

June 22, 2020

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B)  
Washington, D.C. 20580

**Re: Endorsement Guides, P204500**

Dear Commissioners:

The American Financial Services Association (AFSA)<sup>1</sup> appreciates the opportunity to offer comments to the Federal Trade Commission (FTC) on the Guides Concerning the Use of Endorsements and Testimonials in Advertising (Guides). AFSA members offer consumer finance products and services including personal installment loans, vehicle finance, mortgage lending, and payment cards. In each of these sectors, AFSA member companies use advertising to reach consumers and these companies are committed to maintaining compliance with the FTC's guidance relating to advertising.

In the FTC's Request for Comment on the Guides,<sup>2</sup> the FTC proposed a series of questions for commenters to consider. The comments from AFSA Members will address those questions.

**Question 3. Are the deceptive or unfair practices addressed by the Guides prevalent in the marketplace? Are the Guides effective in addressing those practices?**

The practices addressed by the Guides are prevalent and becoming more so with the evolution of digital technology and social media becoming the main means by which consumers are exposed to advertising. The proliferation of "influencer" culture, new social media platforms that work across different mediums (*e.g.*, video, image, text, *etc.*), review sites, and other unorthodox forms of marketing lend themselves to endorsement-based advertisements that are not as easy to identify as traditionally commercial/compensated celebrity and expert endorsements. The Guide is effective in addressing these practices in that the FTC addresses a wide variety of potential situations. The concepts themselves are not difficult, but in application they get complex, and so it is helpful for the Guide to give many diverse examples.

The Guide could use some updating, as it tends to focus on more traditional forms of advertising. Also, to make it easier for advertisers to stay compliant and thus better for consumers, there could be more detail in how disclosures need to be presented. The Guide is better at saying when a disclosure should be made than how.

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<sup>1</sup> Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

<sup>2</sup> 85 Fed. Reg. 10104 (February 21, 2020).

As part of the update, it would be useful to have more examples that cover implied endorsements that are prevalent on lead generation and comparison shopper websites and mobile applications. The recent complaint and consent order with LendEDU provide some guidance but is difficult to apply apart from the specific fact pattern of the enforcement action. The consent order requires LendEDU to prominently disclose outside of a hyperlink that they are compensated by the companies that are being reviewed or promoted on their website. However, it does not clarify whether the disclosure should be required on all lead generation sites or only those that make claims that they are ““objective,” “accurate,” and “unbiased.”

**Question 12. What modifications to the Guides, if any, should be made to address technological, economic, or environmental changes that have occurred since the Guides were last revised?**

As consumer technology develops, advertising typically does as well. Aside from obvious channels like social media, media streaming, or review sites, endorsement advertising has worked its way into almost every aspect of digital consumption (advertisements within mobile apps for example). The concepts of when a disclosure is needed and how it can be presented will likely change as technology does. Changes to the economy may require similar review but are unlikely to have the direct impact that technological advancement will have on advertising. Economic changes likely impact technological ones, but it is difficult to predict in what way. The Guide is a good base from which to work, but it will likely require continuous, small updates and revisions to stay relevant.

One area ripe for guidance is for FTC to clarify how advertisers, endorsers, and social media platforms can use the platforms’ tools to increase compliance with the Guides and consumer awareness, as well as, reduce advertiser liability. Detailed guidance is needed because the Guides do not reference or include examples of the platforms’ disclosure tools, and because advertisers are increasingly turning to social media platforms as a channel for endorsements and testimonials.<sup>3</sup>

For example, Instagram features a paid partnership tool by which endorsers can tag their branded content to feature their business partners.<sup>4</sup> Other platforms, including Facebook and YouTube, have similar tools.<sup>5</sup> The FTC should provide detailed guidance for all platforms, including Instagram, Facebook, YouTube, LinkedIn, Snapchat, Twitter, and TikTok, so that platforms understand whether their tools comply with the Guides; how the platforms can change their tools to comply with the Guides, including placement and proximity of disclosures; and for platforms that do not offer tools, requirements to follow to build tools that are fully compliant with the Guides.

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<sup>3</sup> See, e.g., Business Insider, *Influencer Marketing: State of the social media influencer market in 2020* (Dec. 17, 2019), available at <https://www.businessinsider.com/influencer-marketing-report> (“Every social platform attracts influencers to some degree, but Instagram is the gold standard for the group. Nearly four in five (79%) brands predominantly tap Instagram for influencer campaigns, compared with Facebook (46%), YouTube (36%), Twitter (24%), and LinkedIn (12%), per Influencer Marketing Hub.”).

<sup>4</sup> Instagram, *Branded Content on Instagram*, <https://help.instagram.com/116947042301556>.

