

NAD Decision Addresses Endorsements from Product Testers

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February 25, 2016

This week, the NAD published a decision involving an infomercial for the Shark Rocket DeluxePro vacuum. Although the decision covers several issues – including comparative claims, product demonstrations, and consumer endorsements – we’re just going to focus on the last one for this post.

If you read our blog, you already know that when a company gives a consumer a product for free, that must be disclosed in connection with any endorsement from that consumer. But what if a consumer is only testing a product, without any expectation of keeping it? In the Shark case, consumers signed up to test vacuums and were periodically contacted to discuss their opinions. The company argued that because the consumers weren’t expecting to keep the vacuums, a disclosure wasn’t necessary.

The NAD disagreed, noting that a review is likely to be influenced by whether the product was purchased or used for free – “even when just borrowed.” The NAD noted that the use of a borrowed product “might materially affect the weight or credibility of an endorsement because a purchasing decision generally involves weighing costs and benefits of one product as compared to another. A consumer given a vacuum to use may evaluate that product differently than a consumer that purchases the product.”

The NAD was also concerned that the multiple interactions between the company and the testers is a “connection that a



reasonable consumer would not reasonably anticipate when viewing an infomercial” – especially when the infomercial touts “real people” and “real results.” Because of these multiple connections and interactions, the NAD recommended that Shark disclose the relationship between the consumers in the infomercial and the company.

The NAD’s analysis presents a broader interpretation of when a disclosure is required than many companies might expect. Because this area keeps evolving, companies should pay close attention to

all the connections they have with endorsers – no matter how remote – and analyze whether they may trigger disclosure obligations.