

NAD Takes Strict Position on Employee “Endorsements”

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In 2019, the FTC announced a [settlement](#) with a retailer over allegations that it had encouraged employees to write favorable reviews of its products without disclosing they worked for the company. Most observers weren't surprised that the FTC found that conduct to be problematic or that the terms of the settlement required the company to instruct employees to clearly disclose that worked for the company when reviewing its products. But employee reviews often involve more subtle issues, and a recent NAD decision on some of those issues may surprise some readers.

Renue By Science sells products with NMN, a supplement that is thought to slow the aging process. Ad Law Access is known for the quality of its content and the youthfulness of its writers, so we don't have personal experience with the supplement, but some people swear by it. One of those people is an employee of Renue By Science that posts informative YouTube videos on various health topics. In one of the videos, she discusses the current regulatory status of NMN and speaks positively about the supplement, in general. Notably, though, she doesn't promote any particular brand.

Reasonable minds can disagree over whether a video that discusses a product category without promoting a particular brand constitutes an “endorsement” that would trigger a disclosure requirement under the FTC's Endorsement Guides. NAD seems to conclude – without much explanation – that it does. One sentence in the decision mentions that the video description included links to sites where the company's products were sold. It's likely that impacted NAD's analysis, but it's not clear to what extent or whether the conclusion would have been different if the description didn't have those links.

NAD acknowledged that a written disclosure identifying the speaker as an employee of the company appeared in the video description, above the “show more” link. However, that wasn't enough to satisfy NAD. Instead, NAD recommended that the company “inform the employee of their obligation to clearly and conspicuously disclose *in the video itself* that the speaker is an employee.” This recommendation is arguably more stringent than what is required by the FTC's Endorsement Guides and what appears to be common practice with many influencer campaigns.

NAD's discussion of the video is contained in one short paragraph of the decision – and it doesn't seem like the advertiser debated the issues of whether the video constituted an endorsement or whether the disclosure was sufficient – so we don't have a lot go on. What we do have, though, suggests that NAD is taking a strict position on what employees must do when they promote products that are sold by their companies, even if the company's products aren't mentioned specifically. Now may be a good time to look through your employee policies to see if they address these types of issues.