

WHAT YOUR EMPLOYEES SAY ONLINE ABOUT YOUR AGENCY CAN LEAD TO TROUBLE WITH THE FTC

by

MARK G. BURNETTE

Mr. Burnette is the attorney for the Association and specializes in dealing with the unique legal issues of insurance agencies and agents. He handles the "IIAG Free Legal Service" program, which provides each member agency a free 15 minute telephone consultation per quarter. Contact him at 1-800-IIAG-911 or 404-638-5891 or by e-mail to mburnette@decaturlaw.com

The explosion of social media (Facebook, LinkedIn, Twitter, etc.) over the past few years has opened up a whole new networking and advertising medium for all businesses, large and small. Its relative inexpensiveness combined with its virtually unlimited reach, as well as the ability to target very specific customer groups, has made social media the hot new way for a business and its employees to connect with its customers and potential customers, and thereby, promote the sale of its products or services. Anyone with an internet connection can now express an opinion about a product or service and have that opinion disseminated literally around the world in minutes, if not seconds.

However, in using this new medium for networking and advertising, businesses need to be aware of certain requirements that are imposed by the Federal Trade Commission ("FTC") on the making of statements about a business or its products or services by an employee or other person with a "material connection" to the business, which statements are intended to promote the sale of those products or services. Even though the authority of the FTC to regulate business competition is limited to interstate or international commerce, the FTC will most likely have jurisdiction over any business related posting on social media or other internet sites due to its worldwide reach, even if the business in question operates only within a single state.

The statute creating the FTC declares it to be unlawful for any person or other entity to engage in "unfair methods of competition . . . and unfair or deceptive acts or practices in or affecting commerce." The FTC has adopted guidelines on the proper use of endorsements and testimonials for the purpose of promoting the sale of a business' products or services. It considers anything done or said by any person about a business' products or services for such a purpose to be an endorsement or testimonial. The person does not have to be a celebrity or otherwise well known and does not even have to be identified by name.

The FTC guidelines require that any endorsement or testimonial made by a person with a "material connection" to the seller of the products or services in question must contain "full disclosure" of the connection, if the intended audience would not "reasonably expect" the existence of the connection. Thus, statements, photos, videos, and anything else posted on a social media site, blog, or other internet medium by a business' employees or others with a "material connection" to the business that seek to promote the sale of its products or services must contain such "full disclosure" in order to comply with the FTC's guidelines. The FTC considers any connection between a

business and the endorser “that might materially affect the weight or credibility” to be given the statement by its intended audience, if known to such audience, to be a “material connection.”

Any conduct in violation of the FTC’s guidelines can lead to an investigation by the FTC and the taking of corrective action by it. Such action can include the issuance of what amounts to an injunction forbidding the continuation of a particular practice and requiring the business in question to remedy any damage caused by the improper conduct of its employee or others. The FTC also has the power to bring an action in federal district court for the imposition of a civil penalty of up to \$10,000 for a knowing violation of the law or a violation of its injunction.

From the above, it is clear that anytime an employee of an insurance agency posts a positive statement in any way, shape, or form about the agency on a social media site or other internet medium, that employee’s connection with the agency must be “fully disclosed” as part of that statement. The same thing is true for any such statement posted by a relative of the employee or anyone who is likely to benefit by the agency’s sale of its products and services. Agency owners would be well advised to create and enforce a comprehensive policy regarding its employees’ use of social media and other internet mediums in connection with the conduct of their business activities.

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