

# Improper Celebrity Endorsements According To Federal Trade Commission Law

Katherine Sarro

## Abstract

*The Federal Trade Commission (FTC) does not allow for deceptive advertising and provides certain standards and considerations for endorsement. Celebrity endorsement commonly creates deceptive advertisements when not used properly. Two of the considerations the FTC offers are examined in relation to court cases involving a misuse of celebrity endorsement that created deceptive advertising. These considerations require the celebrity endorser to be a “bona fide user” of the endorsed product and cannot make false or unsubstantiated claims about the product. The examined cases show abuse of these considerations.*

The Federal Trade Commission (FTC) has a duty to protect consumers from the implications of deceptive advertising. The FTC’s Deception Policy Statement claims that an advertisement is deceptive if it makes a statement or omits information that would be misleading to the consumer (Federal Trade Commission 1983). An important area of note in deceptive advertising is that of celebrity endorsement. The importance of staying truthful while relying on an outside source for endorsement cannot be overstated, as it is a common source of fault.

In the “Guides Concerning the Use of Endorsements and Testimonials in Advertising”, the FTC gives four main considerations for the use of endorsement in

advertising. This paper will examine the application of Considerations 3 and 4, which are summarized as follows:

3. If the endorser is promoting their use of a product, the endorser must be a “bona fide user” (meaning genuine user) of the product at the time of their advertisement. The advertisement can only run as long as the belief of the endorser being a “bona fide user” doesn’t change.
4. Advertisers are held liable for any false or unsubstantiated statements made through endorsements, as well as for failing to disclose a relationship between the advertiser and the endorser. Endorsers themselves are also liable for any

statements they make while endorsing.

### **Consideration 3: “bona fide user”**

The FTC requires that if an endorser is promoting a product on behalf of an advertiser, the endorser must be a “bona fide user” of the product at that time. This principle can be applied to celebrity endorsement as exhibited in the following case, *Federal Trade Commission and Respondents Google LLC and iHeartMedia INC*.

The Federal Trade Commission (FTC) investigated respondents Google LLC and iHeartMedia INC for violations of the FTC Act. Google used their media buying agent to hire multiple radio stations and have their “radio personalities” record advertisements endorsing the Google Pixel 4. (Tabor 2023).

In October 2019, scripts created by Google were given to the radio personalities endorsing the Pixel 4. Before any advertisements were recorded by the radio personalities, an iHeartMedia employee contacted the Google media buying agent requesting that the radio personalities be given Pixel 4’s for the purpose of proper endorsement. Part of that request reads, “it’s something that we really need to get to our voicing talent, especially if we want them to use their own first-person tense when voicing. We . . . cannot require talent to use “I” in voiced spots when they have not physically used the product” (Tabor 2023). Google’s media buying agent allegedly checked with Google and stated that they would not be able to provide the radio personalities with a Pixel 4.

In October 2019, forty-three radio personalities from iHeartMedia recorded advertisements for the Google Pixel 4 using first-person language. Some were very similar to the script provided by Google, while others chose to customize the script. However, the radio personalities “did not own or regularly use a Pixel 4 and had not used a Pixel 4 to take pictures at night” (Tabor 2023), and “these ads aired over 11,200 times between October and December 2019” (Tabor 2023). The FTC held the respondents Google LLC and iHeartMedia INC on two counts of false endorsements (Tabor 2023), and the two companies paid a combined \$9.4 million to settle (Dori, Kim, & Longhi 2022).

### **Consideration 4: false or unsubstantiated statements**

Advertisers are held responsible for any false or unsubstantiated claims an endorser makes during the time of the endorsement. Endorsers themselves are also liable for any false or unsubstantiated statements they may make during an endorsement. In addition, it must be clearly established that there is a relationship between the advertiser and the endorser. These guidelines are violated by celebrity endorsers in the following case, *Heugerich v. Gentile et. al.*

The plaintiff filed a class action complaint against multiple defendants. “This case arises from a scheme among various individuals in the cryptocurrency sector to misleadingly promote and sell the digital asset associated with EthereumMax (the EMAX Tokens) to unsuspecting investors” (Jasnoch 2022). In this case, the digital asset was EMAX Tokens. The company used multiple celebrity endorsements to promote

EthereumMax, known as “Promoter Defendants” (Jasnoch 2022). Part or all of the compensation these promoters received was in the form of EMAX Tokens, and the promoters are “sophisticated public figures with familiarity and experience with endorsement contracts” (Jasnoch 2022).

Defendant Paul Pierce was a former NBA player and worked with ESPN until he was fired for a video posted on social media. On May 26, 2021, he promoted EthereumMax with a post on Twitter which both promoted the company and undermined ESPN. On the same day, EthereumMax made a press release that stated that their cryptocurrency would be “accepted for online ticket purchasing for the highly anticipated Floyd Mayweather vs. Logan Paul Pay-Per-View event, June 6, 2021, in Miami Gardens, Florida” (Jasnoch 2022). They also used multiple incentive techniques to persuade purchasers to use EMAX Tokens, such as offering a ten percent discount at checkout.

Due to these endorsements, on May 26, 2021, the trading volume for EMAX Tokens reached \$44.43 million, which is almost five times higher than the trading volume the day prior. The next day, the volume was at \$107.7 million. A similar instance occurred in relation to an Instagram post by Kim Kardashian, which saw a further spike in EMAX Token price. Shortly after, the price plummeted by 98%, returning to its worth after the artificial inflation from celebrity endorsements (Jasnoch 2022). The plaintiff Ryan Huegerich would like to be awarded damages. The case trial is not complete, so it is still unclear how the case will be settled.

## **Conclusion**

Celebrity endorsement is a powerful tool when it comes to advertising, but using it properly is of the utmost importance. These four cases demonstrate the FTC’s ability to regulate celebrity endorsement based on their considerations listed above. While there are many more examples where celebrity endorsement is used to create deceptive advertising, these cases should be considered as possible consequences of improper celebrity endorsement.

## References

- Dori, Y., Kim, L., & Longhi, A. (2022, December 8). *Google and iHeartMedia Reach Settlements with FTC and States for Deceptive Endorsements*. Inside Privacy. <https://www.insideprivacy.com/consumer-protection/google-and-iheartmedia-reach-settlements-with-ftc-and-states-for-deceptive-endorsements/>
- Federal Trade Commission. (1983). *FTC Policy Statement on Deception*.
- Federal Trade Commission. (2009). *Guides Concerning the Use of Endorsements and Testimonials in Advertising*.
- Jasnoch, J. (2022, January 7). *Heugerich v. Gentile et. al.* Scott and Scott Attorneys at Law LLP.
- Tabor, A. (2023, February 9). *Federal Trade Commission and Respondents Google LLC and IHeartMedia INC.* Federal Trade Commission.