

Federal Trade Commission

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For example, captions such as, “Men/women wanted to train for * * *,” “Help Wanted,” “Employment,” “Business Opportunities,” and words or terms of similar import, may falsely convey that employment is being offered and therefore should be avoided.

(b) It is deceptive for an industry member to fail to disclose to a prospective student, prior to enrollment, the total cost of the program and the school’s refund policy if the student does not complete the program.

(c) It is deceptive for an industry member to fail to disclose to a prospective student, prior to enrollment, all requirements for successfully completing the course or program and the circumstances that would constitute grounds for terminating the student’s enrollment prior to completion of the program.

[63 FR 42574, Aug. 10, 1998 as amended at, 63 FR 72350, Dec. 31, 1998]

PART 255—GUIDES CONCERNING USE OF ENDORSEMENTS AND TESTIMONIALS IN ADVERTISING

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AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41–58.

§ 255.0 Definitions.

(a) The Commission intends to treat endorsements and testimonials identically in the context of its enforcement of the Federal Trade Commission Act and for purposes of this part. The term *endorsements* is therefore generally used hereinafter to cover both terms and situations.

(b) For purposes of this part, an *endorsement* means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) which message consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the spon-

soring advertiser. The party whose opinions, beliefs, findings, or experience the message appears to reflect will be called the endorser and may be an individual, group or institution.

(c) For purposes of this part, the term *product* includes any product, service, company or industry.

(d) For purposes of this part, an *expert* is an individual, group or institution possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals.

Example 1: A film critic’s review of a movie is excerpted in an advertisement. When so used, the review meets the definition of an endorsement since it is viewed by readers as a statement of the critic’s own opinions and not those of the film producer, distributor or exhibitor. Therefore, any alteration in or quotation from the text of the review which does not fairly reflect its substance would be a violation of the standards set by this part.

Example 2: A TV commercial depicts two women in a supermarket buying a laundry detergent. The women are not identified outside the context of the advertisement. One comments to the other how clean her brand makes her family’s clothes, and the other then comments that she will try it because she has not been fully satisfied with her own brand. This obvious fictional dramatization of a real life situation would not be an endorsement.

Example 3: In an advertisement for a pain remedy, an announcer who is not familiar to consumers except as a spokesman for the advertising drug company praises the drug’s ability to deliver fast and lasting pain relief. He purports to speak, not on the basis of his own opinions, but rather in the place of and on behalf of the drug company. Such an advertisement would not be an endorsement.

Example 4: A manufacturer of automobile tires hires a well known professional automobile racing driver to deliver its advertising message in television commercials. In these commercials, the driver speaks of the smooth ride, strength, and long life of the tires. Even though the message is not expressly declared to be the personal opinion of the driver, it may nevertheless constitute an endorsement of the tires. Many consumers will recognize this individual as being primarily a racing driver and not merely a spokesman or announcer for the advertiser. Accordingly, they may well believe the driver would not speak for an automotive product unless he/she actually believed in what he/she was saying and had personal knowledge sufficient to form that belief. Hence

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they would think that the advertising message reflects the driver's personal views as well as those of the sponsoring advertiser. This attribution of the underlying views to the driver brings the advertisement within the definition of an endorsement for purposes of this part.

Example 5: A television advertisement for golf balls shows a prominent and well-recognized professional golfer hitting the golf balls. This would be an endorsement by the golfer even though he makes no verbal statement in the advertisement.

[40 FR 22128, May 21, 1975, as amended at 45 FR 3872, Jan. 18, 1980]

§ 255.1 General considerations.

(a) Endorsements must always reflect the honest opinions, findings, beliefs, or experience of the endorser. Furthermore, they may not contain any representations which would be deceptive, or could not be substantiated if made directly by the advertiser. [See Example 2 to Guide 3 (§255.3) illustrating that a valid endorsement may constitute all or part of an advertiser's substantiation.]

(b) The endorsement message need not be phrased in the exact words of the endorser, unless the advertisement affirmatively so represents. However, the endorsement may neither be presented out of context nor reworded so as to distort in any way the endorser's opinion or experience with the product. An advertiser may use an endorsement of an expert or celebrity only as long as it has good reason to believe that the endorser continues to subscribe to the views presented. An advertiser may satisfy this obligation by securing the endorser's views at reasonable intervals where reasonableness will be determined by such factors as new information on the performance or effectiveness of the product, a material alteration in the product, changes in the performance of competitors' products, and the advertiser's contract commitments.

(c) In particular, where the advertisement represents that the endorser uses the endorsed product, then the endorser must have been a bona fide user of it at the time the endorsement was given. Additionally, the advertiser may continue to run the advertisement only so long as he has good reason to believe that the endorser remains a bona fide

user of the product. [See §255.1(b) regarding the "good reason to believe" requirement.]

Guide 1, Example 1: A building contractor states in an advertisement that he specifies the advertiser's exterior house paint because of its remarkable quick drying properties and its durability. This endorsement must comply with the pertinent requirements of Guide 3. Subsequently, the advertiser reformulates its paint to enable it to cover exterior surfaces with only one coat. Prior to continued use of the contractor's endorsement, the advertiser must contact the contractor in order to determine whether the contractor would continue to specify the paint and to subscribe to the views presented previously.

Example 2: A television advertisement portrays a woman seated at a desk on which rest five unmarked electric typewriters. An announcer says "We asked Mrs. X, an executive secretary for over ten years, to try these five unmarked typewriters and tell us which one she liked best."

The advertisement portrays the secretary typing on each machine, and then picking the advertiser's brand. The announcer asks her why, and Mrs. X gives her reasons. Assuming that consumers would perceive this presentation as a "blind" test, this endorsement would probably not represent that Mrs. X actually uses the advertiser's machines in her work. In addition, the endorsement may also be required to meet the standards of Guide 3 on Expert Endorsements.

[Guide 1]

[45 FR 3872, Jan. 18, 1980]

§ 255.2 Consumer endorsements.

(a) An advertisement employing an endorsement reflecting the experience of an individual or a group of consumers on a central or key attribute of the product or service will be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product in actual, albeit variable, conditions of use. Therefore, unless the advertiser possesses and relies upon adequate substantiation for this representation, the advertisement should either clearly and conspicuously disclose what the generally expected performance would be in the depicted circumstances or clearly and conspicuously disclose the limited applicability of the endorser's experience to what consumers may