



FTC Disclosures Guidance (2024 Update)

Guidance for Disclosures

What level of disclosures are necessary?

- If the endorsement is made through visual means, the disclosure should be made at least visually. If the representation is made audibly, the disclosure should be made at least audibly. And if the representation is made through both visual and audible means, the disclosure should be made both visually and audibly.
 - Given that most of advertising campaigns involve video content, it is important that the disclosures in all the videos are made both audibly and displayed in writing in a way that stands out and is “unavoidable.”
- Simply including a disclosure in the description, comments, or text accompanying a video is not enough. Many people might watch the video without even seeing the description page or the text posted along with the video, and even those who do see that text might not see or read the disclosure.
 - As noted above, if the campaign involves a video, then the disclosure should be made visibly via text overlay and spoken clearly.
- You cannot rely on a social media platform’s built-in disclosure/paid endorsement tool. Just because a platform offers that feature, it is no guarantee that the post will comply with the FTC Guidelines.
 - As noted above, it is important to ensure that each post and video is closely reviewed, even where platforms include these tools.
- Please note, a disclosure that works with adults might not work with younger individuals or older adults. Accordingly, advertisers and endorsers should be particularly careful in their use of endorsements directed to these audiences.
 - Any campaigns directed towards younger audiences will need to ensure all disclosures are clear enough that even a child could understand.
 - Additionally, older adults may require disclosures that are spoken more slowly, are straightforward, and consider any diminished auditory, visual, or cognitive processing abilities.

(See FEDERAL TRADE COMMISSION, 16 CFR Part 255, Guides Concerning the Use of Endorsements and Testimonials in Advertising

https://www.ftc.gov/system/files/ftc_gov/pdf/P204500%20Guides%20Concerning%20Endors%20and%20Testimonials.pdf and <https://www.federalregister.gov/documents/2023/07/26/2023-14795/guides-concerning-the-use-of-endorsements-and-testimonials-in-advertising>)

Tips to Consider for Proper Disclosure:

- **Form** — disclosure on a website must be equally clear and conspicuous when viewed on a smartphone or other medium, or it is inadequate. Text color, length of time it appears, and detracting text surrounding it are all factors in determining sufficiency of disclosure.
- **Language** — disclosure must be in the same language as the ad/endorsement
- **Placement** — disclosure on a profile page, rather than a post, is insufficient
- **Messaging** — images should support the messaging, not misrepresent capabilities of a product or service



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General Considerations for Endorsements (FTC Act, 16 CFR § 255.1)

An advertiser may be liable for a deceptive endorsement even when the endorser is not liable. Advertisers should:

1. Provide guidance to their endorsers on the need to ensure that their statements are not misleading and to disclose unexpected material connections;
2. Monitor their endorsers' compliance; and
3. Take action sufficient to remedy noncompliance and prevent future non-compliance. While not a safe harbor, good faith and effective guidance, monitoring, and remedial action should reduce the incidence of deceptive claims and reduce an advertiser's odds of facing a Commission enforcement action.

If your campaign includes a sweepstakes, make sure that it is clear which Brand is paying for or running it.

For example, simply including the word or hashtag "contest" or "sweepstakes" would not be enough if an influencer is posting in connection with an advertising campaign. Instead, you should use "#Brand_Contest" or "#Brand_Sweepstakes", to make it much clearer that while the influencer is the one posting about the sweepstakes, the actual sweepstakes is being run/hosted by the Brand, and the post itself is sponsored content.

(See FTC's Endorsement Guides: What People Are Asking - <https://www.ftc.gov/business-guidance/resources/ftcs-endorsement-guides-what-people-are-asking> - SOCIAL MEDIA CONTESTS)



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Guidance for Agencies and Brands

Both the brand and the marketing agency or intermediary acting on behalf of the brand can be held directly responsible if its influencers/creators create and distribute posts that violate the FTC Guidelines. The largest areas of concern are:

