

# KIRKLAND & ELLIS

Kirkland Alert

## FTC Sends Over 700 Companies Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct Around Endorsements and Testimonials

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As part of the Federal Trade Commission's ("FTC") efforts to curb the deceptive use of endorsements and testimonials, it recently sent a Notice of Penalty Offenses to over 700 companies warning them that such practices could result in financial penalties of up to \$43,792 per violation. The notice was widely distributed to large companies, top advertisers, well-known consumer products companies, leading retailers and major advertising agencies.

The notice is not an indication that the recipient engaged in any deceptive conduct. Nevertheless, the FTC wanted to make clear that companies that received the notice will be treated as having "actual knowledge" that the practices listed in the notice are deceptive and unlawful under Section 45(m)(1)(B) of the FTC Act. For example, the notice describes several practices concerning endorsements and testimonials that the FTC determined are unlawful, including:

- representing that a third party has endorsed a product or its performance when that is not the case;
- misrepresenting endorsers as actual, current or recent users of a product;
- continuing to advertise an endorsement when the advertiser has good reason to believe the endorser no longer subscribes to the endorsement;
- using testimonials to make unsubstantiated or deceptive performance claims, even if such testimonials are genuine;
- failing to disclose a connection between an endorser and a seller of the advertised product or service; and

- misrepresenting an endorser's experience as the typical experience of users of the product or service, when that is not the case.

Should the FTC find it necessary to pursue an action against the companies that received the notice, the companies' knowledge of the FTC's endorsement and testimonial rules may make it easier for the FTC to seek civil penalties.

Although the FTC's Notice is informational, it illustrates the FTC's increased interest in this kind of advertising. Therefore, companies using endorsements and testimonials in their advertising should review their own practices to ensure that they are lawful. The FTC's rules concerning endorsements and testimonials can be found in its [Guides Concerning the Use of Endorsements and Testimonials in Advertising](#).

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## Related Services

### Practices

- Advertising, Marketing & Promotions
- Intellectual Property

## Suggested Reading

- 21 October 2021 Award Chambers UK: A Client's Guide 2022

- 15 October 2021 In the News Strategic move: How Quinn Emanuel and Kirkland became US firm success stories in Europe
- 06 October 2021 Award Top Trade Secrets Lawyers 2021

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