

New NAD Decision Addresses Affiliate Links

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As part of its routine monitoring, the NAD requested substantiation for various statements that a BuzzFeed staff member had made about a moisturizer in one of the site's shopping guides. The NAD's decision in the case sheds some much-needed light on various issues related to affiliate marketing.

BuzzFeed explained that the shopping guides include product recommendations by its writers, and that the companies mentioned in the guides don't have any ability to influence the content. In some cases, BuzzFeed may receive compensation if a reader makes a purchase through an "affiliate link." The writers, however, don't know whether affiliate links may be available for the products they recommend. Those links are added by a separate group at BuzzFeed *after* the article is completed. Thus, the decision to recommend a product is not linked to the potential for compensation. Moreover, the potential for compensation is disclosed at the top of each shopping guide: "We hope you love the products we recommend! Just so you know, BuzzFeed may collect a share of sales or other compensation from the links on this page."

We hope you love the products we recommend! Just so you know, BuzzFeed may collect a share of sales from the links on this page. Oh, and FYI — prices are accurate and items in stock as of time of publication.

The FTC has noted that publishers who use affiliate links in conjunction with product reviews should clearly disclose their relationship with the companies or retailers whose products are reviewed. Although many companies get tripped up over this issue, BuzzFeed got the disclosure right, and the NAD did not focus on it. Instead, the case focused largely on the issue of whether the shopping guides constitute "national advertising," as defined by NAD Policy and Procedures. More specifically, "the issue here is whether online publishers using affiliate links can use the aegis of editorial independence to avoid the requirement that it have substantiation for any product claims in the content." As the line between editorial and commercial content gets increasingly blurred, it isn't always easy to answer this question.

Ultimately, the NAD determined that the shopping guide did not constitute "national advertising" for a few key reasons. First, the content was created by writers who did not know whether or not the company would receive any affiliate revenue based on purchases of the recommended products. Second, neither the retailers nor the brands mentioned in the guides had any input in what was said about the products. And, third, the links were added to the shopping guide after the content was written. "In sum," the NAD wrote, "the content was created independently of and prior to the addition of affiliate links to the article." Thus, the statements in the shopping guide weren't ads and BuzzFeed wasn't responsible for substantiating claims about the products that were reviewed.

This decision provides a roadmap for other companies that use affiliate links. Simply calling something “editorial” is not going to be enough to escape scrutiny under advertising laws. Instead, companies must have procedures in place to ensure that there is a clear separation between editorial decisions and revenue and that the companies whose products are being reviewed cannot influence the content. It’s also important to clearly disclose the affiliate relationship, as BuzzFeed did here. The NAD’s decision suggests that if companies get this wrong, they may be required to substantiate any claims they make about the products they review.