

Food, the FTC and the Risks of Social Media Promotions

Anthony Froio and Melissa Goodman

Social media platforms offer food and other CPG companies a host of new, creative ways to engage with consumers and generate brand experiences, especially on strongly visual platforms like Pinterest, Vine, and Instagram. But a recent FTC investigation of a contest on Pinterest offers a cautionary tale regarding the necessary disclosures the FTC wants for social media contests and promotions—especially when consumer use of the brand, brand name, or images of the branded product are required for entry. Though the FTC ultimately issued a “closing letter” without further action—in part because the company under investigation changed its social media policy for contests—the details of the contest and the FTC’s responses to it provide great insights into “how to” (and how not to) use social media to conduct brand contests and promotions.

A “Pin It to Win It” World

Pinterest has become a popular social media outlet for companies to promote their brands among the sites users who “pin” images and other media together on “boards” that show ideas for different projects and interests. Many companies have made contests and sweepstakes an important part of their Pinterest strategy and “Pin It to Win It” is now a part of Pinterest culture. Instagram and Vine—which offer different ways for consumers to share and comment on visual images—also frequently feature platform-specific promotions and contests. (So do “older” social media platforms like Facebook and Twitter, where contest entry often only requires a “like” or a “retweet”).

But—as shoe manufacturer retailer Cole Haan recently found out—this kind of consumer interaction may run afoul of the FTC’s rules regarding endorsements.

Social Media Contests as Endorsements

Like many other companies who maintain a presence on Pinterest, Cole Haan sponsored a contest to engage with its customers. To enter, consumers had to create a Pinterest Board titled “Wandering Sole” using:

- Five shoe images from Cole Haan's own Wandering Sole Pinterest Board
- Five images of the contestants' "favorite places to wander"; and
- The hashtag “#WanderingSole” in each “pin.”

The stated prize for the most creative entry was \$1,000 shopping spree.

The FTC opened an investigation of the Cole Haan Pinterest contest using its authority under Section 5 of the FTC Act. The FTC turned to its [Guides Concerning the Use of Endorsements and Testimonials in Advertising](#) [1], 16 CFR § 255.5 for specific direction. § 255.5 requires disclosure of any material connection between a marketer and an endorser when their relationship is not otherwise apparent from the context of the communication that contains the endorsement.

The FTC said the financial incentives of the Cole Haan contest created a material connection between Cole Haan and the contest's entrants that other consumers who saw the Wandering Sole pins would not reasonably expect. According to the FTC, the #WanderingSole hashtag was not enough to adequately communicate to other Pinterest users the financial incentives that motivated the pins. While issuing a "closing letter" without further action, the FTC concluded that "entry into a contest to receive a significant prize in exchange for endorsing a product through social media constitutes a material connection" requiring adequate disclosure under Section 5 of the FTC Act.

The FTC's investigation of Cole Haan's Pinterest contest and its conclusion regarding social media contests has important consequences for food and other CPG companies considering or using social media contests to promote their brands. The FTC published this letter to put all companies on notice that existing guidelines on endorsement disclosures apply to contests or promotions across social media platforms.

Going Forward

The FTC does not want to end social media contests, but it does want to make sure that consumers clearly understand the incentives and connections behind the sharing of corporate content on social media sites. While the FTC has not yet specifically outlined just what disclosures will be adequate for social media-based contests, March 2013 updates to the FTC's [.com Disclosures Guide](#) [2] (".com Guide") provide some guidance.

The .com Guide specifically addresses adequate disclosure in space-constrained ads on platforms like Twitter. Through specific examples, the .com Guide states that using a hashtag #Ad or #Sponsored is adequate to let consumers know the content is sponsored advertising.

Similarly, use of #contest, #entry or #sweepstake as a requirement for entry into social media contests should go a long way to helping create the disclosures the FTC demands. Accordingly, food companies that want to continue to take advantage of the brand-building social media contests offer should build use of these or other clear indicators of sponsorship into contest entry rules. That way, companies can keep using social media AND meet their obligation to disclose the financial incentives—an approach that allows everyone to keep #ContestWinning.

[Anthony Froio](#) [3] and [Melissa Goodman](#) [4] are trial attorneys at [Robins, Kaplan, Miller & Ciresi L.L.P.](#) [5] They represent Food and Beverage companies in complex

Food, the FTC and the Risks of Social Media Promotions

Published on Food Manufacturing (<http://www.foodmanufacturing.com>)

business disputes involving contracts, intellectual property, unfair competition, trade secrets and fraud actions. aafroio@rkmc.com [6] and magoodman@rkmc.com [7].

Source URL (retrieved on 06/02/2014 - 1:54pm):

<http://www.foodmanufacturing.com/articles/2014/06/food-ftc-and-risks-social-media-promotions>

Links:

[1] <http://www.ftc.gov/sites/default/files/documents/one-stops/advertisement-endorsements/091005revisedendorsementguides.pdf>

[2] <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>

[3] <http://www.rkmc.com/lawyers/anthony-froio>

[4] <http://www.rkmc.com/lawyers/melissa-goodman>

[5] <http://www.rkmc.com/services/food-and-beverage>

[6] <mailto:aafroio@rkmc.com>

[7] <mailto:magoodman@rkmc.com>