Tiffany Ferris, Joe Lawlor, Abbey Gauger Write About FTC Stance on Improper Endorsements, Testimonials

By Tiffany Ferris, Joseph Lawlor | October 27, 2021

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A highly motivated FTC (Federal Trade Commission), not dissuaded by a recent setback at the Supreme Court, is intent on re-asserting its authority to regulate unfair trade practices and to seek significant monetary penalties from companies that deceive consumers through improper endorsements and testimonials.

Two weeks ago, the FTC sent Notices of Penalty Offenses to more than 700 advertisers, from Adidas to Zillow and everyone in between. Apparel companies, manufacturers of consumer packaged goods and personal care products, entertainment and telecommunications companies, hospitality players and more all received the Notices, which set the stage for the imposition of civil penalties up to $43,280 (£31,371) per violation should any of these companies continue advertising in the ways deemed deceptive in the Notices.

Advertisers are now contending with an FTC that is re-orienting itself away from a view that market forces can correct deceptive practices and toward taking a more active role in policing and deterring wrongdoing. The FTC is showing that it will use all tools at its disposal to do this, including reviving a long-dormant authority to seek financial penalties, even from first-time offenders. Advertisers will be wise to take this opportunity to review their advertising guidelines and programs to ensure compliance before the FTC begins doling out fines.

The FTC's Penalty Offense Authority

In April 2021, the Supreme Court strictly curtailed the FTC's ability to use Section 13(b) of the FTC Act – its then-primary enforcement mechanism – to obtain restitution and disgorgement from companies that engage in unfair or deceptive advertising practices. Anticipating this move by the Court, and a potential incoming Democratic administration, several FTC Commissioners had already begun brainstorming potential alternatives to Section 13(b).

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