COMMENTS SUBMITTED FOR THE ENDORSEMENT GUIDES REVIEW, PROJECT NO. P034520

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Comments:

The American Association of Advertising Agencies ("AAAA") and American Advertising Federation ("AAF") are pleased to jointly submit these comments to the Federal Trade Commission ("Commission" or "FTC") in response to its Notice of Proposed Changes ("FTC's Notice of Proposed Changes") to its Guides Concerning the Use of Endorsements and Testimonials in Advertising (the "Guides"). The AAAA and AAF broadly support the goal of responsible marketing and self-regulation and appreciate the opportunity to comment on this important issue.

The AAAA, founded in 1917, is the national trade association representing all components of the American advertising agency business. Its nearly 500 members, comprised of large multi-national agencies and hundreds of small and mid-sized agencies, maintain 2,000 offices throughout the country. Together, AAAA member advertising agencies account for nearly 80 percent of all national, regional and local advertising placed by agencies in newspapers, magazines, radio, television and the

Internet in the United States. AAAA is dedicated to the preservation of a robust free market in the communication of commercial and noncommercial ideas.

The AAF, the oldest national advertising trade association, representing 40,000 professionals, similarly offers a valuable and historical perspective with respect to consumer endorsements and testimonials in advertising. The AAF has a national network of 200 ad clubs located in ad communities across the country. The AAF's mission is to protect and promote the well-being of advertising through a unique, nationally coordinated grassroots network of advertisers, agencies, media companies, local advertising clubs and college chapters.

Together these organizations represent a broad cross-section of the advertising industry, including the nation's leading brands, corporations and Fortune 500 companies. As such, the AAAA and the AAF are uniquely situated to comment on the Guides and provide their expertise and experience.

On June 18, 2007, the AAAA and the AAF submitted joint comments[1] ("AAAA/AAF's 2007 Joint Comments") in response to the Commission's first request for public comments on the Guides. Finding the current Guides effective in ensuring the truth and accuracy of endorsements and testimonials, the AAAA and the AAF strongly urged the Commission to not adopt any changes to the Guides.[2] Notwithstanding the AAAA/AAF 2007 Joint Comments, and comments submitted by other industry members, the Commission has proposed various amendments to the Guides that, if adopted, would

[1] Comments submitted for the FTC Guides Review Project No. P034520 by the American Association of Advertising Agencies and American Advertising Federation, submitted June 18, 2007.

[2] The Guides not only promote responsible marketing by mandating that endorsements reflect the honest opinions, beliefs, or experience of the endorser and by prohibiting any representation which would be misleading, but they also acknowledge the inherent differences between consumer, expert and celebrity endorsements by providing well-defined guidelines for each specific type of endorsement.

represent the most sweeping changes in testimonial advertising in almost thirty years. While we appreciate the Commission's desire to protect consumers from deceptive advertising, there is little evidence that consumers are deceived by testimonials or endorsements, whether in traditional media or new media. In the absence of such evidence, the overly-broad amendments would not appear to be warranted.

While the AAAA and the AAF share the desire to ensure non-deceptive endorsements and testimonials in advertising, both organizations strongly urge the Commission to reconsider the proposed, overly-stringent amendments that will likely result in advertisers abandoning long-standing, legitimate advertising techniques, such as consumer testimonials, and rejecting new media forms, such as blogs and viral marketing.

I. The Proposed Amendments Are Based on Two Flawed Studies

As an initial matter, it is important to note that many of the proposed amendments are based on two flawed research studies, the Endorsement Booklet Study and the Second Endorsement Study. As explained in more detail in the AAAA/AAF's 2007 Joint Comments, and summarized in part below, the two Studies are not representative of all product categories or consumers generally, and are admittedly limited in design and methodology. Accordingly, neither study provides a reliable basis for eliminating typicality disclaimers in consumer testimonials and/or adopting many of the other proposed amendments.

The first study, entitled "The Effect of Consumer Testimonials and Disclosures on Ad Communication for a Dietary Supplement" ("Endorsement Booklet Study"), examined the communication effects of a promotional booklet for a dietary supplement

that contained multiple consumer testimonials promoting the product. Tellingly, the Endorsement Booklet Study acknowledged certain limitations in the study's design and methodology that would limit its application generally to all consumer testimonials, including the fact that it was comprised of only 200 participants, eighty percent of whom where over 60 years of age. The Endorsement Booklet Study was also based on a single product category—dietary supplements.

