

FDA Recalls Kim Kardashian's Post

Gonzalo E. Mon, Kristi L. Wolff

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Last month, Kim Kardashian praised Diclegis, a drug for morning sickness, on her social media accounts. Since Kim doesn't follow us on social media, we don't always keep tabs on her. But when her posts raise regulatory issues, we like to stay on top of those. In this case, the posts promoting Diclegis caught the attention of the FDA, who warned the drug manufacturer that the posts may have been misleading.

"OMG." Kim posted, "have you heard about this? As you guys know my #morningsickness has been pretty bad." She then went on to explain the Diclegis cured her morning sickness and, "most importantly, it's been studied and there was no increased risk to the baby. I'm so excited and happy with my results that I'm partnering with Duchesnay USA to raise awareness about treating morning sickness. If you have morning sickness, be safe and sure to ask your doctor about the pill . . ."

The FDA, which regulates prescription drug advertising, and the FTC, which regulates advertising for non-prescription and non-FDA regulated products, have issued separate guidance documents regarding advertising in social media, available [here](#) and [here](#). The agencies' positions are markedly consistent, however: The rules for advertising in social media are the same as those that apply to traditional media. Whether it is the "fair balance" between the benefits and risk information required for prescription drugs, or disclosures material to a consumer's understanding of the advertisement, space and format constraints do not excuse advertisers from providing necessary information and doing so in a clear and conspicuous manner.

As we've posted before, the FTC requires endorsers to disclose any connections they have to the companies whose products they endorse. Kim got that right, but the FDA [alleged](#) that the post failed to comply with prescription drug advertising requirements. In its letter to the manufacturer, the FDA stated that posts can be misleading if they fail to disclose certain material facts, including those related to "consequences that may result from the use of the drug as recommended." In this case, the FDA found the posts to be misleading because they included efficacy claims without any risk information. Moreover, FDA stated that the posts failed to provide material information regarding the drug's full approved indication, including important limitations of use. FDA requested that the manufacturer remove the post at issue and Duchesnay has already announced that they will create "corrective messaging" to remedy any misimpressions.

This case should serve as a reminder that companies can get in trouble when celebrity endorsers do things on social media that fall short of legal requirements (even when it's hard to comply with those requirements). It's important to have good contracts with endorsers, provide them with guidance about the legal requirements, and monitor to ensure they comply. To the extent a company helps endorsers write posts, the company should also remember that those posts will be subject to the same laws as ads in other media.