- If a brand (or its marketing agency) plays a role in creating or posting endorsements containing statements it knows or should know are deceptive or false. The FTC, per its new 2024 final rule, prohibits the creation and distribution of any reviews or testimonials that fall into the following categories:
 - AI-generated fake reviews or any reviews or testimonials that are created by or attributed to any fictional or artificial users/characters; and
 - Reviews or testimonials from real people, who have either:
 - never actually used or have no experience with the products or services they are promoting; or
 - that misrepresent that person's actual experience with the product or service they are promoting.
 - For example, if the advertised product was a weight loss supplement, and the marketing agency is aware that the influencer that was engaged to promote the product either had not actually taken the supplement, or discovered the influencer actually had a negative experience with that product, the agency would be prohibited from creating content in which the Creator indicates they had a positive experience using the product. Instead, the Creator would only be able to create content where they talk about the product in an informal way, explaining what the product is in a factual context only.
- If a brand (or its marketing agency) provides compensation or other incentives conditioned specifically on a user/creator/influencer writing or creating reviews expressing a particular sentiment, either positive or negative for their products or services.
 - As noted above, all reviews, testimonials, or endorsements are required to reflect a creator's actual experience. If a brand or its marketing agency were to engage creators with the specific guidance to provide positive reviews only, the brand and the agency could be held liable for FTC violations.
- If influencers or creators fail to disclose their connections with the brand or make the necessary disclosures, and the brand and the marketing agency who engaged them, fail to enforce those disclosure requirements.
 - All parties involved, including the brand, and the marketing agency it has hired to run its campaigns, will be held responsible for reviewing all campaign posts before they go live, to ensure they have the necessary disclosures. If any campaign post is lacking proper disclosure, each party should ensure that the creator edits the post to correct the disclosures, where possible, or if editing the post isn't an option, requiring the creator to take the post down and create a new post with the correct disclosures.
- If a brand (or its marketing agency) engages in the selling or buying fake indicators of social media influence for a Creator's post (i.e. fake followers or views, clicks, or interactions generated by bots or hijacked accounts).
 - For example, if a marketing agency, as part of its services paid for the creation or use of bots, which would then interact with or "like" specific campaign posts, it would result in artificially boosted engagement numbers/performance, which would violate the FTC guidelines.



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- If a brand (or its marketing agency) suppresses or hides negative reviews on a platform or site, which represents that it displays (or where the public would reasonably believe it displays) all reviews related to the brand's products or services, regardless of the sentiment, positive, negative, or neutral.
 - For example, if a company hosts a hub on its website where users could post their reviews, the company would not be permitted to suppress or "hide" reviews left by users that were negative or that did not portray its products or services in a positive light, unless the hub or site also included a disclosure that made it very clear that it ONLY displayed positive reviews.
- If a brand (or its marketing agency) owns or operates a website or entity that represents it provides (or that the public would reasonably believe it provides) independent reviews or opinions about a category of products or services, which includes the brand's own products or services, without disclosing that it owns or operates such site or entity.
 - For example, if a company, "Z", which produces a weight loss drug, created a website called "WeightLossWatchdog.com", with no indication the website was owned or run by Z, and provided recommendations or positive reviews for its own products and/or provided negative reviews or recommendations against using its competitors' products, this would violate the FTC's final rule.
- If a brand (or its marketing agency) engages in unfounded or groundless legal threats, physical threats, intimidation, or certain false public accusations to prevent or remove negative consumer reviews for a brand's products or services.

(See FTC's Endorsement Guides: What People Are Asking - <https://www.ftc.gov/business-guidance/resources/ftcs-endorsement-guides-what-people-are-asking> and Federal Trade Commission Announces Final Rule Banning Fake Reviews and Testimonials - <https://www.ftc.gov/news-events/news/press-releases/2024/08/federal-trade-commission-announces-final-rule-banning-fake-reviews-testimonials>)



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In general, the employees, agents, and contractors of a brand (or any marketing agency engaged by the brand) should not assist or directly engage in promoting or distributing any branded campaign content from their own personal accounts.

- The updated 2024 final rule prohibits any reviews or testimonials from insiders, including, but not limited to officers, managers, employees, or agents, that fail to clearly and conspicuously disclose the reviewers' material connection to the business. Therefore, if any employee, agent or contractor of the brand (or its marketing agency) creates a public review or testimonial, they would be required to disclose their connection to the brand in their review.
- An additional consideration for brand's (or its marketing agency's) employees, agents, and contractors posting or sharing any content related to a brand's campaign, is that, as noted above, the FTC prohibits individuals endorsing a product or services they haven't used or that doesn't reflect their personal experience; therefore, if an employee, agent, or contractor's only connection to a product or service is that they worked on branded campaign or are paid by the brand, they should not be posting or sharing any content endorsing it, unless they also disclose and/or make it clear that the post is related to their work for the brand (e.g. "Check out this campaign I helped work on, on behalf of our client, BRAND.").
- While technically an employee, agent, or contractor is permitted to "like" a post from a brand's campaign, they should only do so organically (i.e. if such employee, agent, or contractor, as an individual, actually likes the video or product), however, please note that the FTC discourages agencies or brands from directly asking its employees, contractors, representatives, etc., to go out and "like" their posts, and it considers this practice deceptive, as it would be artificially boosting the content's engagement numbers.

(See FTC's Endorsement Guides: What People Are Asking - <https://www.ftc.gov/business-guidance/resources/ftcs-endorsement-guides-what-people-are-asking> - ENDORSEMENTS BY ORDINARY CONSUMERS ON SOCIAL MEDIA)