The second study, entitled "Effects of Consumer Testimonials in Weight Loss, Dietary Supplements and Business Opportunity Advertisements" ("Second Endorsement Study") was also not generally representative of demographic groups or products, as it was heavily-skewed to the dietary supplement and weight loss industries, with the majority of the participants over the age of 45.

Notably, the Commission admits that "the staff's research did not attempt to determine what message consumers take away from testimonials and disclaimers on all media and for all products." FTC's Notice of Proposed Changes at 36. Despite the admitted limitations of both studies, they appear to be the basis for eliminating typicality disclaimers in consumer testimonials and for adopting several other changes to the Guides, even though such changes would result in many advertisers no longer being able to use testimonials in their advertising.

II. Renumbered 255.2(b) Would Impose Substantial Burdens On Advertisers

The Commission's Renumbered Section 255.2(b) provides, in part, that "An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service will *likely* be interpreted as representing that the endorser's experience is representative of what consumers will

generally achieve with the advertised product in actual, albeit variable, conditions of use." In drafting this amendment, the Commission acknowledged that certain advertisements employing testimonials may not convey that the endorser's experience is representative of what consumers will generally achieve with the advertised product or service. *See* FTC's Notice of Proposed Changes at 17. Thus, renumbered 255.2(b) was intentionally drafted to not be an unequivocal statement but to be ambiguous with respect to when testimonials will be interpreted as representative of what consumers will generally achieve with the product or service.

While, at first glance, the intentionally ambiguous language would appear to be favorable to advertisers, the amendment would ultimately impose a substantial burden on advertisers by making them responsible (with little guidance from the Commission) for determining how testimonials in each instance will be interpreted by consumers. Notably, the ambiguous language (and the Commission's explanation thereof) fails to provide the information that would be necessary for an advertiser to make this determination, such as to whom would the testimonial *likely* be interpreted as being generally representative. Is it the reasonable person standard or some other standard? If the latter, what standard applies and is the standard more stringent than the reasonable person standard? (e.g., the reasonable *advertiser* standard). Without answers to these critical questions or further guidance from the Commission, it would be unfair to burden advertisers with this responsibility, as many advertisers may decide to include generally representative disclosures (and pay for the expensive research costs associated therewith) even in instances where such disclosures are not necessary (and, by consequence, likely confusing consumers).

III. Disclaimers of Typicality Are A Well-Accepted and Valuable Advertising Technique

Section 255.2(a), as currently written, provides that if an advertiser does not have adequate substantiation that the experience described by the endorser is representative of what consumers will generally achieve, the advertiser can either: (i) clearly and conspicuously disclose what generally expected performance would be in the depicted circumstances, or (2) disclose the limited applicability of the endorser's experience to what consumers may generally expect to achieve, i.e., that the depicted results are not representative (which are often referred to as "disclaimers of typicality"). Although disclaimers of typicality have been accepted by the Commission since 1975[3] and have been widely-utilized as an effective advertising device by legitimate advertisers for several years, the proposed amendment to Section 255.2(b)[4] would eliminate disclaimers of typicality, and, in doing so, deprive advertisers of a valuable and long-standing advertising technique.

Proof of the effectiveness of typicality disclaimers is most evident in connection with their use in aspirational testimonials, particularly in the weight loss and health-related categories. Truthful, inspirational consumer testimonials have long motivated other consumers to make important lifestyle changes, such as losing weight and/or adopting healthier lifestyles. Despite the Commission's claims to the contrary, consumers viewing weight loss testimonials typically understand that aspirational testimonials are reflective of the specific consumer's circumstances and not necessarily

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[3] *See* 40 Fed. Reg. 22146, 22147 (May 21, 1975).

[4] The FTC proposed amendment to Section 255.2(b) provides that "[i]f the advertiser does not have substantiation that the endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely upon adequate substantiation for that representation."

reflective of the experience one will have using the program, especially in the weight loss category where most consumers are able to recognize that other variables affect weight loss, such as metabolism, current weight, sex, height, and/or exercise regime.[5] These aspirational testimonials are not intended to be "generally representative" of what consumers can expect to achieve, but are intended to motivate and inspire consumers to adopt healthier lifestyles. Notably, many consumers who respond to aspirational testimonials do so after many years of not being motivated or persuaded by other advertising techniques, including statements of generally expected results.

