

Client Alert

FTC's Enforcement of Promotional Tweeting Has Teeth

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Deutsch LA, has settled with the Federal Trade Commission over charges that customers were deceived by product-related tweets for the ad agency's former client, Sony PlayStation. This case illustrates that the FTC is following through on its warning that it will continue to enforce disclosure requirements in social media and product promotion through user-generated content. Coming on the heels of the FTC's settlement with ADT regarding improper disclosures, this most recent enforcement harkens back to the fake reviews and employee review cases against Reverb Communications, Inc. and Legacy Learning Systems, Inc. in 2010 and 2011.

In March 2013, the FTC updated its online advertising disclosure rules to explicitly address potentially deceptive advertising or promotional messaging via Twitter and other virtual media. The agency has provided specific examples of how to ensure such promotional messaging remains in compliance with existing law, such as including "Ad:" or "#Sponsored" in the tweet.

The enforcement action against Deutsch LA stemmed from 2011 allegations that an account executive e-mailed staff requesting that they bolster the ad campaign of the agency's client by tweeting about the product. As a result, staff tweeted about the PlayStation Vita from their personal Twitter accounts, without disclosing any relationship to Sony or the ad agency. The tweets were challenged as deceptive because they purported to be opinions from actual users of the PlayStation Vita. The FTC further argued that consumers would have viewed the posted information differently had they known that the tweets were generated by employees of Sony's advertising agency. Deutsch LA did not admit any wrongdoing, but indicated settlement was preferable to prolonged legal battles. In a related FTC action regarding product claims, Sony agreed to refund identified PlayStation Vita customers with \$25 cash or a \$50 merchandise voucher.

FTC's published Endorsement Guides and Dot Com Disclosure guidance advises marketers that the failure to disclose such material relationships is deceptive. The Dot Com Disclosure guidance particularly notes that disclosure requirements apply to any promotional messaging, even when content is "space constrained." This means that advertisers in the Twittersphere must take care to fit disclosure information into 140 characters.

Social media tools such as Twitter and Facebook are proving to be powerfully effective for product advertising. As marketers take advantage of these new platforms, they must take care to ensure compliance with FTC and other requirements. It is important to create anticipatory internal guidelines and educate employees about risks associated with posting product-related content from personal social media accounts. Such preparation can ensure continued compliance as FTC continues to police online content. #CrowellMoring

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