



March 2, 2009

William E. Kovacic, Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Endorsement Guides Review, project No. P034520
Docket ID FTC-2009-0020
16 C.F.R. Part 255
Guides Concerning the Use of Endorsements and Testimonials in
Advertising

Chairman Kovacic and Commissioners Harbour, Leibowitz and Rosch:

The Public Relations Society of America (PRSA) is pleased to submit these comments in response to a request by the Federal Trade Commission (FTC) for public comments on the overall regulatory impact of proposed changes to its Guides Concerning the Use of Endorsements and Testimonials in Advertising (the "Guides"). PRSA is the world's largest organization of public relations professionals, and its members are directly impacted by FTC rules and regulations governing the use of endorsements and testimonials in advertisements as part of integrated communications programs executed on behalf of our clients.

PRSA is a 501c(6) professional organization representing more than 22,000 professionals, as well as 10,000 student members of our ancillary Public Relations Student Society of America (PRSSA), who practice public relations in every state of the United States. PRSA is responsible for representing, educating, setting standards of excellence, providing certification, and upholding principles of ethics for its members and, more broadly, the \$4 billion U.S. public relations profession.

Members of PRSA include independent practitioners, small business owners, employees of government agencies, corporations, academic institutions, law firms and professional services practices, public relations firms of all sizes and practice specialties, and nonprofit institutions of every description. PRSA membership also includes professionals who engage public relations as part of a

comprehensive mix of marketing communications strategies to achieve client objectives.

The Society operates under the direction of a board of directors elected by the general membership. Each year, PRSA members also elect a chair and chief executive officer, as well as a board of directors comprised of practitioners from across the nation. Guidance for the organization in fulfilling its mission – to advance the standards of the public relations profession through education, innovation and adherence to a strong code of ethical behavior – stems from the organization’s published bylaws.

A. Comment Summary

PRSA shares the view of the FTC that the public is best served by fully open and transparent information offered to consumers. We also agree with the FTC’s stated regulatory intent of striking a balance among governmental interests to prevent consumers from receiving deceptive or misleading information, advertisers’ interest in creatively communicating useful product information, and minimizing the burden on the business of conducting pre-publication studies to substantiate product claims.

In that spirit, PRSA maintains that existing rules and regulations, coupled with vigorous self-regulation by all those involved at every level in the identification, explication, presentation and broadcast of advertisements engaging expert or celebrity endorsements and testimonials, should be sufficient to meet FTC goals.

However, PRSA maintains that key provisions of the proposed rules are not sufficiently clear to prevent confusion and uncertainty that will leave communications professionals without adequate clarity to advise the clients who rely on them for guidance in creating promotional campaigns for their products, services and organizations. This lack of clarity, and resulting applicability to new and emerging circumstances, presents a fundamental challenge to PRSA and practicing public relations professionals to realizing its commitment to the free flow of truthful and accurate information, as well as to other key principles of the industry-standard PRSA Code of Ethics.

B. Clarity and Applicability

The definitional structure on which the proposed rule changes hinge leaves too much room for subjective interpretation, running counter to the level of clarity in communications to which PRSA and its members commit professionally, as well as ethically, under the PRSA Code of Ethics (the “Code”). The world’s largest and foremost professional association for public relations professionals, PRSA commits to the principle that “free flow of information is critical to decision making in a democratic society,” encompassing the values of truth and accuracy in all communications, as well as to the principal of advancing the interests of those we represent.

In that context, PRSA views the proposed rule changes as lacking in the degree of clarity that enables members to meet their obligations under the Code to ensure the free flow of accurate and truthful information both to their clients and, in turn, to the consuming public. The rule changes also put public relations professionals in a position where they cannot confidently meet their obligations to advance the interests of those we represent. As a professional society of communicators, moreover, we set, encourage and formally recognize the execution of professional duties that meet high standards of best practice in communications, and so are particularly attuned to the questions left unanswered with regard to the meaning and application of the proposed changes.

Emerging from these principles, PRSA maintains that it has a professional and ethical obligation to speak out since the proposed rule changes are not sufficiently clear in their application and impact with regard to commonly arising professional scenarios, where clients rely on professional guidance and counsel. PRSA itself must ensure that, as a member organization, we remain securely in a position to carry out our ethical communications obligations under the Code. PRSA must advocate the free flow of accurate and truthful information to its members and, in turn, their communications with their clients. The resulting campaigns bring critical information to the consuming public who relies on the truth and accuracy of all representations.

In the proposed rules, there is much room for subjective interpretation. The definition of the key concept of “endorsement,” in fact, is itself expressed in open-ended terminology – “the only relevant criterion in determining whether a statement is an endorsement is whether consumers believe it reflects the endorser’s views.” Defining a term on which a regulatory structure is built with the subjective measure of consumer understanding creates inherent uncertainty. Moreover, the subjectivity of the definition is reinforced by the Commission’s extensive discussion of the very nature of consumer knowledge and their understanding of the information they receive from endorsers and advertisers. This construct is at best circular and certainly highly problematic when it triggers regulatory scrutiny that has the potential to impede the free flow of information. Additionally, defining “endorsement” as legally indistinguishable from “testimonial” contributes to the blurring of distinctions with established meaning and consequence for the practice of public relations and other communications disciplines. Additionally, as the world’s largest society of professional communicators, PRSA must also question the premise that it is a “natural implication” for consumers to assume that an endorsement represents typical results, despite the findings in the Commission’s study.