Because many advertisers in the weight loss and health-related industries would not likely be able to determine the generally excepted performance of their products in the depicted circumstances due to the variables involved in such calculations (*i.e.*, metabolism, current weight, etc.) (*See* Section IV(A)(2)), these advertisers would no longer be able to employ aspirational testimonials in their advertising. Thus, the elimination of typicality disclaimer would deprive consumers of an advertising technique that has been instrumental in inspiring Americans to make positive lifestyles changes, and, by consequence, improving the lives of Americans.

IV. The Generally Expected Result Standard Unfairly Burdens Advertisers and Is Unnecessary In Light of the Current Regulatory and Self-Regulatory Framework

A. The Generally Expected Result Standard Would Impose Impractical - and in Certain Instances - Impossible - Burdens on Advertisers

In the place of typicality disclaimers, the Commission has proposed a mandatory disclaimer of the generally expected results ("Generally Expected Results Standard"): "If

[5] *See* In re Review of the Guides Concerning the Use of Endorsements and Testimonials in Advertising for Comments, Product Partners, LLC at 3 (June 18, 2007); In re Review of the Guides Concerning the Use of Endorsements and Testimonials in Advertising for Comments, Jenny Craig Comments at 5 (June 18, 2007).

the advertiser does not have substantiation that the endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely upon adequate substantiation for that representation." For the reasons stated below, this new standard would be impractical - and, in some instances, impossible - to implement and is simply unnecessary in light of the current regulatory and self-regulatory framework.

1. Imposes Unreasonable Economic Burden On Advertisers

In most cases, providing the generally expected results would impose an unreasonable economic burden on advertisers because such determinations would likely require comprehensive studies (e.g., calculating average performance across a diverse customer base), which, for most advertisers, would be a costly endeavor. Especially given the current economic climate, many companies simply do not have the economic resources to conduct these comprehensive studies. Even the companies that may have conducted comprehensive studies in the past may no longer have the resources to update their previous research. Recognizing the economic burden such studies would impose on advertisers, the Commission admits that the costs associated with conducting a study may result in advertisers no longer using consumer testimonials: "a calling for non-typical testimonials to be accompanied by disclosure of the results consumers generally achieve with the advertised product would increase costs for those advertisers who have not previously tracked consumers' experience with their products, and *could present an impediment to the use of such testimonials by certain advertisers.*" FTC's Notice of Proposed Changes at 27 (emphasis added).

Most notably, a mandatory disclosure of generally expected results would significantly disadvantage smaller advertisers who do not have the resources to conduct expensive surveys, and new businesses that may not yet have substantiation for the generally expected results of their product. Because such advertisers would not likely be able to afford the required studies, they would not be able to employ consumer testimonials in their advertising. Without consumer testimonials, these advertisers would not be able to compete on equal footing with their competitors, particularly those competitors who may have far more extensive economic resources.

2. Generally Expected Results Are Impossible To Calculate

There are certain products, such as weight loss or health-related products, where it would be almost impossible to determine their generally expected performance as certain variables, such as height, metabolism, age, current weight/health, family history, and exercise regiment, affect how the product performs. For example, the average weight loss of obese, young men with fast metabolisms would have little to no bearing on the expected weight loss of a non-obese, older woman, with a slow metabolism. In addition, a disproportionately large group (e.g., obese, young men with fast metabolisms) could skew the average scores so that the scores would not be an accurate or realistic representation of the generally expected results. Even though calculating the generally expected results would be impractical, if not impossible, in such instances, these advertisers would still be required to spend thousands to millions of dollars in vain trying to develop comprehensive studies that attempt to calculate the average results.

B. Generally Expected Results Standard Is Unnecessary In Light of the Current Regulatory and Self-Regulatory Framework

Requiring a disclosure of Generally Expected Results is unnecessary in light of the current regulatory and self-regulatory framework, which effectively ensures against deception without overly burdening advertisers. Under the existing regulatory structure, the Commission may regulate deceptive testimonials and/or disclosures that are not clear and conspicuous, as it has done successfully in the past, under Section 5 of the Federal Trade Commission Act ("FTC Act"). In the FTC's Notice of Proposed Changes, the Commission acknowledges that it has brought a number of enforcement actions against consumer testimonials for deceptive advertising pursuant to its Section 5 enforcement authority. *See* FTC's Notice of Proposed Changes at 19. One of the Commission's stated reasons for brining a number of these enforcement actions is the fact that "the disclosures are often buried in fine print footnotes or flashed as video superscripts too quickly for consumers to read them", which is more appropriately challenged under the Commission's Section 5 authority, and should not influence the adoption of new disclosure requirements in consumer testimonials.

