Fake News: Facebook Reaches Settlement for Infringing Ads

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Kristel Oreto, a Philly tattoo artist, acquired nearly one million fans and followers on social media platforms Facebook and Instagram. Her following is thanks in large part to her inspiring story of weight loss, which she detailed along the way. Over the course of several years, Oreto shed more than 120 pounds and 14 dress sizes through extensive dieting and exercising. Throughout her journey, she posted numerous before-and-after photos in order to document her achievements and in hopes of inspiring others.

The photos Oreto used to share her story, document her achievements, and inspire others began popping up on Facebook and Instagram as part of an illegitimate weight-loss product advertisement campaign. In June 2018, Oreto filed suit against the social media giants seeking monetary damages and an injunction to stop their alleged knowing approval of and profiteering from advertisements that used her image, name, likeness, and trademarks without her consent. Oreto claimed her social media followers, eager for dieting solutions and tips on losing weight, clicked on the illegitimate ads because they were under the impression that Oreto had sponsored or endorsed them. She allegedly believed the ads were not only demeaning toward her, but also detrimental to her personal and professional reputation.

At the time of Oreto’s suit, Facebook and Instagram presented how they diligently review submitted advertisements to prevent this type of harmful use through their advertising policies. Their policy stated, in relevant part: “Before ads show up on
Facebook or Instagram, they’re reviewed to make sure they meet our Advertising Policies…. We will check your ad’s images, test, targeting, and positions . . . Your ad may not be approved if the land page content . . . doesn’t match the product/service promoted in your ad”. Facebook’s advertising policies further prohibited content that promoted the sale or use of unsafe supplements, infringed upon any third party’s trademark rights, or contained false or misleading information. The policies also included particular restrictions on ads that contained body transformation photos with unlikely results.

Despite this seemingly stringent policy, Oreto maintained how Facebook and Instagram failed to prevent the misleading and unconsented-to advertisements from surfacing. Even with their self-imposed regulation, Facebook admitted to having a huge “fake news” and “fake advertising problem,” as they managed to collect ad revenue exceeding $40 billion dollars per year.

On November 6, 2018, an order was entered by the Federal District Court in Philadelphia dismissing the case due to settlement, the details of which were not disclosed.

Digital data, such as the content Oreto posted, is the fuel of the new economy; a resource that allows for the creation of new products and services and the expansive marketing of them. But much like physical pollutants, unchecked digital information has the ability to pollute on a massive scale. The first step in addressing the problem is to focus on those platforms and look for ways to disincentivize the generation and dissemination of factually false or unconsented-to content. For the individual user, it is troubling to learn that proprietary information posted to social media may be used, without consent, to promote illegitimate products. The concern remains over the effectiveness of the platforms’ private solutions in light of their own economic incentives in the advertising marketplace.

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