

NAD Holds Celebrity Social Media Posts Need Disclosures

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Under the FTC's Endorsement Guides, influencers and celebrities have to disclose any material connection they have to the brands they promote "when a significant minority of the audience for an endorsement does not understand or expect the connection." That leaves open the possibility that there are instances in which a connection is so obvious to almost everyone, that it doesn't need a disclosure. A pair of recent NAD cases show just how narrow that exception is.

As part of its ongoing routine monitoring program, NAD found various social media posts in which Kevin Hart promoted Fabletics, an athletic apparel brand. NAD questioned whether Hart had adequately disclosed his relationship to the company in those posts. While previous NAD challenges involving influencers were targeted solely at the companies, here, NAD brought two separate challenges – one against Fabletics and one against Hart himself.

Fabletics argued that Hart is the face of Fabletics Men, having partnered with the brand since its inception in 2020. Hart is an equity owner and has created special collections, headlined ad campaigns, and is prominently featured in marketing materials. Because of the strong association between Hart and Fabletics Men, the company argued that consumers are likely aware of his connection to the brand, negating the need for an explicit disclosure. Hart made similar arguments in his case.

NAD disagreed. "In evaluating the reasonable expectations of the audience, a significant minority of the audience might not be aware of Hart's affiliation with Fabletics, potentially due to varying levels of engagement with athletic brands, comedians, or celebrity endorsements." Because some viewers may not be aware of Hart's relationship to Fabletics, NAD recommended that Hart clearly and conspicuously disclose that relationship when posting about the company.

These decisions show just how narrow the FTC's exception to the disclosure requirement may be. It's not clear what constitutes a "significant minority" of an audience, and proving what the overwhelming majority of the audience understands to the FTC or NAD is a daunting task. In FAQs accompanying the Endorsement Guides, FTC staff noted that "determining what readers know can be tricky, so we recommend disclosure." Most advertisers will want to follow that recommendation.