

THE
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Federal Trade Commission Reminder about Advertising Disclosures

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In mid-April, the **Federal Trade Commission (FTC)** sent out 90 letters to advertisers, celebrity endorsers and influencers who use their fame and the power of digital advertising to help promote products. The facts in each letter vary, but the FTC's message was a strong reminder that clear and conspicuous disclosure is required if a "material connection" exists between an endorser and the marketer of a product.

Typically, the marketer is a manufacturer, importer or an advertising agency that establishes a relationship with an endorser. In 2009, the FTC created [endorsement guides](#) to ensure that consumers are on notice that an endorser or influencer is being compensated by a marketer. In 2015, the FTC published an [Enforcement Policy Statement on Deceptively Formatted Advertisements](#). Those sources provide straightforward guidance to inform consumers that an endorser is acting on behalf of a marketer and to differentiate advertising from truly independent news or reviews of products.

Throughout history, producers of consumer goods marketed their wares with endorsements from famous people and "satisfied consumers." Social media provides an enormous boost to the most ancient form of marketing, "word of mouth." An image of your product with a celebrity or the perfect "ordinary consumer" in a creative setting can quickly go viral to millions of consumers or receive hundreds of thousands of likes on Facebook.

All ads should be truthful, targeted appropriately, and compliant with industry codes. If appropriate, ads should also be clearly identified as paid endorsements or advertising material to reduce the risk of consumer deception. These principles are especially important in the digital domain where viewers tend to move rapidly from one destination to another.

A successful ad that includes use of celebrities or influencers should meet the FTC's standards to avoid future enforcement initiatives. The reputation of the advertiser and endorser as well as the integrity of the brands should not be placed at risk by the failure to include clear and conspicuous notices or disclaimers. Congress granted the FTC broad jurisdiction to police deceptive ads. The FTC's guidance has now been around long enough to be on the checklist of every advertiser—particularly those under pressure to publish the next iconic image on Facebook or Instagram!

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The logo for McDermott Will & Emery, featuring the firm's name in a bold, teal, sans-serif font. The text is arranged in two lines: "McDermott" on the top line and "Will & Emery" on the bottom line.

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