

## **FTC Warns Influencers and Trade Associations to Be Much More Specific About Ties**

Article By:

Phyllis H. Marcus

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Last week, the FTC sent high profile [warning letters](#) to two trade associations, the American Beverage Association (AmeriBev) and the Canadian Sugar Institute, and 12 registered dietitians regarding inadequate disclosures in the dietitians' social media posts. While the specific influencer posts varied across dietitian, they all related to the safety of aspartame, an artificial sweetener, and other messaging regarding the benefits of consuming sugar-containing products. Further, some dietitians even went so far as to call the World Health Organization's warnings regarding aspartame and artificial sweeteners as based on "low-quality science" and "clickbait" evidence. While some of the dietitians included words like "#Ad" or "Sponsored" in their posts, according to the FTC most failed to provide obvious disclosures informing consumers that they were watching an ad that had been paid for by an industry association. The FTC's warnings alleged that inconspicuous messaging surrounding these partnership deals led to consumer confusion regarding who ultimately was responsible for the influencers' nutrition messaging. And according to the FTC, the fact that these influencers are registered dietitians increases the public's confidence in the information they disperse, thus heightening the need for them to be clear about their partnership

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affiliations.

Most of the warnings to the trade associations and dieticians are the same, however, notably, the FTC makes it clear to trade associations that ultimately, they are responsible for the individuals with whom they partner and for ensuring that those individuals comply with the FTC's Endorsement Guides. The FTC emphasized that trade associations must ensure that the individuals they partner with provide adequate disclosures and make sure that the material connections—ones that might affect the weight or credibility consumers give to the endorsement—between the influencer and the trade association is clear and conspicuously disclosed. The FTC pointed to numerous ways in which the associations and the dieticians failed to meet the “material connection” standard:

1. The FTC noted that the types of disclosures used were inadequate, finding that some of the posts had no disclosures at all, while others only included disclosures in the video or text portions, but not in both. The FTC made clear that where an endorsement is made, a disclosure must also be made. This means that if a post has both text and video, and an endorsement is made in both the text and video, a disclosure must also be made in both the text and the video.
2. In some instances, the influencers used hashtags like “safetyofaspartame,” “cndnsugarnutr” (to mean the Canadian Sugar Institute), or “Paid partnership with ameribev.” The FTC stated that an innocuous or ambiguous hashtag at the end of a caption is insufficient to provide consumers with the knowledge that they are viewing a paid sponsorship, and exactly who the sponsor is.
3. In addition, putting a hashtag six or seven lines deep in the caption of a post is simply insufficient to meet the clear and

conspicuous disclosure requirements. Instead, an endorser must make it abundantly obvious that the content is an ad, such that a consumer would not be misled. This may mean tagging the post in the first line, or prominently in the video itself.

4. The FTC also noted that it may not be sufficient to rely solely on platforms' disclosure tools—for example, a “Paid Partnership” designation—since the disclosure may be too easy for viewers to miss.
5. Importantly, the FTC noted that even the posts that contained the words “sponsored” or “ad” failed to provide adequate disclosures because they failed to convey to consumers exactly who was behind the sponsorship. Noting that the identity of the sponsor is relevant, the disclosure must make it clear to consumers who is paying for the advertisement.

The FTC's warnings enclosed the agency's Notice of Penalty Offenses (which we reported on [here](#)), references the FTC's updated Endorsement Guides (reported on [here](#)), and asked recipients to report back on changes to be made within 15 days.

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