

Locke Lord QuickStudy: FTC Takes Action Against Social Media Posts for Failure to Disclose Material Connections

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On November 15, 2023, the FTC announced that it had issued fourteen [Warning Letters](#) to the two trade associations, the American Beverage Association (AmeriBev) and the Canadian Sugar Institute (“the Associations”), as well as twelve health influencers who were paid by the Associations to comment on the safety of the sugar substitute aspartame or promote the consumption of sugar-containing products. AmeriBev’s influencers posted advice on TikTok and Instagram endorsing the safety of aspartame, while the Canadian Sugar Institute’s influencers posted dietary advice on Instagram endorsing the consumption of sugar-containing products.

Regardless of the competing views advocated by the influencers, the FTC’s position remains the same: when there is a material connection between an endorser and a sponsor, disclosure of the material connection must be clear and conspicuous, so it is difficult to miss and is easily understandable by ordinary consumers. Without an adequate disclosure of the material connection, consumers cannot evaluate the weight and credibility to give the endorsement.

The FTC found that the influencers’ social media content did not adequately disclose the material connections between themselves and the Associations. The FTC noted that even when certain influencers used the social media platforms’ built-in disclosure tools, such as “Paid Partnership,” or using text such as “#sponsored,” or “AD,” did not clearly and conspicuously disclose the material connection between the influencers and the Associations and use of these tools and text was inadequate without supplementing with additional disclosure information to clearly inform the Association that had engaged them.

Since the first introduction of the Endorsement Guides, the FTC has been consistent with the requirement that material connections between the endorser and the party for whom they speak must be clearly and conspicuously disclosed, so that consumers can decide what weight they will give to the posting.

The FTC’s Warning Letters noted that the fundamental position of the FTC Endorsement Guides was to establish the requirement that material connections must be clearly and conspicuously disclosed. In the case of these Associations, not only was there a failure to disclose a material connection, but the FTC noted that the

Associations used registered dietitians and online health influencers? whose expertise carries greater weight to promote their products and influence consumers? without adequately disclosing the material connection between the influencer and the trade association that retained them?

The Warning Letters propose the levy of fines on the individual Influencers and the Associations for engaging in unfair and deceptive trade practices?

Separately, in its Warning Letters the FTC reminded the Associations of their ongoing obligations to monitor and review the activity and content of their paid endorsers.

Not surprisingly, there has also recently been activity by State Attorneys General on the issue of false endorsements. It is likely that State AGs will become more active on these issues with endorsements.

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