, traditional media has a history of maintaining a separation of editorial and advertising and of journalistic ethics that may make these review venues of less concern to the FTC than consumer blogs.¹⁴ Indeed, the FTC in its response to comments noted that it would look at a reviewer of products in traditional media differently “if the reviewer

were receiving a benefit directly from the manufacturer (or its agent).”¹⁵

In New Example 8, an employee of a company that manufactures MP3 players posts messages online at a message board designed for discussion of MP3 players. The employee’s posts promote her employer’s products, but she does not reveal that she is employed by the manufacturer. Because “knowledge of this poster’s employment likely would affect the weight or credibility of her endorsement,” she must clearly and conspicuously disclose her relationship to the manufacturer. This example is far less controversial than the other two given that the employee is capable of being directed and controlled by the advertiser. In response to a comment that a company that has a social media participation program and appropriate policies and practices should not be responsible for a rogue employee that fails to follow the rules, the FTC responded that “appropriate procedures would warrant consideration” and noted that it had never brought an enforcement action against a company for an isolated incident of failure to follow adequate company policy. New Example 3 reaches a similar conclusion when celebrity spokespeople speak about a product in social media, on talk shows other venues that are not traditional ad messages. Accordingly, companies should have appropriate social media policies and practices in place that incorporate the New Guide’s principles, train employees, celebrity spokespersons and vendors on them and enforce the rules.

In New Example 9, a member of a “street team”¹⁶ is awarded points every time he talks to his friends about the street-team organizer’s products. He can then exchange those points for prizes. Because, to the FTC, this incentive would materially affect the weight or credibility of the endorsements, the team member must also clearly and conspicuously disclose his relationship to the advertiser. Notably, unlike the other two examples, New Example 9 explicitly states that “the advertiser should take steps to ensure that these disclosures are being provided.” This example, however, does not indicate how specific the street-team member needs to be in disclosing his relationship. It is unclear whether the simple disclosure that he is a member of advertiser’s street team or is an advertiser “Brand Ambassador” will suffice or to what degree the details compensation or reward structure must be explained. A common way currently employed in connection with posts, particularly

where cash compensation has been paid, is to add the text “Sponsored Post”. On twitter posts, which are limited to 140 characters, the mere “#SP” designation is starting to appear. Whether these notices will meet the FTC’s long established requirements that material disclosures be clearly and conspicuously made, is questionable. The Commission’s comments regarding the totality of the circumstances and what consumers might reasonably understand or expect with respect to particular media and venues must guide these disclosures.

Public Comments and Concerns Regarding the Regulation of Evolving Social Media

The vast majority of the seventeen public comments submitted on the Proposed Guides came directly from or on behalf of major consortiums or trade organizations within the advertising and marketing industry. Perhaps not surprisingly given their similar situations, many comments echoed the same concerns. Many groups, including the Word-of-Mouth Marketing Association (“WOMMA”), the Association of National Advertisers (“ANA”), the American Association of Advertising Agencies (“4As”), and the Direct Marketing Association (“DMA”) expressed concern that the new media examples added to Sections 255.1 and 255.5 create substantial uncertainty as to advertiser liability. The 4As and the ANA were especially concerned that the new examples created liability for advertisers and endorsers in situations where either one or both lacked final editorial control over the endorsement, as noted in the example of the Skittles Twitter search feed discussed above. The ANA was also especially vocal in exploring when an advertiser potentially incurred liability for blogger comments stemming from samples it had freely distributed.

The New Guides resolve some of the ambiguity of the Proposed Guides regarding when and on whom liability can be imposed for product-related statements made on blogs, social-networking sites, and other emerging communication channels. It is now clearer that both the sponsor and the speaker are potentially liable and the Commission will look at the circumstances to determine its enforcement decisions. The FTC has rejected cries that given that these new venues and tools eschew much of the editorial control associated with traditional advertising, that it is unwise and unjust to subject either advertisers or consumers to liability for the other’s actions unless the consumer is either materially

compensated or the advertiser actively encouraged or knowingly permitted the bad act, such as was alleged in the Belkin example above. In traditional forums, testimonials used by advertisers could be carefully vetted to ensure the endorser’s veraciousness. Further, the content of advertisements could be edited for compliance with the FTC’s regulations, including claims substantiation and efficacy and typicality requirements. In short, the advertiser had substantial control over the speaker’s message. The FTC is placing the risk of viral and social marketing’s lack of that very control on the advertiser and telling advertisers they had better institute sound policies and practices to make reasonable efforts to prevent activities that may result in consumer confusion, including monitoring celebrity spokespersons in non-traditional media and employees, vendors and consumers it engages to send sponsored messages into social media, and to take appropriate actions when violations are discovered. In its response to comments, the FTC suggested that an appropriate corrective action to a consumer blogger that failed to follow appropriate rules relating to sponsored posts might include to “cease providing free product to the individual.”

