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Posted at 5:24 PM on September 10, 2010 by Sheppard Mullin

"Astroturfing" With Fake Reviews Exposes A Company to Legal Risk

By Michelle Sherman

Web businesses have fueled the natural cynicism that consumers have when reading online reviews. There are too many reported instances of businesses or PR firms using employees or paid reviewers to post glowing reviews, and, in addition, mark as unhelpful negative reviews of their respective businesses.

In a letter to the Ethicist column in the NY Times (August 1, 2010), "Name Withheld" in Dallas wrote that when his company releases a new iPhone application, "our boss urges the staff to download it at the App store and give it a five-star rating, even employees who don't own a device that can run it." The employee believes fake reviews are wrong, and that his boss should not pressure employees in this way. However, the employee is torn because he wants to support his company. The Ethicist, Randy Cohen, lists several ways in which it is an unethical request for a company to make, including: (1) nobody should review an app they have not actually used; and (2) no one can review something on which their paycheck depends, or their work buddies developed, since it is an obvious conflict of interest. What the Ethicist failed to say is that fake endorsements could also expose the company to legal liability.

Businesses need to understand that planting fake reviews may violate the Endorsement and Advertising Guidelines (Guidelines) issued by the Federal Trade Commission (FTC), and amended last year to expressly apply to the Internet. "Fake reader reviews would violate section 255.5 of the FTC guidelines on the use of endorsements and testimonials in advertising," asserts Frank Dorman of the FTC.

Further, fake reviews have resulted in monetary sanctions and other penalties against businesses doing it. In July 2009, a plastic surgery outfit Lifestyle Lift reached a settlement with the New York State Attorney General's office over the publication of numerous reviews purportedly submitted by very satisfied clients. According to a release from the AG's office, Lifestyle Lift actively encouraged its employees to post glowing reviews of their cosmetic surgery experiences on Web sites and message boards. Some employees even went so far as to set up their own Web site, with one using the URL "MyFaceLiftStory.com". The AG's office also released part of an internal email in which Lifestyle Lift told its employees: "Friday is going to be a slow day - I need you to devote the day to doing more postings on the web as a satisfied client." Lifestyle Lift agreed to pay $300,000 in penalties and costs, and other remedial actions. In a press release, the AG's office said the action was "a strike against the growing practice of 'astroturfing,' in which employees pose as independent consumers to post positive reviews and commentary to Web sites and Internet message boards about their own company."

More recently, the FTC settled charges for deceptive advertising against the California marketing company, Reverb Communications. The FTC alleged that Reverb paid its employees to write and post positive game reviews of clients' games in the Apple iTunes store without disclosing that they were being paid for their reviews. According to the complaint, Reverb employees posted positive reviews about clients' games from November 2008 to May 2009. The reviews would give the respective games 4 to 5 stars, and describe the game as an "amazing new game," or "one of the best apps just got better." The reviews were posted under account names that would give consumers the impression that they had been placed by ordinary buyers. The complaint states that Reverb was paid a portion of the sales by its game developer clients.

These charges are some of the first to be filed under the amended version of the FTC Guidelines. These Guidelines were amended last year to apply explicitly to Internet endorsements. The Guidelines apply to bloggers, and anyone writing reviews on Web sites or promoting products through Facebook and Twitter.

While the FTC did not condition its settlement on Reverb paying monetary sanctions, the case was clearly a well publicized warning that deceptive reviews will not be tolerated.

The negative press from an FTC action for false advertising can also destroy the trust and credibility that businesses work hard to build but can lose easily. In addition, an employee who is fired down the line now has a possible legal claim in which she can argue that she was fired in retaliation for not posting misleading reviews. Put simply, astroturfing with fake reviews is a bad idea.

While the Guidelines and how they are applied in some instances can vary depending on the facts of a particular situation, the FTC has sought to draw some bright lines. Businesses and advertisers involved in online marketing "[s]hould not pass themselves off as ordinary consumers touting a product, and endorsers should make it clear when they have financial connections to sellers," as succinctly stated by Mary Engle, Director of the FTC's Division of Advertising Practices.

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