

# PRWeek

MAY 1, 2009

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### FTC proposal could be hard for PR professionals to accept

As reported in *PRWeek's* April 27 print edition, the FTC's proposed revisions to the Guides Concerning the Use of Endorsements and Testimonials in Advertising would represent the most sweeping changes in almost 30 years in endorsement and testimonial advertising. These guidelines, if adopted, would have a substantial impact on the way many companies and their PR firms market their products and services to consumers, particularly with respect to blogs and other forms of non-traditional media.

The proposed changes would hold marketers and their PR firms liable for their roles in making or promoting false and unsubstantiated statements made through a blogger's endorsement, even in instances where the marketer or the PR firm has acted responsibly to ensure the blogger received the accurate information. The proposal could result in marketers no longer using blogs and other forms of viral media.

The PR industry should also be aware that the revised guidelines would require a celebrity touting a product in non-traditional media, such as talk shows, radio programs, or interviews, to disclose his or her relationship with the marketer if such relationship was not readily apparent to the audience. The FTC

provided the example of a well-known tennis player who appears on a talk show and touts the success of her recent laser vision correction surgery at a clinic identified by name, but does not disclose that she has a contractual relationship with that clinic. If this sounds a bit reminiscent of the Armstrong Williams controversy, it is.

The guidelines would likely consider the tennis player's endorsement deceptive without the disclosure. This situation could also subject the marketer (and its PR firm) to liability, even in instances where the marketers have acted responsibly (e.g., instructed the celebrity to make the required disclosure, provided celebrity media training). Thus, the guidelines could unfairly expose marketers to liability for endorsements that are made by a third party who is not under the marketer's control – and in a medium that is also not under the marketer's control.

The FTC is expected to vote on these proposals this summer. ■

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