The Need to Develop Policies and Follow Best Practices by December 2009

Accordingly, every company should have and enforce policies and practices for its own use of social and other evolving media, as well as use by its employees, spokespersons, vendors and agents, including regarding how consumers are engaged, educated, monitored and handled. Best practices reflective of the FTC’s Proposed Guides, and consistent with the New Guides, are already emerging and many companies have already instituted the policies and procedures foreshadowed by the Proposed Rules. In May of 2009, IZEA, a blog-network-advertising firm that pairs advertisers’ products with relevant bloggers, began providing its advertiser clients with reports tracking whether its bloggers were disclosing compensation arrangements. Companies can also look to industry best practices to guide them in developing their own policies. The WOMMA Ethics Code and Code of Conduct (www.WOMMA.org/ethics/), which the FTC specifically pointed to in its commentary to the Proposed Guides as an “important step” to ensuring “transparency for marketers who engage in new forms of marketing”, were recently updated on August 10,

2009. WOMMA, requires disclosure, veracity and transparency and prohibits cash payments to consumers for their support. The Interactive Advertising Bureau (“IAB”) published its Social Media Advertising Best Practices (<http://www.iab.net/socialads>) in May 2009. Reportedly, the Children’s Advertising Review Unit (“CARU”), a self-regulatory body, is currently examining use of social media for sell messaging to children as part of soon to be announced guidelines on blurring, which counsels for a more conservative approach regarding children and teens.¹⁷ These various industry best practices are a good place for a company to start when developing policies and practices under the guidance of experienced legal counsel. Such policies and practices, along with ongoing training and compliance review, will help a company’s marketing department navigate the complexity of this developing field and reduce potential liability and negative consumer backlash.

Endnotes

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² A “blog” is an online discussion board, which may have one or more participants.

³ A “tweet” is the act of posting a message on the popular on-line service Twitter (www.Twitter.com).

⁴ Notwithstanding the FTC’s recent guidance on send-to-a-friend campaigns, See FTC CAN SPAM FIND Rule, 16 CFR Part 316, Federal Register, Vol. 73, No. 99, pp 29654-29680 (May 21, 2008), this technique has spawned several recent lawsuits, one of which is being defended by the author and his firm.

⁵ This practice is among the types of social media advertising that formed the basis of a lawsuit filed against Facebook in California in August 2009. Elisha Melkonian et al. v. Facebook, Inc., CA Superior Court, Orange County, Case No. 30-2009-00293755 (filed August 17, 2009).

⁶ The Electronic Retailing Self-Regulation Program of the National Advertising Review Counsel, a self-regulatory board, has brought actions in 2009 against advertisers who ran seemingly objective informational blogs about topics such as diet and beauty and used them to promote their own

products in seemingly objective editorial reviews. See case #219, Urban Nutrition, LLC (WeKnowDiets.com); and case # 222 E-Commerce Solutions, Inc. (Vibrant White Tooth Whitener).

⁷ Callari, “Top Ten Branded Social Media Nightmares,” http://inventorspot.com/articles/top_ten_branded_social_media_nightmares_30874.

⁸ “Netiquette” means the commonly accepted etiquette, norms, understandings and behaviors of Internet users.

⁹ This article does not discuss all of the changes and clarifications set forth in the New Guides, particularly those not directly related to evolving media (e.g., requiring disclosure of payment of an outside research’s study costs when that study is later touted by the advertiser).

¹⁰ The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, or CAN SPAM, and the regulations thereunder, create a federal scheme for commercial e-mail. States have limited retained authority to regulate e-mail in the area of fraud and computer crime.

¹¹ The Telephone Consumer Protection Act, or TCPA, and related regulations, impose requirements on marketing to mobile devices.

¹² The Mobile Marketing Association (“MMA”) provides self-regulatory best practices regarding mobile marketing and updated its U.S. Consumer Best Practices Guidelines on July 1, 2009.

¹³ See Friel and Derwin-Weiss, “As Technologies Evolve, Web Sites Play Compliance Catch-Up,” Daily Journal (March 10, 2009) and “Evolving Media Tools Require Companies to Navigate Changing Waters,” Daily Journal (March 17, 2009) (both republished as “Evolving Media Tools,” M/E Insight -- The Journal of the Association of Media and Entertainment Counsel (July 2009); and Friel and Derwin-Weiss, “So You Want to Run a Promotion,” The Corporate Counselor (May 2009). Articles available at www.wildman.com/index.Cfm?fa=pubs.home&type=articles.

¹⁴ As an example, in June 2008, the American Society of Magazine Editors (“ASME”) published the thirteenth edition of its ASME GUIDELINES FOR EDITORS AND PUBLISHERS. These guidelines suggest that a publisher should label any advertisement or promotion that could be mistaken for editorial content. The disclosure should be as prominent as the publication’s normal type face. Advertisements also should not be placed immediately before or after editorial pages that discuss, show or promote the advertised products. Additionally, sponsorship language should not appear in connection with regularly occurring editorial content; it may be used with special issues, inserts, contests, and the like, as long as the editorial content does not endorse the sponsor’s products, and any page announcing the sponsorship is clearly an ad or is labeled as such. In April 2009, ASME followed those guidelines with a set of BEST PRACTICES FOR DIGITAL MEDIA. These “Best Practices” advise that all web pages should clearly distinguish

between editorial content and sponsored or advertising content, and that any content from a source other than the web page's editors should be labeled in a clear way. Also, a site should disclose its sponsorship and advertising policies, either on a disclosure page or in text accompanying an article.

¹⁵ It should also be noted that traditional media is regulated regarding sponsored promotions in some respects. The FTC in 2005 in response to urging by a consumer group to require clear and conspicuous disclosure of product placement and brand integration, while declining to adopt such a rule, noted that it would look at particular incidents on a case-by-case basis, especially if consumers might take away product claims messages from the placement. The FCC is still considering the issue of disclosures and product placement and brand integration, and already regulates disclosure by requiring certain

sponsorship identification disclosures at the end of broadcast television programs and disclosures when an advertiser provides a broadcaster news and informational programming that features the company or its products. Federal law and industry self-regulatory rules of the Children's Advertising Review Unit (CARU) prohibit "host selling", the practice of including television ads featuring characters (including those that may be based on toys or other products) from children's television programming during that programming period.

¹⁶ A group of consumers, frequently young people, engaged to spread positive word of mouth about one or more brands.

¹⁷ CARU addresses marketing to children under the age of thirteen.

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