

MCLE ARTICLE AND SELF-ASSESSMENT TEST

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by Nicholas A. Persky

Rules of ENDORSEMENT

Attorneys can use case law and the FTC guides to steer celebrity clients toward a safe harbor for endorsements made on social media

AS ADVERTISERS, marketers, and celebrity endorsers find new ways to spread their commercial messages via social and new media, legal advisers must be cognizant of how the Federal Trade Commission has applied its revised Guides Concerning the Use of Endorsements and Testimonials in Advertising.¹ These guides provide instruction to advertisers and endorsers for voluntarily compliance with Section 5 of the FTC Act² as it applies to endorsements and testimonials. The FTC originally published a proposed set of guides in 1972. In 1980 the commission finalized the guides,³ and it updated them in 2009 to address the growing use of social media as a vehicle for commercial speech. A number of the changes

directly affect celebrity endorsers.

For example, while it has always been the law that advertisers can be held responsible for false and misleading advertising, the revised guides expressly place celebrities on notice that they also may be liable for statements made in their endorsements.⁴ Enforcement actions have been brought against celebrities in the past,⁵ and the FTC has alerted paid endorsers and their counselors to this potential risk in the revised guides. The warning particularly applies in situations in which the connection between the advertiser and celebrity may be unclear to consumers.⁶

The FTC has acknowledged, however, that “well-known persons can appear in adver-

tising without being deemed endorsers.”⁷ Thus, to determine liability, the threshold question becomes: Is the celebrity an endorser or a paid actor?⁸ The revised guides define an endorsement as “any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than

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the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.”⁹

Whether the celebrity is an endorser or paid actor depends upon the probable beliefs of consumers as determined on a case-by-case basis. For example, as illustrated in the guides, if a celebrity suggests he or she is a satisfied customer of a product in an infomercial, a significant percentage of consumers will likely believe that those statements represent the celebrity’s own views, even if the celebrity is reading from a script.¹⁰ On the other hand, consumers would likely understand that an athlete performing voice-overs in an insurance commercial is merely a paid

what they do not say. The guides state that “when there exists a connection between the endorser and the seller of the advertised product that 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.”¹⁶ Material connections include, for example, situations in which the endorser has been paid or given something of value to tout the marketer’s product, or where the endorser is simply a relative or employee of the marketer.¹⁷ In an exception to this rule, material connections need not be disclosed when consumers would ordinarily understand that the celebrity is a paid endorser

that the celebrity has been engaged as a spokesperson, this endorsement is likely deceptive,²² and the same idea would apply when a celebrity endorses a product in other nontraditional outlets (such as in a talk show television interview or on a personal or guest blog).

Enforcement before 2009

Venerable singer and actor Pat Boone made history as a celebrity endorser. In the 1970s, Boone appeared in a number of advertisements on behalf of an acne product called Acne-Statin. In one typical commercial, Boone can be seen sitting next to his daughter Debbie proclaiming, “With four daughters, we’ve

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actor, not an endorser, as there is no nexus between the athlete’s profession and the product and no suggestion that the athlete is a user of the product.

When a celebrity is in fact an endorser, the endorsement must “reflect the honest opinions, findings, beliefs, or experience of the endorser.”¹¹ While not required to become experts on a product or industry, the celebrity, if reading from a script, may have an obligation to make reasonable inquiries of the advertiser to confirm that there is an adequate basis for assertions the script has them making.¹² This may include requesting substantiation for product claims made in the advertising campaign and requesting samples of the product for personal use. In essence, the celebrity should not ignore signs that claims made about a product appear to be false or misleading.¹³

In the event an advertisement represents that the celebrity uses the endorsed product, the endorser must be or have been a bona fide user at the time the endorsement was given.¹⁴ For example, it would be misleading for Kobe Bryant to regularly wear Reeboks on the basketball court but appear in a Nike commercial as an endorser. Once an endorsement is secured, the advertiser should consider periodically checking that the celebrity’s opinions remain the same, as an “advertiser may continue to run the advertisement only so long as it has good reason to believe that the endorser remains a bona fide user of the product.”¹⁵

