

Insights

UPDATED FTC ENDORSEMENT GUIDES AND DOTCOM DISCLOSURES GUIDANCE MAY BRING CLARITY IN INFLUENCER MARKETING

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If you've been even remotely paying attention, you've heard the news that the Federal Trade Commission released its long-awaited revisions to the [Endorsement Guides](#) following the Open Commission Meeting it held on May 19. You've likely also seen the countless blurbs and articles about some of the changes the Commission appears to have proposed – a definition for “clear and conspicuous”, inclusion of a section on consumer reviews, coverage of virtual endorsers, a focus on children and their level of (un)sophistication, and more clearly-articulated guidance over who may be held responsible for misleading tactics, including intermediaries such as agencies and PR firms.

What didn't get as much attention, though, happened two weeks later on Friday, June 3, when the Commission unexpectedly announced a [request for public comment](#) on its famous [.com Disclosures: How to Make Effective Disclosures in Digital Advertising](#) guidance document, which was last updated in 2013 (which I'll refer to here as the “Dotcom Disclosures”).

How do these two connect, you might ask? Well, if you've reviewed the proposed *Endorsement Guides* closely, you'll notice that they do not purport to demonstrate what disclosures should look like to be effective in the scenarios it uses as examples. No, the Commission clearly points out *when* and *why* disclosures are needed, *who* should make them, *what* they should convey, and sometimes *where* they should live. But it doesn't say or show HOW TO MAKE THEM. In fact, the new *Endorsement Guides* do not even use the word *hashtag* a single time!

Putting two and two together, I believe I may know why. Per the Commission's new Footnote #1 in the *Endorsement Guides*, it intends to continue to offer:

"staff guidance address[ing] details not covered in these Guides and [which will be] updated periodically..." [emphasis added]

AHA! It appears that the Commission has made the conscious decision to try to address the who, what, when, where, and why of endorsements in the *Endorsement Guides* – since those principles are relatively static – and to use the soon-to-be-updated *Dotcom Disclosures* document to demonstrate the how – i.e., what a properly formatted, clear and conspicuous disclosure might look

like across different scenarios, such as consumer reviews, affiliate marketing links, and social media posts. While the *Dotcom Disclosures* document covers a much broader footprint than just endorsements, 6 of the 22 graphic/pictorial examples included in the current version demonstrate the proper placement, presentation, proximity, and prominence of material connection disclosures. Given that the first question listed in the Commission’s request for public comments specifically asks for input around “sponsored or promoted advertising on social media platforms or otherwise”, it appears that this will likely be the home for this specific piece of guidance, and we will likely see more endorsement-related examples.

This approach will allow the Commission to keep the general principles espoused by the *Endorsement Guides* in place while utilizing the *Dotcom Disclosures* document and other guidance issued by FTC Staff, such as its [FAQs on the Endorsement Guides](#) – each of which can be revised and replaced much more quickly and efficiently over the coming years to keep up with changes in technology and tactics – as a roadmap and a resource for what disclosures should look like.

This should all be very encouraging, at least to those of us who hope for cohesive and updated direction from the Commission. While it may be another year before those two documents are “finalized”, we can and should all do our part to submit comments with respect to both documents that can help guide the Commission as it works to guide us.

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