In addition to FTC enforcement, most states have adopted their own mini-FTC Acts, which the State Attorneys General have successfully used to bring enforcement actions for false and deceptive endorsements and testimonials. Private litigants also continue to challenge unsubstantiated testimonials through Lanham Act litigations. Industry self-regulation via the National Advertising Division ("NAD") of the Council of Better Business Bureaus ("CBBB"), and the National Advertising Review Board ("NARB") provides another deterrent to deceptive consumer testimonials. This multi-

faceted structure ensures that consumer testimonials are non-deceptive so that the overly-stringent Generally Expected Results standard is simply unnecessary.

V. The Proposed Amendment Regarding Celebrity Endorsements Unfairly Subjects Celebrities to Liability

The Commission's proposed amendment imposing liability on celebrity endorsers[6] should be reconsidered because, as written, it could unfairly expose celebrities to liability for advertising claims for which they do not possess the requisite knowledge to verify and/or authority to change (and may result in a breach of contract action if they attempt to make such changes). Because the amendment provides little, if any, guidance as to when a celebrity would be liable for such statements, fear of liability may result in celebrities refraining from endorsing products, which would deprive advertisers of another long-standing and valuable advertising technique.

A. Celebrities Have No Knowledge about the Law So That Liability Would Be Warranted

The Commission acknowledges that the revisions to the Guides are intended to formalize the principles that have been enforced by the Commission. [7] However, the proposed revisions do more than that as they potentially expose celebrities to strict liability without acknowledging the celebrity's limited knowledge about the advertisements and regulatory obligations and/or limited control over such advertisements. As written, and without further clarification, the proposed changes could make an endorser *per se* liable for claims in an advertisement (while we acknowledge

[6] *See* proposed Section 255.1(d) which states that "[a]dvertisers are subject to liability for false or unsubstantiated statements made through endorsements, or for failing to disclose material connections between themselves and their endorsers. Endorsers also may be liable for statements made in the course of their endorsements."

[7] Federal Trade Commission, 16 C.F.R. Part 255, Guides Concerning the Use of Endorsements and Testimonials in Advertising, Notice of Proposed Changes to Guides at 4.

that is not likely the intent of the amendment, the broad, sweeping language can be interpreted as imposing *per se* liability).

Celebrities are hired by advertisers for their celebrity status, not because of their knowledge of a particular product or service. Nonetheless, the Commission's proposed amendment could be interpreted as imposing new obligations on celebrity endorsers to ensure that claims made by an advertiser and communicated by the celebrity are independently verified and properly substantiated.[8] This obligation could require a celebrity to educate himself or herself on not only the product or service at issue, but also the relevant industry and competitors' products or services. Because the products and services for which a celebrity is paid to endorse are highly complex, requiring specialized degrees for those whose job it is to verify claim substantiation, this new requirement would create an unfair and impractical burden on celebrity endorsers. Additionally, celebrities do not typically have any knowledge of the regulations governing the advertising industry, and, thus, may not even know how to comply with such regulations.

B. Celebrities Have No Control Over the Advertising Claims So That Liability Would Be Warranted

Because celebrities appear in advertisements solely for their celebrity status, their involvement in an advertisement is typically limited to an on-camera or on-air appearance. Celebrities are seldom involved in and ultimately have no control over the advertisement's script development, editing, post-production work or claim substantiation. Celebrities typically do not have the ability to change the script provided

[8] The Commission's proposed revisions serve to transform the nature of the celebrity endorsement into that of an expert endorsement by requiring a celebrity to verify that all claims for which they are the mouthpiece are accurate. Morphing these two very distinct and fundamentally different types of endorsements into the same category undermines the purpose of the Guides and the two distinct advertising techniques.

to them as they are under contract to read the script provided and may be in breach of their talent contract if they refuse to do so or if they suggest extensive revisions.