<sup>5</sup> YouTube, *Paid product placements and endorsements*, <https://support.google.com/youtube/answer/154235>;  
Facebook, *Add a Branded Content Tag*, <https://www.facebook.com/business/help/1512279682412364?id=491898788154026>.

An area of technological advancement to consider is the use of artificial technology in advertising. Computer programs and algorithms may be used to determine what products and services that a customer is shown in a digital advertisement. Could these be considered endorsements? What type of disclosure would be necessary so that they customer is informed of the material connection between the company that programmed the AI and the advertisers?

**Question 13. FTC Staff periodically updates a business guidance document, “The FTC’s Endorsement Guides: What the People Are Asking.” Is there guidance in the current version of that document that should be incorporated into the Guides?**

This document addresses new technology and how disclosures should be made in much more depth than the Guide itself. The Q&A format is good for exploring specific examples of questions companies face when determining when and how they should disclose a relationship.

Because technology is changing at a rapid pace, the Q&A document should be updated more frequently than the Guide. Incorporating into the Guide could hinder the speed at which the Q&A document is updated and create unnecessary uncertainty in the market regarding compliance with the Guide. A recurring opportunity for advertisers to submit questions to the FTC would allow for clearer disclosures and benefit to customers.

**Question 14. How well are advertisers and endorsers disclosing unexpected material connections on social media platforms?**

This is hard to determine. We see endorsements on social media with no disclosures that we question, though we also see many endorsements that clearly disclose a relationship. The Guide certainly helps. The sheer number of businesses that are online make it hard to monitor, and the informal nature of many of the advertisements make it hard to determine if they are paid endorsements. Online reviews, which data shows are very important in informing consumer choices, but also much easier to fabricate or post while avoiding disclosure, should be given more consideration. Also, with recent developments in technology and business services, it has become much easier for people to create viable businesses that are primarily online, and those may be offering reviews and endorsements in a casual manner that is unaware of applicable laws and regulations.

**Question 16. Some marketers give incentives (e.g., free or discounted products) to consumers in exchange for posting reviews of their products or services without specifically requiring that the reviews be favorable. Do such incentives skew or bias the resulting reviews?**

If a favorable review is not required in connection with an incentive, then the disclosure of the incentive is less important to the customer, but the potential for bias in the review still exists. It makes the review less reliable because one factor that reviewers almost always account for is the price of the product or service. A negative review makes it less likely that the reviewer is biased

from the material benefit, but this is not a given, and that material benefit should always be disclosed to avoid potential deception.

**Question 17. Some consumer reviewers who receive incentives in exchange for their reviews disclose their material connections in their reviews. Are composite ratings that are based in whole or in part on such incentivized reviews misleading?**

Yes. Incentivized and non-incentivized reviews should be compiled separately because to combine them creates bias in the ratings.

**Question 20. Some endorsers (including the authors of some product reviews) include affiliate links that can be used to purchase the products they are endorsing. Should the Guides address such links, and if so, how?**

Yes. This would be a helpful channel of advertising to cover in order to give companies more opportunity to be compliant with FTC Guidelines. As noted above, the Guides should provide more information on disclosures required on lead generation and comparison-shopping websites where the endorsement is more likely to be implied rather than explicit.

**Question 21. What disclosures, if any, do advertisers or the operators of review websites or review platforms need to make about the creation, collection, processing, or publication of reviews or ratings in order to prevent those reviews or ratings from being deceptive or unfair?**

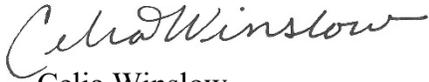
The Guide should apply to review sites in all forms (*i.e.*, a customer review site where the reviewer received some kind of benefit versus an affiliate/aggregator site that has a financial relationship with the company whose product/service they are reviewing – regardless of it being a positive or negative review).

Review sites should do their own due diligence to affirm legitimacy of the review and provide a disclosure as needed that reviewers receive compensation (broadly defined as anything of value that the reviewer received). Alternatively, the review site could disclose that they have not confirmed whether the reviewers were compensated by advertisers and that they do not check the accuracy of the reviews. Advertisers may have limited control or influence over review sites, so it is unfair to hold the advertisers liable for the actions of the review sites unless the advertisers played an active role in the deceptive activity.

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Thank you for the opportunity to provide comments on these issues. Please contact me with any questions at 202-776-7371 or [cwinslow@afsamail.org](mailto:cwinslow@afsamail.org).

Sincerely,

A handwritten signature in black ink that reads "Celia Winslow". The signature is written in a cursive style with a large initial "C" and a long horizontal flourish at the end.

Celia Winslow  
Senior Vice President  
American Financial Services Association