Marketer Ordered to Disclose Low Success Rate of its Customers

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Earlier this year, the FTC and the Colorado Attorney General filed a lawsuit against a company that sells a wealth-building program. The company's infomercials included testimonials from consumers who purportedly made money through the program and fine print disclosures stating that results would vary. The regulators recently announced they had obtained a court order that, among other things, requires the company to highlight the low success rate of its customers.

As we've mentioned in previous posts, two years ago, the FTC updated their guidelines on endorsements and testimonials. Under the new guidelines, a company can no longer feature testimonials with atypically good results and simply use a "Results Not Typical" disclaimer. Instead, a company must either feature testimonials that show typical results or include a disclosure that clearly explains the results that a typical consumer can expect to achieve.

As part of the court order, the infomercial company is forced to "clearly and prominently" include the following statement in all ads and infomercials: "Most of our customers will earn little or no money." The order includes detailed requirements about how, when, and how often the disclosure must be made in various types of ads. In addition, the company is prohibited from representing that consumers are likely to quickly and easily make a lot of money.

This case serves as a reminder that advertisers need to ensure that all claims in their ads -- including claims that are made by consumers -- are truthful and not misleading. And companies need to be particularly careful that claims made by consumers are either representative of typical results or that the ads otherwise clearly disclose the typical results. Otherwise, a much more onerous disclosure may be forced on them by a court.