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## **Social Media Photo Contest Draws FTC Attention: Endorsement/Testimonial Guidelines Apply**

The FTC recently conducted an investigation of shoe manufacturer Cole Haan's "Wandering Sole" photo contest. The investigation focused on compliance with FTC guidelines requiring disclosure of material connections between an advertiser and consumers who offer testimonials or endorsements about the advertiser's products. While the FTC eventually issued a no-action letter, the facts of the case provide useful guidance to advertisers who seek to incentivize consumer action via social media.

The contest offered a \$1,000 prize for the "most creative entry" among photos posted on Pinterest. Entry required (a) creating a Pinterest board titled with the manufacturer's slogan "Wandering Sole," (b) pinning five photos from the manufacturer's "Wandering Sole" Pinterest board, (c) pinning five photos of the consumer's favorite "place to wander," and (d) including the hashtag #WanderingSole with each photo. There was no requirement (or instruction) to mention the contest or the prize, neither of which would be obvious to a viewer of the consumer-posted boards.

The FTC's concern was that on these particular facts – *i.e.*, a photo contest run via individual consumer social media pages featuring the manufacturer's products without any explanation that consumers were posting the photos to try to win a prize – viewers could be misled into believing that the Pinterest boards reflected spontaneous consumer endorsements or testimonials for the manufacturer's products.

The FTC took this occasion to announce clearly that it viewed the consumer postings in this particular case as "endorsements," and that the existence of the contest should have been disclosed. The FTC took no action, however, because: (a) the FTC had never previously applied its endorsement guidelines to contest entries; (b) the contest ran for a short time with relatively few entries; and (c) the sponsor subsequently adopted a social media policy to address the FTC's specific concerns.

The lesson for advertisers is that, unless the existence of a contest is otherwise clear from the context – for example, if consumers are posting photos on a contest web page – consumers who are invited to post content in social media to promote the sponsor's brand should be instructed to disclose the existence of the contest with the posting. More generally, advertisers should remember to adopt and enforce general social media policies to instruct all persons (including company personnel) who talk about the advertiser's products to disclose any material relationship with the company, such as any employment, compensation, free-product offers, contest entry, or other fact that might reasonably affect an independent viewer's judgment of the objectivity of the "endorser's" statements about the advertiser and its products.

The FTC's no-action letter can be found [here](#).

The FTC's general guidelines on endorsements and testimonials can be found [here](#).

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