

#SOCIALSPONSORED: HOW TO COMPLY WITH FTC REGULATIONS

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Following up on [last year's blog post about how easy it is for a sweepstakes](#) (often akin to a "giveaway") to end up being considered "illegal gambling," I wanted to discuss marketing and advertising in a more general capacity, along with some best practices influencers and businesses should be using when advertising, particularly on social media.

Federal Trade Commission Regulations & Guidelines

First, it is helpful to understand the tenets of traditional advertising and the requirements the Federal Trade Commission (the "FTC") has promulgated:

All Advertisements Must be Truthful

Though seemingly self-explanatory, the FTC guidelines, at their core, are about making sure advertising is honest. And guidelines aside, from a business standpoint, being truthful and honest can help build trust and confidence with your consumers and actually attract your ideal consumers.

The choice of a lawyer is an important decision and should not be based solely upon advertisements.

No Advertisement Can Be Deceptive

This may seem like another way of saying "all advertisements must be truthful," but think of it with the following case in mind: In 2014, Wal-Mart advertised a nationwide sale on Coca-Cola where a 12-pack would cost \$3. However, customers in New York were charged \$3.50. *Technically*, it was true that there was nationwide sale on a Coca-Cola 12-pack. *However*, for those consumers in New York, the advertisement was deceptive because it misled those consumers into thinking that if they walked into their neighborhood Wal-Mart, the nationwide sale would be applicable to them, too.

To avoid being deceptive in your advertisement, simply make sure that a "**material**" statement or claim in your advertisement doesn't mislead consumers. (By "**material**" statement, I mean a statement that is important to a consumer's decision to buy or use the product.)

Worth noting is that Wal-Mart had to pay more than \$66,000 in fines.

Applicable Claims Made in an Advertisement Must Have Objective Evidence to Back up Such Claims

The FTC pays particular attention to claims made about

- health
- safety **and**
- claims consumers would have trouble evaluating themselves

Such claims will need objective evidence to back them up. Simply relying on a satisfied customer to back up such a claim is not sufficient. Having said that, if no part of your advertisement is making such a claim, and you're just using puffery ("Our gelato is the best in the world!"), those exaggerated types of statements that a reasonable customer would not rely on are **not** regulated by the FTC.

No Advertisement Can Be Unfair

An advertisement is unfair if it causes or is likely to cause substantial consumer injury which a consumer could not reasonably avoid. Hidden fees and surcharges are a common example of this.

Application of The Federal Trade Commission Regulations & Guidelines

These advertising requirements, while initially developed for traditional advertising (such as television and radio), now also apply in digital advertising (such as on Instagram and Facebook).

However, it's much easier in traditional advertising to know that what you are looking at is an advertisement. If you're reading a magazine geared toward technology and you come across a page that has pricing for the new iPhone, where it will be sold, etc., it's easy to discern that is an advertisement. With modern advertising, that is not always the case. Which is why the FTC **additionally** requires, in certain circumstances, a **disclosure**.

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A disclosure is required when a “significant *minority*” of consumers would not understand the “material connection” between the influencer, individual, etc. and the business.

A “material connection” is information that could impact the weight or credibility a consumer gives to an advertisement. ***Note that even the potential to receive a benefit requires disclosure and constitutes “material connection.”***

Thus, even if I only have 203 Instagram followers, if Southwest decides to fly me out to Coachella with the understanding I will document and post about Southwest—no matter if I truly believe they are the best airline—because I received a benefit from them, a consumer deserves to know the “material connection” between myself and Southwest and, thus, any and all posts, stories, etc. **must** have a disclosure.

No particular wording is needed for a disclosure. Instead, what matters most is effectively communicating the disclosure (so a single disclaimer on your blog or social media often isn't sufficient). But instead of thinking of disclosure as burdensome, think about how you can use it to your advantage as a selling point. Be humorous about it or try explaining the value of what you do. Ultimately, it does not appear these disclosure requirements are going anywhere—and likely will continue to evolve. So begin making these advertising requirements a part of your business and your brand. And if you need any help along the way, I'm always available! #ad #sponsored

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