As a profession, practicing under the guidance of the PRSA Code of Ethics, we adhere to the highest standards of accuracy and truth in communicating with the public and in advancing the interests of those we represent. Steeped in these fundamental principles, as well as professional best practices, PRSA suggests

that the lack of clarity, combined with the impact the proposed rules stand to have on common client situations for marketers of all disciplines, puts our members in a position of uncertainty in meeting their obligations under the PRSA Code of Ethics. As the professional association committed to promoting ethics and best practices, PRSA consequently feels a need to speak out to advocate that regulatory compliance and adherence to ethical obligations are not inconsistent. Members of the profession must speak from a position of certainty in informing members who, in turn, need to deliver that guidance in advising clients and executing communications programs for public consumption.

C. New Media

The communications environment in the United States and worldwide is being radically altered by the advent of new and social media. public relations, with its professional focus on two-way communications and relationship building, is the discipline that parallels most closely the skill and experience requirements of the new media environment and is positioned to address client needs as communications strategies adapt to that environment. Moreover, as the lines continue to blur among traditional distinctions among advertising, public relations and marketing, in part due to the new media environment, clients are increasingly looking to public relations professionals for guidance in creating new communications strategies and tactics that engage these game-changing methods of serving clients and disseminating public information.

The blurring of the lines among communications disciplines also means that “advertising” can no longer be neatly defined, with new implications for the use – and regulation – of endorsements and testimonials. Advertising, by nature, is fixed messaging, developed and presented by an organization to targeted publics. However, in the age of new media, no marketing discipline can completely control its messaging, with countless channels available for public comment, opinion, dialogue and interaction. Despite this new reality, the Guides continue to have just one standard for traditional and non-traditional marketing venues. PRSA looks forward to the Commission’s expressed desire to illustrate in more detail the applicability of the Guides’ long-established principles to new and social media.

The Commission does address the issue of endorsers, such as bloggers, who should not conceal their relationship with advertisers or misrepresent their opinions or identities, such as by creating artificial entities to endorse products. In its discussion, the Commission states that it “has long believed that industry self-regulatory codes play an important role in consumer protection, and that the development of ethical standards emphasizing transparency for marketers who engage in new forms of marketing is an important step to this end.”

Transparency is also a fundamental principle of the PRSA Code of Ethics. The Code states that “Open communication fosters informed decision making in a democratic society,” with a corresponding intent “to build trust with the public by

revealing all information needed for responsible decision making.” In a word, the PRSA Code puts forward transparency as a key element of communications ethics.

PRSA also has addressed specifically the issue of anonymous Internet postings and the use of artificial online identities. Based on principles in the PRSA Code of Ethics, PRSA periodically issues Practice Service Advisories to clarify the application of Code principles to situations suggested by unfolding news events or practice challenges. In Public Service Advisory PS-8, PRSA cites Code provisions that prohibit the “misrepresentation by organizations and individuals using blogs, viral marketing, and anonymous Internet postings with undisclosed sponsorships and/or deceptive or misleading identities or descriptions of goals, causes, tactics, sponsors or participants. “

In Practice Service Advisory PS-6, PRSA clarifies Code prohibition of “the failure of commentators and professional spokespersons to disclose that they have been paid to promote a cause or point of view, or that they have a financial interest in the products or organizations on which they purport to provide expert opinion, commentary or information.” The Advisory was issued in response to two situations: where commentators posing as news reporters and expert analysts whose views were presumed to be independent had been paid to endorse a cause or product and had not disclosed that relationship; and where supposedly independent consumer product experts appeared on news programs and endorsed specific products, but were later found to have been paid for those endorsements or to have had prior financial relationships with the manufacturers.

D. Free Flow of Information

Under the PRSA Code of Ethics, members espouse the core principle that “Protecting and advancing the free flow of accurate and truthful information is essential to serving the public interest and contributing to informed decision making in a democratic society.” Under that principle, PRSA cautions that removing the safe harbor of the disclaimer can actually work against both the highest standards of accuracy and truth and the best interest of consumers, which PRSA advocates through several Code principles.

The disclaimer provides a clear statement that an endorser’s experience is not being represented as “typical results,” providing a definitive statement of fact. If the disclaimer is deemed insufficient, and advertisers are required to do independent research into “typical results,” a door is opened to a wide spectrum of potential uncertainties and subjectivity in several ways:

- Research must be conducted by the companies who are eager to convey a marketing message
- Research to determine “typical results” is exceedingly difficult to achieve because of the scope of variations in individual experience and because achieving a sample size that would have statistical integrity and be scientifically valid would have to

- be very large, an undertaking that is unduly burdensome in terms of time, cost and practical feasibility.
- Requiring that such research be conducted prior to presenting a testimonial would put a serious chilling effect on the free flow of information, another PRSA Code principle, and open communications, the results of which could be that consumers may never receive important information providing significant benefits such as critical health, fitness, financial or educational opportunities.

Even if advertisers could determine the results consumers generally achieve with the advertised product or program, disclosing those results would confuse consumers because of the amount of information advertisers would have to provide in order to enable consumers to interpret those averages and, in turn, discourage them from engaging information that might be helpful to them. It may also be that, insofar as the current Guides provide no incentive for a company to track and analyze consumers' success or failure with its product or program, they actually decrease the amount of useful information that could be made available to consumers.

For all these reasons, PRSA urges the Commission to clarify the proposed amendments to the existing Guides before considering further promulgation.

PRSA looks forward to assisting the Commission in evaluating the current Guides and the impact of its proposed changes on the public relations industry.

Respectfully submitted,

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