

Consumer Group Questions Kardashian Posts

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On Monday, a consumer advocacy group [announced](#) that it had sent a letter to the Kardashian-Jenner family challenging how the sisters promote products on Instagram. The group contends that the sisters have engaged in deceptive advertising by failing to disclose that their posts are sponsored. The group states, “The law is clear – unless it’s self-evident that an Instagram post is an advertisement, a clear and prominent disclosure is required so that consumers understand that what they are viewing is an ad.” That statement of the law is correct, but it raises a broader question about what is self-evident.

The Kardashian-Jenner family is famous for promoting products on social media. I think we all remember that even [Kim’s use of a morning sickness drug](#) was sponsored, and the consumer group in fact acknowledges in its letter that “it has been widely reported that paid-for social media posts earn celebrities, including those in the Kardashian-Jenner clan, tens to hundreds of thousands of dollars per post.” Many of the sisters' posts that the group identified also arguably bear more of a resemblance to traditional ads than they do to typical social media posts. Here’s an example.



Is it possible for the sisters (and their corporate sponsors) to argue that it’s self-evident that these posts are ads? The FTC has acknowledged that there are circumstances in which consumers will understand that something is a celebrity endorsement, even without any label. But, the FTC also cautions companies not to assume that consumers will always figure this out. For instance, FTC guidance cautions that consumers might not understand whether a celebrity who discusses a product on a talk show is acting as a paid endorser. Companies should consider the context in which any sponsored post appears and what the typical viewer will think. Celebrity endorsements have some leeway that other types of endorsements don’t, but context must still be carefully considered.

The consumer group stated that if the sisters continue to post about products in the same manner, it would file a complaint with the FTC. It will be interesting to see if the FTC takes the opportunity to delve into the mindset of the typical Kardashian-Jenner fan.