Absent involvement and control, holding a celebrity liable merely on the basis of his or her participation in the advertisement, as proposed by the Commission, is contrary to existing case law. In the *FTC v. Garvey*, the District Court held and the appellate court affirmed that Garvey could not be held liable under a "participant" theory of liability.[9] The Court held that Garvey did not have actual knowledge of any material misrepresentations, that he was not recklessly indifferent to the truth or falsity of any representation that he made, and that he was neither aware of a high probability that he was making fraudulent representations nor intentionally avoiding the truth and, accordingly, liability was not imposed. Consistent with this precedent, a celebrity endorser who does not possess the requisite knowledge and control over the advertisement should not be held liable for any misrepresentations contained therein. Accordingly, the Commission's proposed revision could be interpreted as a grave departure from established case law and could create a wholly new, albeit unclear, standard for imposing liability without any nexus of knowledge or control over the offending activity.

C. Example 4 to the Revised Section 255.1(d) May Result in the Unfair Imposition of Liability Where the Celebrity Does Not Have the Requisite Knowledge or Control Over the Advertising

The Commission's proposed Example 4 to revised Section 255.1(d) (the well known celebrity in the infomercial for an oven roasting bag) should be reconsidered because it could unfairly expose celebrities to liability for claims beyond his/her expertise

[9] *FTC v. Garvey*, 2001 U.S. Dist. LEXIS 25060 (C.D. Cal. Nov. 7, 2001). Aff'd, 383 F.3d 891 (9th Cir. 2004).

or control. Example 4 assumes that the celebrity has a sound understanding of advertising laws and is privy to all that is happening on-set with respect to the roasting bag when, in reality, it is more than likely that the celebrity is focused on his or her own appearance and performance than the on-set production. In all likelihood, the celebrity in Example 4 may be unaware of which roasting bag is placed into which oven and for how long. In almost all instances, the celebrity has no control over post-production of the infomercial and likely does not know what footage or claims will be added to the final version of the infomercial and, thus, should not be held liable for his/her endorsement in the advertisement.

VI. Disclosure Obligations on Celebrities In the Non-Traditional Context Is Unwarranted and May Unfairly Impose Liability On Advertisers, Celebrities and the Programs

The Commission has proposed applying the disclosure obligations set forth in Section 255.5 to non-traditional contexts, such as television programs.[10] For the reasons set forth below, we urge the Commission to not adopt this application as it would be unfair to impose a different disclosure requirement on celebrities in a non-traditional context (in comparison to a traditional context) and it would raise significant concerns regarding which party is ultimately liable for the lack of disclosure.

The Commission's application to non-traditional contexts would require a celebrity to disclose his/her financial interest in a product or service if the celebrity promoted that product or service during a routine interview. Inexplicably, however, if the same celebrity makes that same endorsement in a traditional commercial instead, no disclosure would be required. There is little basis for imposing different and inconsistent

[10] Section 255.5 states that, "[w]hen there exists a connection between 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), such connection must be fully disclosed."

standards on celebrities depending on the media. Such a distinction becomes even more problematic as the line between traditional programming and commercial mediums becomes increasingly blurred. Absent any empirical evidence of deception, there is no reasonable basis for imposing disclosure requirements on celebrities in non-traditional media, particularly given the long-held view that has been applied to commercials - when a celebrity speaks favorably about a product, consumers realize such celebrity was paid for the endorsement.

The proposed application could also unfairly expose the celebrity, the advertiser, and/or the entertainment program to liability even in instances where the party does not have the requisite knowledge to make the disclosure and/or the ability to do so. For instance, imposing liability on celebrities would be patently unfair in instances in which the celebrity discloses his or her relationship during the interview, and the entertainment program removes the disclosures from the edited program. Similarly, imposing liability on an advertiser would be unreasonable when the advertiser has no control over what a celebrity says in a non-traditional advertising forum such as an interview, may not be aware of the interview, is not on the set of the program and/or has no control over the content of the program, all of which are typically the case. Likewise, imposing liability on the television program may not be appropriate if the program has no knowledge of the material connection between the celebrity and the advertiser.

An analysis of proposed Example 3 to Section 255.5 concerning the well-known tennis player on the television talk show best-illustrates the inherent problems with the proposed application. In such instance, it would be unreasonable to impose liability (i) on the celebrity, if the celebrity disclosed her relationship and such disclosure was

deleted from the program or the celebrity was not aware of her disclosure obligation, as the advertiser never informed her of it (and it would also be unfair if the celebrity was required to verify that her experience was representative of what others would undergo, as stated in Section V(A), as celebrities often do not have the knowledge or ability to verify such claims); (ii) on the advertiser, if the advertiser was not on the set but had previously instructed the celebrity to disclose the relationship during interviews, and the celebrity forgot to make such disclosure or chose not to do so or the program edited out the disclosure; or (iii) on the television program, if the television program had no knowledge of the material connection between the tennis player and the clinic.

