

**FEDERAL TRADE COMMISSION
16 C.F.R. Part 255**

**Guides Concerning the Use of
Endorsements and Testimonials in Advertising**

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) requests public comment on the overall costs, benefits, and regulatory and economic impact of its Guides Concerning the Use of Endorsements and Testimonials in Advertising (“the Guides”), as part of the Commission’s systematic review of all current regulations and guides. The Commission is also releasing consumer research it commissioned regarding the messages conveyed by consumer endorsements. The Commission is seeking comment on this research and upon several other specific endorsement-related issues.

DATES: Written comments must be received by March 19, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to “Endorsement Guides Review, Project No. P034520” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex S), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule

4.9(c).¹ The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form should be submitted by using the following weblink: <https://secure.commentworks.com/ftc-endorsements> (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the weblink <https://secure.commentworks.com/ftc-endorsements>. If this notice appears at <http://www.regulations.gov>, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at <http://www.ftc.gov/ftc/privacy.htm>.

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT: Shira Modell, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C., 20580; (202) 326-3116.

SUPPLEMENTARY INFORMATION:

I. Background

In December 1972, the Commission published for public comment proposed Guides Concerning the Use of Endorsements and Testimonials in Advertising, 37 FR 25548 (1972). Extensive comment was received from interested parties. On May 21, 1975, the Commission promulgated, under the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 41-58, three sections of the 1972 proposal as final guidelines (16 C.F.R. §§ 255.0, 255.3 and 255.4) and republished three others, in modified form, for additional public comment. 40 FR 22127 (1975). Public comment was received on the three re-proposed guidelines, as well as on one of the final guidelines. On January 18, 1980, the Commission promulgated three new sections as final guidelines (16 C.F.R. §§ 255.1, 255.2 and 255.5) and modified one example to one of the final guidelines adopted in May 1975 (16 C.F.R. § 255.0 Example 4). 45 FR 3870 (1980).

The Guides are designed to assist businesses and others in conforming their endorsement and testimonial advertising practices to the requirements of Section 5 of the FTC Act. Although the Guides are interpretive of laws administered by the Commission, and thus are advisory in nature, proceedings to enforce the requirements of law as explained in the Guides can be brought under the FTC Act.

The Guides define both endorsements and testimonials broadly to mean any advertising message that consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser. 16 C.F.R. §§ 255.0(a) and (b). The

Guides state that endorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser. 16 C.F.R. § 255.1(a). Furthermore, endorsements may not contain any representations that would be deceptive, or could not be substantiated, if made directly by the advertiser. *Id.*

The Guides advise that an advertisement employing a consumer endorsement on a central or key attribute of a product will be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve. 16 C.F.R. § 255.2(a). If an advertiser does not have adequate substantiation that the endorser's experience is representative, the advertisement should contain a clear and conspicuous disclosure. *Id.*

The Guides define an expert endorser as someone who, as a result of experience, study or training, possesses knowledge of a particular subject that is superior to that generally acquired by ordinary individuals. 16 C.F.R. § 255.0(d). An expert endorser's qualifications must, in fact, give him or her the expertise that he or she is represented as possessing with respect to the endorsement. 16 C.F.R. § 255.3(a). Moreover, an expert endorsement must be supported by an actual exercise of expertise and the expert's evaluation of the product must have been at least as extensive as someone with the same degree of expertise would normally need to conduct in order to support the conclusions presented. 16 C.F.R. § 255.3(b).

Among other things, the Guides also state that:

- (1) Advertisements presenting endorsements by what are represented to be "actual consumers" should utilize actual consumers, or clearly and conspicuously disclose that the persons are not actual consumers. 16 C.F.R. § 255.2(b).
- (2) An organization's endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization. 16 C.F.R. § 255.4.

(3) When there is a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (*i.e.*, the connection is not reasonably expected by the audience), such connection must be fully disclosed. 16 C.F.R. § 255.5.

II. Regulatory Review Program

The Commission has determined to review all of its rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's existing rules and guides, and their regulatory and economic impact. The information thus obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comment on, among other things, the economic impact of its Guides Concerning the Use of Endorsements and Testimonials in Advertising; possible conflict between the Guides and state, local, or other federal laws; and the effect on the Guides of any technological, economic, or other industry changes.

Specifically, the Commission solicits written public comment on the following questions with respect to the guides appearing in 16 C.F.R. § 255.

