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Entertainment Alert

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iHeartMedia agrees to pay $400,000 to settle deceptive endorsement claims

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Broadcasters, networks, and media companies should be aware of the FTC's endorsement guidelines and tread carefully when facilitating these deals.

What's the Impact?

- Endorsers of a product must be a bona fide user at the time of the endorsement and must be expressing their own personal belief/experience of the promoted product.
- Media companies and representatives that are actively involved in the recording/production of such advertisements may be held liable for false endorsements of individual advertisers.

In 2019, iHeartMedia, Inc. and 11 other radio networks in 10 major markets received over $2.6 million for their on-air personalities to promote a new edition smartphone. While iHeartMedia requested the phones, its talent only received a link to a webpage about the phone's features, and scripts for the on-air personalities to use, which included lines such as, "I've been taking

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studio-like photos of everything … my son’s football game … a meteor shower … a rare spotted owl that landed in my backyard. Pics or it didn't happen, am I right?”

The advertisements were released—with talent using first-person language identical or substantially similar to the provided scripts—suggesting they had used the phone and were expressing their opinion about the product. After the ads were aired for several months, iHeartMedia received five of the promoted phones.

In November 2022, the Federal Trade Commission and seven state attorneys general from Arizona, California, Georgia, Illinois, Massachusetts, New York, and Texas sued iHeartMedia for airing nearly 29,000 deceptive endorsements from the above promotion between 2019 and 2020.

The parties have agreed to settle the matter with the FTC. In the proposed order, the parties have to pay $9.4 million in penalties (iHeartMedia’s portion which is $400,000), and agree to mandates against making any similar misrepresentations expressly or by implication moving forward.

Navigating endorsement regulations

The FTC’s enforcement efforts remain focused on protecting consumers from phony testimonials, reviews, and other deceptive endorsements in all mediums, including podcasts/radio.

While influencer endorsements are a time-honored way to signal a product’s worthiness, it can backfire if these promoters have never used such products. Endorsements need to be timely, truthful, and conspicuously disclosed. At minimum, promoters must have actual knowledge and use or experience with the promoted products at the time of the endorsement. Further, promoters should vet scripts and other messaging points to make sure their content is “on brand,” authentic, and compliant as the FTC has and will continue to hold individual promoters liable for non-compliance.

Importantly, this recent action shows us that the FTC will pursue parties beyond the advertiser. Broadcasters, networks, and media companies should be aware of these guidelines and their roles in facilitating these deals. Here, despite some initial due diligence in asking for the phones, iHeartMedia was held accountable because regulators found that it played an active role in the production and advertising by supplying the talent. These companies and representatives should make sure their agreements, insertion orders, and sponsorship agreements for various talent are sufficiently clear and comprehensive to ensure FTC compliance to avoid disproportionate liability relative to amounts actually received for the endorsements.

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