VII. The Amendment to Blogs and New Media is Unwarranted

A. The Revised Section 255.5 of the Guides Unfairly Imposes Liability on Bloggers

Example 7 to the revised Section 255.5 of the Guides regarding the disclosure of material connections of the video game blogger imposes an unfair burden on bloggers and other viral marketers. In the example, the college student was sent a complimentary copy of a video game system and later wrote a favorable review of the game system on his Internet blog. Example 7 states that because the readers of the blog are unlikely to expect that the blogger received the free video game system in exchange for his review of the product, and because the value of the video game system, this fact would materially affect the credibility of his endorsement. Accordingly, under Example 7, the blogger should disclose that he received the gaming system free of charge. However, Example 7 improperly subject bloggers (most of whom are regular consumers who have no knowledge of the advertising laws and regulations) to liability for not having support for

the statements made in their blogs. For instance, bloggers could be subject to liability for any false or unsubstantiated statements about a product or service, despite having no expertise to evaluate claim substantiation and no understanding that they have a duty to substantiate such claims or that there are laws that require them to do so. Bloggers could also be subject to liability for failure to disclose material connections, when, in reality, most bloggers are regular consumers who do not understand that they are legally required to disclose any such material connection.

The example further suggests that an advertiser who sends its product to a blogger will be responsible if the blogger fails to disclose a material connection, even though the advertiser has no control over the blogger or the content of the blog. This would be the case even though consumers do not take information found on blogs to be fact as much as they assume it to be opinion.

B. It Is Premature to Regulate Blogs and Other Forms of New Media

Given the exponential speed with which new media, including blogs, are developing and changing, it is premature for the Commission to institute specific regulations in this area. Because creating guidelines prematurely will likely result in less optimal and potentially ineffective regulations, the Commission would best serve consumers by waiting until these new media are more established before assessing whether additional regulations, if any, are necessary. Otherwise, regulating these developing media too soon may have a chilling effect on blogs and other forms of viral marketing, as bloggers and other viral marketers will be discouraged from publishing content for fear of being held liable for any potentially misleading claim.

Premature changes to the Guides regarding new media are unnecessary at this time as industry self-regulation appears to be effective in prompting appropriate disclosures. The Word of Mouth Marketing Association ("WOMMA") has established guidelines (the "WOMMA Guidelines") which adequately address exactly that which the Commission has proposed to further regulate. The WOMMA Guidelines are respected in the industry for their transparency and effectiveness and adhered to by most industry members.

Even the Commission acknowledges the effectiveness of regulation and self-regulation, when, in December of 2006, it denied Commercial Alert's request to investigate the viral marketing industry finding that the industry was already adequately regulated.[11] The Commission also declined to issue guidelines to the viral marketing industry, concluding that no additional regulations were warranted as the Commission already has ability to challenge deceptive communications via Section 5 of the FTC Act. Thus, absent any evidence of a shift in the effectiveness of current regulation and industry self-regulation, it is unclear why additional regulations are necessary.

Conclusion

The current Guides are well-accepted by the advertising industry, consumers, self-regulating organizations, and regulators and have been quite effective in facilitating truthful and non-deceptive endorsements and testimonials. For such reasons, we believe that the sweeping changes to the Guides proposed by the Commission would impose an unfair burden on advertisers and have a chilling effect on advertisers' use of legitimate,

[11] Letter from Mary K. Engle, Associate Director for Advertising Practices, Federal Trade Commission letter to Gary Ruskin, Executive Director, Commercial Alert (Dec. 7, 2006).

widely-accepted old and new forms of commercial speech. As the proposed changes to the Guides may result in a de facto ban on consumer and celebrity endorsements and, in light of the Commission's history of favoring disclosures over outright bans where such disclosures are a viable means to protect consumers from deceptive speech, we urge the Commission to continue to enforce the Guides as they are currently written.

The AAAA and AAF look forward to helping the Commission and the industry. We would be happy to facilitate the gathering of further information from AAAA's and AAF's members that might be of interest to the Commission on these important issues.

Respectfully submitted,

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