- (1) Is there a continuing need for the Guides?
 - (a) What benefits have the Guides provided to consumers?
 - (b) Have the Guides imposed costs on consumers?
- (2) What changes, if any, should be made to the Guides to increase their benefits to consumers?
 - (a) How would these changes affect the costs the Guides impose on businesses and others following their suggestions?
 - (b) How would these changes affect the benefits to consumers?

- (3) What significant burdens or costs, including costs of compliance, have the Guides imposed on businesses and others following their suggestions?
 - (a) Have the Guides provided benefits to those following their suggestions?
If so, what benefits?
- (4) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on those following their suggestions? How would these changes affect the benefits provided by the Guides?
- (5) Do the Guides overlap or conflict with other federal, state, or local laws or regulations?
- (6) Since the Guides were issued, what effects, if any, have changes in relevant technology, such as email and the Internet, or economic conditions had on the Guides?

III. Consumer Endorsements and Extrinsic Evidence

In conjunction with its regulatory review of the Guides, the Commission is releasing reports on two studies it commissioned regarding the messages conveyed by consumer endorsements. Both studies are available on the Commission's Web site, www.ftc.gov, or from the Commission's Public Reference Office, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

The first report, "The Effect of Consumer Testimonials and Disclosures of Ad Communication for a Dietary Supplement" ("the Endorsement Booklet Study"), can be found at www.ftc.gov/reports/endorsements/study1/report.pdf.² It reports the results of a consumer

² Questionnaires and advertisements used in the study and resulting data from the study are available at www.ftc.gov/reports/endorsements/study1/materials/.

survey, conducted in the course of a law enforcement investigation, that examined the communication effects of a promotional booklet for a dietary supplement. The booklet consisted solely of three pages of consumer endorsements, primarily from senior citizens, touting the product's efficacy for treating various diseases and conditions. The survey was designed to examine whether consumer endorsements by themselves communicate product efficacy (*i.e.*, that the product works for the uses discussed in the testimonials) and typicality (*i.e.*, that the endorsers' experiences are representative of what consumers will generally achieve with the advertised product), and whether any of several prominent disclosures qualify the claims conveyed by the advertisements.

According to the authors, the study suggests “that multiple testimonials about a product effectively communicate efficacy claims, *i.e.*, that the product works for the uses discussed in the testimonials. Testimonials also appear to communicate that the product will work for all, most, or about half of the people who use it. Finally, the study suggests that prominent disclosures in ads containing multiple testimonials may be ineffective in limiting the communication of efficacy and typicality claims. This study used disclosures that were more prominent and stronger than the disclosures typically used in ads containing testimonials.”

The second report, “Effects of Consumer Testimonials in Weight Loss, Dietary Supplement and Business Opportunity Advertisements” (“the Second Endorsement Study”), can be found at www.ftc.gov/reports/endorsements/study2/report.pdf.³ It reports the results of a consumer survey examining the messages conveyed to consumers by one-page print advertisements containing consumer endorsements for a weight loss program, a cholesterol-

³ Questionnaires and advertisements used in the study and resulting data from the study are available at www.ftc.gov/reports/endorsements/study2/materials/.

lowering dietary supplement, or a business opportunity. Advertisements contained testimonials by either one or five individuals who claimed to have achieved specific (that is, numerically quantified) results with the advertised product or system (*e.g.*, “I am earning an extra \$2,300 a month.”). Some of the advertisements also included one of several disclosures regarding the typicality of the consumer endorsers’ experiences. The study was designed to explore these advertisements’ communication of product efficacy and typicality.

According to the authors, the testimonials tested in this study communicated to a substantial percentage of consumers that the advertised products:

- Would enable new users to achieve results similar to those portrayed by the testimonialists (*i.e.*, the testimonials communicated product efficacy); and
- Would enable a substantial proportion (half or more) of new users to achieve results similar to those portrayed by the testimonialists (*i.e.*, the testimonials communicated typicality).

The study authors also concluded that two of the disclosures tested (“results not typical” and “experiences of a few”) in most cases failed to significantly reduce the communication of efficacy and typicality. The authors concluded that a third disclosure (which stated how much weight the average user loses in three months), tested on the advertisement for the weight loss program, did significantly reduce such communication in most cases.

The Commission solicits written public comment on the following questions.

- (1) What are the implications and limitations of the Endorsement Booklet Study with respect to the question of whether consumer testimonials about a product’s efficacy or performance convey that the product is effective for the purpose(s) discussed in the testimonials? What are the implications and limitations of the

study with respect to the question of whether consumer testimonials convey that the endorser's experience is representative of what consumers will generally achieve with the advertised product? Is there any other research or evidence that would be relevant in answering these questions?

