

Insights: Alerts

New NAD Decision Reminds Advertisers of Influencer Marketing Pitfalls

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A recent decision by the National Advertising Division (“NAD”) provides some helpful reminders and best practices for influencer marketing.

Wonderbelly—the maker of “clean” antacids—worked with influencers to help promote its Wonderbelly Antacid product on social media. A competitor complained that Wonderbelly's influencers failed to disclose their connections to Wonderbelly or buried the disclosures in hard-to-find places. The challenger also attacked a post by actress Demi Moore, in which Moore promoted Wonderbelly while stating that the post was “not an ad.” However, Moore did not mention that she is an investor in the company.

Wonderbelly agreed to clean up its influencer marketing, bringing it into compliance with the FTC's endorsement guides by clearly and prominently disclosing all material connections instead of burying them “below the fold” or behind links. This includes, e.g., adding hashtags like #ad right at the top of posts. Wonderbelly also agreed to work with Ms. Moore to ensure that she always discloses her affiliation with Wonderbelly when promoting the company and its products.

As part of her promotion of the product, NAD made clear that Ms. Moore may not say “not an ad” *even if* she discloses her affiliation with Wonderbelly. Longstanding NAD precedent states that disclosures cannot contradict a primary claim, so saying “not an ad” in what is definitively an ad would violate this rule.

NAD took issue with two other practices by Wonderbelly as well: reposting influencer posts on the Wonderbelly corporate account, and linking directly to third-party media discussing Wonderbelly and its products. When Wonderbelly reposted influencer content, many of the influencers' disclosures did not carry over. NAD required Wonderbelly to re-add the disclosures when reposting influencer content. Similarly, NAD held Wonderbelly responsible for the contents of third-party media that Wonderbelly linked to or referenced on its website. Because Wonderbelly could not substantiate some of the claims made in third party media (in this case, that the competing product TUMS shouldn't be taken by pregnant women), Wonderbelly agreed to stop linking to the third-party report entirely.

This decision doesn't break much new ground, but it is a great reminder of precautionary measures advertisers should take when involving third parties in advertising.

If you have any questions or concerns about influencer marketing, or any advertising claims, please feel free to contact us. [Kilpatrick's Advertising and Marketing team](#)

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