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Check in on Influencer Marketing



While regulator actions related to the COVID-19 pandemic have understandably received the bulk of consumer protection headlines in recent months, influencer marketing remains a hot topic for the Federal Trade Commission (FTC) and National Advertising Division (NAD).

As we continue into the latter half of 2020, we recap key enforcement actions, press releases, guidance, and letters related to endorsements and influencer marketing that brands may have missed during the pandemic.

Federal Trade Commission

- **Request for Public Comments on FTC Endorsement Guidelines:** The FTC [requested public comments](#) on questions related to the FTC [Endorsement Guides](#), including whether free or discounted products bias consumer reviews and whether changes in technology require changes to the Guides. Comments were due by [June 22](#) and updated guides may be released later this year or in 2021. Commissioner Rohit Chopra also [issued a statement](#) about the review, noting a desire to seek tougher remedies for violations of the Endorsement Guides.
- **Enforcement Against Teami:** The FTC [settled with Teami](#), imposing a \$15.2 million judgment related to the tea and skincare products company's failure to adequately disclose its material connections and certain unsupported weight loss and health claims. Specifically, the FTC warning letters stated the disclosures were insufficient because #teampartner was not visible except after clicking "more" and the video posts included no audio disclosure. The FTC also sent [warning letters to the 10 influencers involved](#).
- **Enforcement Against Global Community Innovations, LLC. et al. (Geniux):** The FTC [mailed 27,174 refund checks totaling over \\$551,000](#) to consumers who purchased "cognitive improvement" supplements that involved allegedly deceptive (fake) consumer and celebrity endorsements.
- **Enforcement Against LendEDU:** The FTC [finalized a \\$150,000 settlement with LendEDU](#), a comparison shopping website, over [allegations that it promoted deceptive rankings](#) of financial products for a fee and posted fake reviews of its website while falsely claiming that the information on its website was not affected by compensation from advertisers. In reality, companies paid for high rankings and

placement on the website.

- **Enforcement Against Health Center, Inc.:** Health Center, Inc. (HCI) agreed to a settlement related to [allegedly deceptive advertising claims](#) about its "cure-all" health and wellness products, which included allegedly [fake consumer testimonials](#). Specifically, the FTC alleged that HCI employees provided positive product reviews that were purported to be from ordinary customers in violation of the FTC Endorsement Guides.

National Advertising Division

- **NAD Inquiry Against Optivida Silver Solution:** The NAD brought an inquiry against Optivida Health related to testimonials and claims by Optivida's celebrity endorser, Jim Bakker, about the ability of its Optivida Silver Solution dietary supplement to treat or cure COVID-19. Optivida removed the social media posts and committed to discontinue the claims.
- **NAD Choice Home Warranty (CHW) Decision:** In connection with a competitor's challenge of CHW's claims that it "can save thousands," NAD recommended that the advertiser discontinue or modify testimonials by compensated customers to "clearly and conspicuously" disclose what consumers actually save and the material connection between the customers and CHW. Upon appeal, the National Advertising Review Board agreed with the NAD's recommendation to discontinue or modify certain claims.

Key Takeaways

- The FTC and NAD are monitoring influencers and this remains an enforcement priority for both.
- Brands must actively encourage influencers to disclose their material connections when promoting the brand.
- Brands should review their influencer and endorser processes, policies, or procedures to ensure they are consistent with FTC guidelines.
- Brands should keep an eye out for new, upcoming FTC guidance about influencers.

**Summer Associate Rina Kim contributed to this post.*

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