Ruder Ware

BUSINESS ATTORNEYS FOR BUSINESS SUCCESS®

BUSINESS TRANSACTIONS LEGAL UPDATE

May 14, 2010

Revised Federal Trade Commission Guidelines On Endorsements and Testimonials Change Deceptive Advertising Risks and Will Affect Marketing Efforts

In this Legal Update

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For years, the Federal Trade Commission (the FTC) has regulated deceptive advertising under Section 5 of the Federal Trade Commission Act (the Act). This has included the issuance of non-binding, but very important, guidelines outlining the FTC's views on the proper use of advertisements containing endorsements and testimonials.

On December 1, 2009, these revised guidelines became effective and signaled a stricter view from the FTC of what is and is not deceptive advertising when it comes to testimonials and endorsements.

The guidelines apply to any advertisement of any product or service by any party that contains an endorsement. Under these guidelines, an endorsement is defined as any advertising message that consumers are likely to believe reflects the opinions or findings of any party other than the sponsoring advertiser. This very broad definition means the rules have a broad impact.

While these guidelines have existed for many years, the 2009 revisions are significant. At least one commentator has stated that the guidelines' view of acceptable advertisements has shifted "from truthful to transparent" – in other words, the literal truth of an advertisement involving an endorsement is not enough, but rather it must also disclose pertinent information to the consumer about any endorsement or endorser.

For example, the guidelines provide that any material connection between an endorser and an advertiser must be disclosed to the consumer. New restrictions on "results not typical" type marketing efforts also have been introduced. Additionally, the rules now more clearly apply to online endorsements, whether through blogs, social media outlets, chat rooms, or other online or electronic forums which are becoming an increasingly popular way for marketing professionals to promote their company's products or services.

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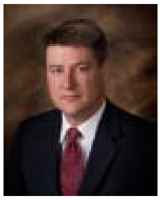
The guidelines even suggest that advertisers and their endorsers (which can be any third party) may bear liability for false statements made about their product through any endorsement – potentially even an endorsement given by a third party the advertiser has no formal connection with. So, for example, a company may bear liability for deceptive advertising when a blogger who is totally unconnected with the company touts the company's product by using false information in his or her online blog.

Since the revised guidelines are so new, it will be important for companies to monitor developments in this area to determine better how the revised guidelines will be enforced or interpreted by the FTC. However, it is clear that companies are best advised to keep the guidelines and their applicability in mind as they promote their products and services.

A link to the FTC's new guidelines, including numerous examples of scenarios where they apply as provided by the FTC, can be found online.

If you have any questions about these guidelines or their effect, please contact Steve Lipowski at Ruder Ware or your Ruder Ware attorney.

Select Attorneys within the Business Transactions Group



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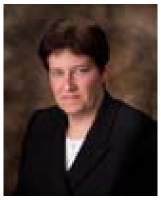

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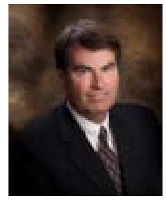

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ABOUT RUDER WARE'S BUSINESS TRANSACTIONS GROUP

Ruder Ware's Business Transactions practice group works with business organizations, as well as their owners and managers, assisting with the variety of transactions that arise during all phases of the business cycle. We advise clients on business organization and start-up issues, assist with corporate governance matters, represent both lenders and borrowers in connection with financing transactions, draft and negotiate commercial contracts, design executive compensation and employee benefit plans, manage intellectual property portfolios, assist with securities law compliance, and negotiate commercial real estate transactions. Our clients range from small businesses just being organized to large, publicly traded corporations. Our expertise, derived from many years of service to our business clients, allows us to anticipate and formulate solutions to the increasingly complex issues confronting businesses today. Specific areas of practice include:

- Antitrust & Trade Regulation
- Banking & Financial Institutions
- Bankruptcy & Creditors' Rights
- Business Organizations
- Commercial Contracts
- Corporate Finance & Securities
- Executive Compensation & Employee Benefits
- Intellectual Property
- Mergers & Acquisitions
- Real Estate & Construction

Ruder Ware

As part of a full-service law firm, our attorneys provide clients with a one-stop approach to their legal needs. Ruder Ware, the largest Wisconsin law firm headquartered north of Madison, also provides legal counsel in Business Transactions; Litigation & Dispute Resolution; and Employment, Labor & Benefits.

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