FTC to Discuss Children’s Privacy, Endorsement Guides at Next (Virtual) Open Commission Meeting: May 19, 2022, 1PM ET

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Monday, May 16, 2022

The Federal Trade Commission (“FTC”) announced its next open meeting will focus on issues related to children’s privacy and those pertaining to the use of endorsements and testimonials in advertising.

Children’s Privacy

The Commission will vote on a policy statement announcing the FTC’s focus on
enforcing the Children’s Online Privacy protection Act ("COPPA") in light of the increased use of education technology during the COVID-19 pandemic.

COPPA requires certain websites, apps, and online services that are child-oriented (including digital assets that may be attractive to children) or knowingly collect the personal information of children to notify and obtain the consent of a child’s parent or legal guardian before collecting, using, or disclosing personal information from children under 13. Last year, the FTC voted to approve a series of resolutions directed at key enforcement areas, including children’s privacy, allowing the FTC to expeditiously investigate allegations of harmful conduct directed at children under 18. The FTC enforces COPPA at the federal level. As we have seen from recent enforcement actions, COPPA is an agency focus. State attorneys general also have jurisdiction to enforce COPPA, meaning private entities are subject to potential scrutiny at both the federal and state levels for alleged COPPA violations.

In addition to these government agencies, there are also non-profits that have a focus on children’s privacy, such as the Electronic Privacy Information Center (EPIC), that lobby for increased COPPA enforcement, and self-regulatory organizations, such as the Children’s Advertising Review Unit (CARU), which as the nation’s first Safe Harbor Program under COPPA promotes responsible advertising to children. Thus, this is an area of heightened scrutiny and businesses should be aware of the various requirements relating to children’s privacy and advertising.

**Advertising: Endorsements and Testimonials**

FTC staff will also present, and the Commission will vote on, a request for public comment on proposed amendments to the Endorsement Guides that will address, among others, fake reviews, suppression of negative reviews, and update the guidance to developments in advertising and endorsements.

The FTC has signaled that endorsements and testimonials in advertising are also an enforcement priority, which we covered in a detailed analysis. Last year, the FTC sent notices to over a thousand businesses regarding fake reviews and other misleading endorsements, warning that if a company “uses endorsements to deceive consumers, the FTC will hold them responsible with every tool at [the FTC’s] disposal.”

Scrutiny of the use of endorsements and testimonials in advertising is likely to continue outside of FTC jurisdiction too. For example, in the U.S., states have mini-FTC Acts that regulate unfair and deceptive acts and practices, which may provide for injunctive relief, restitution, and penalties. Likewise, foreign jurisdictions, such as the UK, also have special requirements for marketing communications that include testimonials and endorsements, which we noted in our coverage of this issue last year. Therefore, businesses that rely on endorsements and testimonials for advertising should take care to provide clear, conspicuous, and effective disclosures alerting consumers of these practices.

**How to Submit Comments for Meeting**

Individuals who wish to address the Commission must submit this form to the FTC by May 17, 2022. Registered attendees may provide comments to the Commission by:
(1) speaking during the public comment section of the meeting (2 minutes per commenter); (2) submitting a pre-recorded video comment that may be broadcast during the meeting; and (3) submitting a brief written statement (note that written statements will be included in the public record of the FTC).

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National Law Review, Volume XII, Number 136

Source URL: https://www.natlawreview.com/article/ftc-to-discuss-children-s-privacy-endorsement-guides-next-virtual-open-commission