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## Keeping Clean on the FTC Regs

March 3, 2010

-By Scott Severson

Everyone in the distribution chain of an advertising message now carries the burden of that message -- even if you had nothing to do with creating it. The industry has been living with the Federal Trade Commission's Revised Endorsement Testimonial Guides since they were released in December, and they continue to be a critical issue to address. If you're not paying attention to the new rules, you risk significant exposure.

The FTC isn't fooling around. The agency has indicated that third parties such as advertising agencies, media, Web site designers and catalog marketers may be liable for "making or disseminating deceptive representations if they participate in the preparation or distribution of the advertising."

A case for all of us to keep in mind: Last year, QVC agreed to a \$7.5 million settlement after the FTC held the home-shopping channel liable for unsubstantiated claims made on-air regarding the ability of Quigley's Cold-Eeze product to prevent colds. In finding QVC liable, the FTC understood that while QVC was not the main source of the deceptive claims, it did play a key role in the distribution of the advertiser's claims and benefited directly from the deceptive ads. The FTC finding said, "The FTC believed it was important to hold QVC as well as Quigley responsible for these claims."

The more specific the claim, e.g., "Lose 20 pounds in two weeks," the greater the need for substantiation. And the claim needs to be the norm, not the exceptional result. It's not acceptable to use the qualifier: "Results not typical."

The FTC recommends that parties involved in the advertising messaging chain take steps to verify the claims, rather than simply rely on a manufacturer's representations regarding its products. Not an easy job. There are ways all of us in the marketing industry can increase our vigilance on this issue. For example:

- Ask the hard questions. Make sure advertisers have evidence for their claims.
- Verbal assurance is no longer enough.
- Get legal advice. This area of regulation is complex and too important to operate by guesswork.
- Be careful how endorsements are expressed. They can't be out of context or reworded to distort the endorser's experience with the product. (And, of course, the endorser must actually use the product.)
- Disclose any connection between an endorser and seller.
- If a sponsored study by an outside company is used to promote the product, clearly indicate that it was paid for.

The FTC has every right and responsibility to do what it can to prevent deceptive advertising. Any of us who operate online a good part of our day -- and especially those of us who create and place advertising -- see far too many examples come across our screens, and we'd cheer efforts to put the brakes on some of the misleading junk that's out there.

But because the FTC is stepping up its scrutiny and enforcement on deceptive advertising, it's up to us in the messaging chain to increase our own watchfulness.

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Audi "Green Car"

2:04:21



#### Best of 2010 Super Bowl

	<b>Audi "Green Car"</b>	2:04:21
	Boost Mobile "Shuffle Remix"	2:55:49
	Bridgestone "Free Willy"	22:44
	Budweiser "Bridge"	32:43
	Budweiser "Fence"	01:00

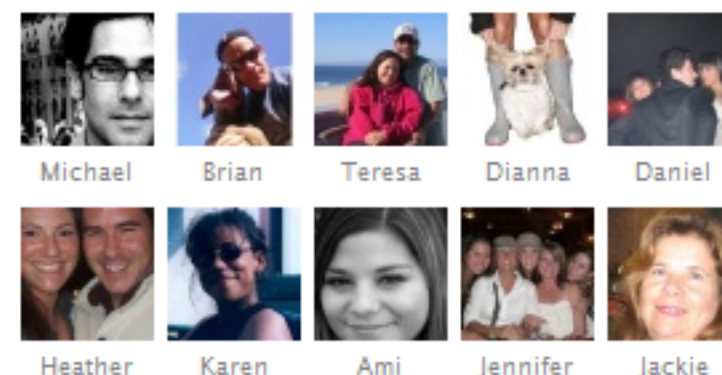
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