- (2) What are the implications and limitations of the Endorsement Booklet Study with respect to the effectiveness of disclaimers in limiting any communication of product efficacy from consumer testimonials? What are the implications and limitations of the study with respect to the effectiveness of disclaimers in limiting any communication of typicality from consumer testimonials? Is there any other research or evidence that would be relevant in answering these questions?
- (3) What are the implications and limitations of the Second Endorsement Study with respect to the question of whether consumer testimonials about a product's efficacy or performance convey that the product is effective for the purpose(s) discussed in the testimonials? What are the implications and limitations of the Second Endorsement Study with respect to the question of whether consumer testimonials convey that the endorser's experience is representative of what consumers will generally achieve with the advertised product? Is there any other research or evidence that would be relevant in answering these questions?
- (4) What are the implications and limitations of the Second Endorsement Study with respect to the effectiveness of disclaimers in limiting any communication of product efficacy from consumer testimonials? What are the implications and limitations of the Second Endorsement Study with respect to the effectiveness of disclaimers in limiting any communication of typicality from consumer

testimonials? Is there any other research or evidence that would be relevant in answering these questions?

- (5) Is there any other research that would be relevant in assessing the messages communicated by consumer testimonials?
- (6) Is there any other research that would be relevant in assessing the effectiveness of disclaimers in limiting any communication from consumer testimonials of product efficacy or typicality?
- (7) In 2002, Commission Staff analyzed the use of consumer testimonials and disclaimers in the context of weight-loss advertising, *see* Weight-Loss Advertising: An Analysis of Current Trends, A Federal Trade Commission Staff Report, Sept. 2002. (<http://www.ftc.gov/bcp/reports/weightloss.pdf>).
 - (a) What other evidence is there regarding the prevalence or effect of consumer testimonials, either generally or for specific product categories, especially with respect to the typicality of the testimonials?
 - (b) What other evidence is there regarding the prevalence or effect of disclaimers of typicality?
- (8) What other research is there on the role of consumer endorsements in marketing?
- (9) The current Guides allow advertisers to use testimonials that are not generally representative of what consumers can expect from the advertised product so long as the advertisers clearly and conspicuously disclose either (1) what the generally expected performance would be in the depicted circumstances, or (2) the limited applicability of the depicted results to what consumers can generally expect to receive, *i.e.*, that the depicted results are not representative.

- (a) What would be the effects on advertisers and consumers of requiring clear and conspicuous disclosure of the generally expected performance whenever the testimonial is not generally representative of what consumers can expect from the advertised product?
- (b) What information, other than what is required to substantiate an efficacy or performance claim, would be required for an advertiser to determine generally expected results? How difficult would it be for the advertiser to make this determination? Do the answers to these questions vary by product type and, if so, how?

IV. Material Connections

Section 255.5 of the Guides states that advertisers must disclose connections between themselves and their endorsers that might materially affect the weight or credibility of the endorsement (*i.e.*, the connection is not reasonably expected by the audience).

Section 255.5 also indicates that consumers will ordinarily expect that endorsers who are well known personalities (*i.e.*, celebrities) or experts will be compensated for their endorsements; therefore, an advertiser need not disclose the payment of compensation to such endorsers. A September 2003 petition submitted to the Commission by Commercial Alert suggests an exception to the principle that consumers will ordinarily expect that endorsers who are well known personalities are compensated for their endorsements. According to an August 11, 2002 New York Times article cited by the petitioners, “dozens of celebrities . . . have been paid hefty fees to appear on television talk shows and morning news programs and to disclose intimate details of ailments that afflict them or people close to them. Often, they mention brand-name drugs without disclosing their financial ties to the medicine’s maker.” The Commission is

interested in any extrinsic evidence regarding consumer expectations about celebrity endorsements made during an interview. Specifically, the Commission solicits written public comment on the following questions.

- (1) Is there any research showing whether consumers have any expectations regarding compensation paid to celebrities who speak favorably about particular products while being interviewed outside the context of an advertisement (*e.g.*, during television talk shows) and, if so, what does that research show?
- (2) Would knowledge that a celebrity endorsing a product during such an interview is being paid for doing so affect the weight or credibility consumers give to the celebrity's endorsement?

V. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Written comments must be received on or before March 19, 2007. All comments should be filed as prescribed in the **ADDRESSES** section above.

List of Subjects in 16 C.F.R. § 255

Advertising, Trade Practices.

Authority: 15 U.S.C. 41-58.

By direction of the Commission.

Donald S. Clark
Secretary