

Q: What's Different About the FTC's New Endorsement Q&As? A: Lots.

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The FTC recently released a new version of its [Q&As on the Endorsement Guides](#). The old Q&As, released in 2010, were about seven pages long. The new ones just about double that. The revisions and additions reflect many of the positions that the FTC has taken in the course of its enforcement over the past five years. Below is a summary of what's new.

- **"Likes."** The FTC questions "how much stock social network users put into 'likes' when deciding to patronize a business." Nevertheless, the FTC states that, as a part of advertising campaigns, "[a]dvertisers shouldn't encourage [use of] features [such as 'like' buttons] that don't allow for clear and conspicuous disclosures."
- **Contests.** When a company asks a consumer to post something (e.g., "#CompanyX4Evs") in order to enter a contest, the FTC will normally consider the post to be an endorsement. Additionally, according to the FTC, entry into the contest is an incentive that should be disclosed – especially if a significant prize is at stake.
- **Talk Shows.** If a talk show host is paid to promote a product, the FTC will usually expect disclosure of the connection. Similar promotions by a paid expert in non-traditional media will also normally constitute an endorsement and require appropriate disclosures, according to the FTC.
- **Gifts for Honest Feedback.** In the FTC's view, it doesn't matter if a company expressly tells people to be honest in their reviews. Any gifts or incentives for reviews should still be disclosed.
- **Product Placements.** The FTC will not ordinarily consider product placements to be endorsements. It describes product placements as "merely showing products or brands in third party entertainment or news content."
- **You Might Be Famous!** If a consumer is told prior to providing a review that the review may appear in an ad, the FTC takes the position that this is an incentive that should be disclosed.
- **Disclosures in Tweets and Other Character-Limited Media.** The FTC elaborates slightly on its prior guidance, noting that "Sponsored," "Promotion," or "Paid ad" may be adequate disclosures. It also notes that "[s]tarting a tweet with 'Ad' or '#ad' . . . would likely be effective."
- **Disclosures Accompanying Videos.** The FTC recommends disclosing any material connections "in the video itself," either at the beginning or, depending on the length, several times throughout the video. Recommendations on live streaming are similar.
- **Disclosing Payments.** The FTC acknowledges that disclosing the specific amount of a

payment to a testimonialist may not be necessary. It notes that for an individual who was paid to review a new video game, “whether [s/he] got \$50 or \$1000, [s/he] could simply say [s/he was] ‘paid.’”

- **Using a Third Party to Handle Social Media.** According to the FTC, companies are responsible for training and monitoring those who make endorsements on their behalves. The FTC clarifies that even if a company hires a third party to handle its social media, the company is still “ultimately responsible.” It recommends taking certain steps to oversee the third party.
- **Endorsements by Employees.** If an employee discusses their employer’s products or services online, the FTC believes that the employee should disclose the employment connection. This is so even if the posting is made while the employee is off the clock. The FTC will generally consider disclosure via the employee's profile page to be insufficient. The FTC also recommends that companies take certain steps to control employee posts.
- **Commissions to Consumers.** If a consumer receives commissions for purchases made via their blog or other online editorial content, the FTC believes that the payment arrangement should be disclosed. A “buy now” button or a description such as, “affiliate link,” will not normally be considered adequate.