

## Federal Trade Commission

## § 255.5

*Example 5:* An association of professional athletes states in an advertisement that it has “selected” a particular brand of beverages as its “official breakfast drink”. As in Example 4, the association would be regarded as expert in the field of nutrition for purposes of this section, because consumers would expect it to rely upon the selection of nutritious foods as part of its business needs. Consequently, the association’s endorsement must be based upon an expert evaluation of the nutritional value of the endorsed beverage. Furthermore, unlike Example 4, the use of the words “selected” and “official” in this endorsement imply that it was given only after direct comparisons had been performed among competing brands. Hence, the advertisement would be deceptive unless the association has in fact performed such comparisons between the endorsed brand and its leading competitors in terms of nutritional criteria, and the results of such comparisons conform to the net impression created by the advertisement.

[Guide 3]

[40 FR 22128, May 21, 1975]

### § 255.4 Endorsements by organizations.

Endorsements by organizations, especially expert ones, are viewed as representing the judgment of a group whose collective experience exceeds that of any individual member, and whose judgments are generally free of the sort of subjective factors which vary from individual to individual. Therefore an organization’s endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization. Moreover, if an organization is represented as being expert, then, in conjunction with a proper exercise of its expertise in evaluating the product under §255.3 of this part (Expert endorsements), it must utilize an expert or experts recognized as such by the organization or standards previously adopted by the organization and suitable for judging the relevant merits of such products.

*Example:* A mattress seller advertises that its product is endorsed by a chiropractic association. Since the association would be regarded as expert with respect to judging mattresses, its endorsement must be supported by an expert evaluation by an expert or experts recognized as such by the organization, or by compliance with standards previously adopted by the organization and

aimed at measuring the performance of mattresses in general and not designed with the particular attributes of the advertised mattress in mind. (See also §255.3, Example 5.)

[Guide 4]

[40 FR 22128, May 21, 1975]

### § 255.5 Disclosure of material connections.

When there exists a connection between the endorser and the seller of the advertised product which 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. An example of a connection that is ordinarily expected by viewers and need not be disclosed is the payment or promise of payment to an endorser who is an expert or well known personality, as long as the advertiser does not represent that the endorsement was given without compensation. However, when the endorser is neither represented in the advertisement as an expert nor is known to a significant portion of the viewing public, then the advertiser should clearly and conspicuously disclose either the payment or promise of compensation prior to and in exchange for the endorsement or the fact that the endorser knew or had reasons to know or to believe that if the endorsement favors the advertised product some benefit, such as an appearance on TV, would be extended to the endorser.

*Example 1:* A drug company commissions research on its product by a well-known research organization. The drug company pays a substantial share of the expenses of the research project, but the test design is under the control of the research organization. A subsequent advertisement by the drug company mentions the research results as the “findings” of the well-known research organization. The advertiser’s payment of expenses to the research organization need not be disclosed in this advertisement. Application of the standards set by Guides 3 and 4 provides sufficient assurance that the advertiser’s payment will not affect the weight or credibility of the endorsement.

*Example 2:* A film star endorses a particular food product. The endorsement regards only points of taste and individual preference. This endorsement must of course comply with §255.1; but even though the compensation paid the endorser is substantial, neither