



BUSINESS LAW & ETHICS CORNER

Clear, conspicuous, and concise: Disclosures and Twitter word-of-mouth

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Abstract Regulatory bodies in the United States and the United Kingdom recently issued revised guidelines concerning the use of endorsements and testimonials in marketing efforts. Of specific interest within these guidelines is the disclosure of a material connection when brand communications are sent within social media platforms such as Twitter. The findings of quantitative and qualitative survey data analysis indicate that consumers may be misled by current disclosure conventions. Managerial implications, policy recommendations, and suggestions for future research are presented in light of these findings.

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1. Word-of-mouth marketing communications

Driven by perceptions of clutter and the waning effectiveness of traditional forms of communications, marketers continue to strive for relevance as consumers have more products to choose from and more communication channels to manage (Morrison & Krugman, 2001; Roy & Chattopadhyay, 2010; Zickuhr, 2010). One persuasive mechanism to which marketers and marketing researchers devote considerable inquiry is interpersonal communication, or word-of-mouth (WOM).

WOM involves the sharing of information between consumers, often with a focus on specific consumption activities (Moore, 2012). Whether it occurs offline (Abendroth & Heyman, 2012) or online (Jansen, Zhang, Sobel, & Chowdury, 2009), WOM has been found to impact consumption behaviors in a variety of situations and may come from any number of sources—from family to friends, from celebrities to brands (Jansen et al., 2009; Katz & Lazarsfeld, 1955; Moore, 2012). While WOM may be intrinsically motivated, it is not uncommon for extrinsically motivated WOM to occur. In such cases, a material connection may exist between the endorser and the brand he/she is discussing. An endorser is any “party whose opinions, beliefs, findings or experience the message appears to reflect” (Federal Trade Commission, 2008). A material connection occurs “[w]hen there exists a connection between

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the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience)” ([Federal Trade Commission, 2008](#)). According to the Federal Trade Commission (FTC), such connection must be fully disclosed.

An ordinary consumer likely understands that a material connection exists between a celebrity appearing in a traditional advertisement and the brand he or she is endorsing ([Savare & Leit, 2009](#)). However, in a social media environment where the brand message is being delivered directly by the endorser from his/her personal account, such a material connection may not be apparent ([Dickinson & Russell, 2011](#)). In social media environments, a lack of clarity with respect to material connections may lead consumers to believe that an individual who is in fact being paid to communicate about a brand is instead independent from the marketer. Such ‘masked marketing’—marketing communications that do not appear to be marketing communications—has drawn considerable attention regarding its potential deceptiveness ([Martin & Smith, 2008](#); [Petty & Andrews, 2008](#)).

In light of the influential power and potential deceptiveness demonstrated by some WOM, regulatory bodies in both the United States and the United Kingdom recently saw fit to issue guidelines designed to help firms better frame their WOM communications ([Dickinson & Russell, 2011](#)). These revised guidelines, which mainly suggest potential forms of disclosure, are intended to protect consumers from deceptive practices. Deceptive practices are designed to influence individuals to act against their own will ([Bok, 1992](#); [Martin & Smith, 2008](#)), preventing the development of informed decisions. Thus, regulatory protections are key within a system of free enterprise, as consumers must be able to make informed decisions in order for the system to operate ([Fraser, 1985](#)).

The purpose of our investigation is to determine if the suggested methods of disclosure that accompany the current U.S. Federal Trade Commission Guides Concerning Use of Endorsements and Testimonials in Advertising, as well as some of the alternative methods adopted by brands on social media platforms such as Twitter, are adequate to disclose material connections. We begin with a review of the FTC’s role in protecting consumers from deceptive acts related to commerce and marketing communications. Next, we highlight recent changes to the FTC Guides. Then we present the findings of a study that examines consumer understanding of FTC-suggested and commonly used methods of disclosure

to determine their ability to communicate the existence of a material connection, and in doing so, reduce the potential for deception. We conclude with a presentation of managerial implications, policy recommendations, and suggestions for future research.

2. The Federal Trade Commission and deception: A brief historical review

The Federal Trade Commission Act (FTC Act) established the Federal Trade Commission, a quasi-judicial body which was initially authorized to determine what constituted unfair methods of competition. The [Wheeler-Lea Act \(1938\)](#) amended the FTC Act and expanded the scope of the FTC’s authority to define and proscribe unfair or deceptive acts or practices in or affecting commerce. Section 5(a) of the FTC Act states: “Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful” ([Federal Trade Commission Act, 1914](#)).

Since passing of the FTC Act and inception of the FTC, an extensive body of case law has developed based on the FTC’s definition that an act or practice is ‘deceptive’ if (1) it has the tendency or capacity to mislead (2) a substantial number of consumers (3) in a material way ([Bailey & Pertschuk, 1984](#)). However, the legal standard that defined deceptive acts or practices has been the subject of debate among Congress and members of the FTC. In the case of [Cliffdale Associates Inc.](#), a majority of the FTC asserted that an act or practice is deceptive if it is (1) likely to mislead consumers (2) acting reasonably in the circumstances (3) in a material way. This new standard was enunciated in a letter to the Chairman of the Committee on Energy and Commerce, the purpose of which was to resolve a conflict within the FTC regarding the definition of ‘deception’ ([Federal Trade Commission, 1984](#)).

An analysis of deception begins with examining an act or practice that is likely to mislead consumers. The FTC need not determine that consumers are actually misled in order to conclude that an act or practice is deceptive. Further, a showing of intent to deceive is not required by law ([Federal Trade Commission v. Bay Area Business Council, Inc., 2005](#)). The FTC’s primary focus is on protecting the consumer by halting deception at its beginning, rather than punishing the acts of the violator ([Regina Corporation v. Federal Trade Commission, 1963](#)). Acts or practices that have been found to be deceptive include false oral

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