
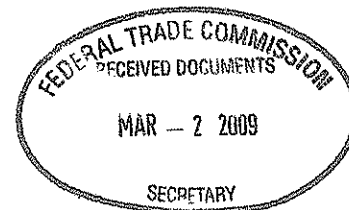


Personal Care  Products Council  
Committed to Safety,  
Quality & Innovation

Via Mail Courier

March 2, 2009

Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex S)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580



RE: Endorsement Guides Review, Project No. P034520

To the Commission:

This provides comments on behalf of the Personal Care Products Council (Council)<sup>1</sup> on the Federal Trade Commission's (FTC) Notice of Proposed Changes to Guides Concerning the Use of Endorsements and Testimonials in Advertising (Guides).<sup>2</sup>

The proposed changes to the Guides include several examples of new forms of internet communication, such as blogs, and addresses how traditional advertising rules may apply to these new forms of communication. For instance, Example 5 in section 255.1 (general considerations) states that an advertiser is liable for false statements made by a blogger who is paid by a blog advertising service to blog about the advertiser's product, and also states that the blogger is liable for representations made in connection with the endorsement and any failure to disclose payment for this promotional service. Also, Example 7 in section 255.5 (disclosure of material connections) states that a blogger who is an expert in a certain product category and reviews a product in that category must clearly and conspicuously disclose that he received a free copy of the reviewed product because "[t]he readers of his blog are unlikely to expect that he has received the video game system free of charge in exchange for his review of the product, and given the value of the video game system, this fact would likely materially affect the credibility they attach to his endorsement."

We are concerned that readers could be left with the incorrect impression that blogs that make favorable statements about products must *always* be subject to the rules of

<sup>1</sup> Based in Washington, D.C., the Council is the leading national trade association representing the \$250 billion global cosmetic and personal care products industry. Founded in 1894, the Council's more than 600 member companies manufacture, distribute, and supply the vast majority of finished personal care products marketed in the U.S. As the makers of a diverse range of products that millions of consumers rely on everyday, from sunscreens, toothpaste and shampoo to moisturizer, lipstick and fragrance, personal care products companies are global leaders committed to product safety, quality and innovation.

<sup>2</sup> 73 FR 72374, Nov. 28, 2008.

advertising law that apply to endorsements. A personal blog, or a blog that functions similarly to traditional media, should not be subject to rules of advertising law that apply to endorsements if (1) the blog provides content that is editorially independent of any sponsor or marketer of a product or service, and (2) there is no material connection with the marketer of a product or service that is discussed in the blog that would call into question the editorial independence of the blog.

The FTC has previously recognized the distinction between personal and media-like blogs on the one hand, and promotional/advertising blogs on the other. For example, in a report entitled "Protecting Consumers in the Next Tech-ade" (Spring 2008, attached), the agency staff said that:

Originally, blogs functioned as personal online diaries; many now are dedicated to news reports, political commentary, promotions of various sorts, and reviews and opinions on sports, fashion, travel, restaurants, entertainment products, child-rearing, neighborhoods, and thousands of hobbies and interests.

When a blog functions solely as a medium of personal expression or as traditional media, it should **not** be subject to the rules governing advertising endorsements. Just as, for example, a magazine article or newspaper article that reviews a product is not an "endorsement" for purposes of advertising law, so too is a blog that performs this same function. There is no basis to distinguish between traditional media and blogs in this regard. Both are providing readers with editorial content; blogs are simply providing it through an updated form. The receipt of a free product sample for review purposes does not change this analysis either, provided that the product itself does not have such a high value that would make its receipt material (e.g., a car), since the resulting editorial content – good or bad—is not controlled by the marketer. Just as reviewers functioning through traditional media receive free samples of new books and free movie passes so that they can evaluate a new book or movie and publish their editorial opinion of it, bloggers who function solely as a medium of personal expression or as traditional media can receive a free product sample from marketers without their editorial function being impacted.

Accordingly, the Council respectfully requests that the FTC include in its Guides an example (or other discussion) that explains that blogs (and other new forms of online communication) can, under the conditions discussed above, function akin to traditional media and are therefore **not** subject to rules governing promotional endorsements.

If you have any questions or concerns, please feel free to contact me, Farah K. Ahmed, Assistant General Counsel, at the Personal Care Products Council, 1101 17th Street, NW, Washington, D.C. 20036, or at 202-331-1770.

Sincerely,

Farah K. Ahmed  
Assistant General Counsel

cc: Elizabeth H. Anderson, Executive Vice President – Legal & General Counsel