

I Am Not a Spokesperson for My Company:

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Employee blogs and social-networking Web sites create a myriad of potential advertising opportunities for today's business. Unfortunately, with great opportunity also comes great potential liability. Recently released Federal Trade Commission guidelines regarding product endorsements reveal one of these new potential risks: Employer liability for false or misleading advertising stemming from employees' online postings about their employer's products or services.

Clearly, social media and blogging are only growing in their importance to companies. Getting your company's information online quickly and accurately to potential consumers is no longer an option, but a prerequisite for keeping up in today's social networking world.

Perhaps because of consumers' overwhelming trust in blogs, the FTC has now decided to get involved in trying to insure that blogs and social networking posts are accurate and truthful. The FTC's revised Guides Concerning the Use of Endorsements and Testimonials in Advertising, published in the Federal Register at 16 C.F.R. Part 255, address the application of Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices and unfair competition in or affecting commerce, to the use of endorsements and testimonials in advertising.

In comments published with the revised guidelines on endorsements, the FTC suggested that it would consider the existence of an employer's policies and procedures governing employee postings on blogs and social networking sites in determining whether the employer should be held liable for misleading employee endorsements on such sites.

Companies should heed the FTC's suggestion and adopt strong social networking policies immediately. This policy should be in writing, consistently implemented throughout the company and effectively monitored. It should also:

How Instituting a Strong Social Media Policy Now May Help Your Company Stay on the Right Side of the FTC's New Endorsement Guidelines

"I am an employee of Company A. These comments represent my own opinions and not those of Company A. I am not a Company A spokesperson."

- Adopt standards of conduct for employees' online communications regarding intellectual property, defamation and privacy issues.
- Notify employees that the company will take an interest in employee blogging about company products and services.
- Require that all employee comments get reviewed by the company's marketing department or legal department prior to being posted online.
- Explicitly notify employees that the company will take action when an employee acts in violation of its policy. Doing so will enhance the company's credibility if the violation is later reviewed by the FTC.
- Explain that all endorsements should be limited to truthful and verifiable statements.
- Clarify that all endorsements should be accompanied by an employee's written disclosure of the employment relationship so that consumers can fairly weigh the testimonial. For example, a company could instruct its employees posting online to include the following explanation: "I am an employee of Company A. These comments represent my own opinions and not those of Company A. I am not a Company A spokesperson."

If the company is not working directly with the blogger and instead is working through an intermediary (e.g., a blog advertising service), the company may want to perform an additional level of due diligence. The company should verify that the advertising service is providing guidance and training to its bloggers. If free products or services are being provided, the company should make sure bloggers are disclosing their commercial relationship.

When using expert endorsers, companies should make sure these experts review products they are endorsing to a degree that is at least equal to what most other experts in their field would deem adequate. Marketers can best avoid issues in this area by selecting quality experts to review their products; requesting experts to conduct thorough examinations guaranteeing that experts provide their unbiased opinions; and selecting experts that have relevant expertise in areas relevant to the reviewed product.

New federal guidelines created to protect consumers from deceptive endorsements and false advertising pose liability risks for companies whose employees utilize social media such as blogs and other social networking site to promote their employer's products or services, even if the comments are not authorized by or sponsored by the company. If your company

provides services or sells products and your employees are blogging about them or talking about them on their Facebook accounts, the presumption may be that they are doing so with the company's blessing and for the company's benefit.

Such online posts can reach thousands of consumers at a time, increasing an employer's exposure to liability under the FTC's new guidelines. If consumers later claim they were misled into purchasing falsely advertised products by the employee's comments you company could be liable. In order to best avoid liability, take the time now to train employees on proper online social media usage and draft a strong social media policy. Doing so may be the best protection a company can get from an FTC enforcement action or worse. ■

Scott Slavick's practice focuses on domestic and foreign trademark prosecution and litigation. He handles domain name arbitration proceedings, trademark licensing, copyright applications and corporate IP compliance manuals. Mr. Slavick received a J.D. from Georgetown University and a B.A. from Northwestern University.