

NAD Decision Leaves Unanswered Questions about Content Creator Disclosures

Gonzalo E. Mon

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P&G filed an NAD challenge against Dr. Squatch over posts that the company's influencers and content creators made on TikTok. These creators participate in the TikTok Shop affiliate program through which they can earn a commission on purchases of Dr. Squatch products that are made through their affiliate links. The challenged posts included a disclosure that stated: "creator earns commission."

Dr. Squatch periodically runs campaigns through which creators can earn rewards beyond the usual commission. P&G argued that these additional rewards are "an unexpected material connection" that must be disclosed separately from the commissions and that the current disclosure wasn't sufficient "because it does not indicate the full nature of the content creator's compensation or the entities behind the compensation."

NAD noted that Dr. Squatch had voluntarily and permanently stopped the challenged ads and that the company had taken steps to ensure that the posts at issue would comply with the FTC's Endorsement Guides. Therefore, NAD did not review the merits of the challenge, and we don't know exactly what NAD would have recommended. A decision would have been interesting because the answer isn't clear.

In FAQs accompanying the Endorsement Guides, FTC staff posed the following question: "Do I need to list the details of everything I get from a company for reviewing a product?" The answer is: "No. What matters is whether the information would have an effect on the weight readers would give your review." For now, we don't know exactly how that analysis would play out in a situation involving commissions and additional rewards.