Celebrity endorsers may also be liable for

(e.g., a film star endorsing a food product in a television commercial or a football player in an interview wearing the clothes of an athletic wear company).¹⁸

It is important to realize that when the current guides were originally adopted in 1980, the advertising landscape was very different. Advertisements were typically disseminated through traditional media outlets such as television and radio commercials, billboards, and print. In such instances, if the connection is not obvious to the consumer, the duty to disclose falls on the advertisers.¹⁹ Today, however, the “recent creation of consumer generated media means that in many instances, endorsements are now disseminated by the endorser, rather than the sponsoring advertiser.”²⁰ It is increasingly common to see celebrities tout products directly to potential consumers through Twitter, Facebook, blogs, and other social media. It may be unclear whether the celebrities are acting as paid endorsers or are merely enthusiastic customers willing to share their preferences with the general public.

The revised guides were updated to directly address these situations, providing a number of new examples to illustrate when the endorser needs to disclose material connections. For example, when a celebrity touts a product on Twitter, consumers may not realize the celebrity is being paid for doing so, “and knowledge of such payments would likely affect the weight or credibility consumers give to the celebrity’s endorsement.”²¹ Without a clear and conspicuous disclosure

tried the leading acne medications at our house, and nothing ever seemed to work until our girls met a Beverly Hills doctor and got some real help through a product she developed called Acne-Statin.”²³ The ads made claims such as “use of Acne-Statin will cure acne regardless of the severity of the condition” and “Acne-Statin is superior to all other acne preparations in the antibacterial treatment of acne.”²⁴

In 1978, the FTC accused the manufacturer, the advertising agency, and Boone of participating in false and misleading advertising, charging that the product would not cure acne as the ad implied and that the parties lacked substantiation to support any such claims.²⁵ The FTC noted that Boone, in return for his endorsement, received a share of the product’s sales. Boone eventually signed a consent order, agreeing to stop appearing in the ads and pay up to \$5,000 in restitution into a fund to compensate customers who were misled. Commenting on the order, the FTC stated that celebrities must “verify the claims made in any commercial before it appears, hiring reliable independent analysts to study them if the star has no expertise in the subject.”²⁶

This action, the first to hold a celebrity accountable for a misleading endorsement, was a major shock to other celebrities who endorsed products, prompting many to demand indemnification clauses in their endorsement contracts.²⁷ At the time, many felt that the FTC was out to establish a general rule of enforcement against celebrities.²⁸

MCLE Test No. 214

The Los Angeles County Bar Association certifies that this activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of 1 hour.

- 1.** The Guides Concerning the Use of Endorsements and Testimonials in Advertising were first finalized by the FTC in 1972.
True.
False.
- 2.** The guides are binding law.
True.
False.
- 3.** Celebrities may be directly liable for statements they make in advertising.
True.
False.
- 4.** Celebrities may be directly liable for their statements made in advertising, even if they are simply reading from a script.
True.
False.
- 5.** Celebrities are not required to research or make inquiries regarding claims they make in advertising.
True.
False.
- 6.** The guides were revised by the FTC in 2009, in part to address the rising use of social media.
True.
False.
- 7.** Celebrities never have an obligation to use the products they endorse.
True.
False.
- 8.** The FTC's enforcement activities focus on advertisers, not endorsers.
True.
False.
- 9.** Beginning in 2009, the FTC increased its enforcement activity against celebrities, particularly in the area of social media.
True.
False.
- 10.** It is the advertiser's responsibility to advise a celebrity in advance about the need to disclose their material relationship in the course of an interview or on social media.
True.
False.
- 11.** Pat Boone was acquitted for statements he made endorsing the Acne-Statín product because the FTC could not prove he was a direct participant under the principles of endorser liability.
True.
False.
- 12.** The 2009 guides clarify that all well-known persons in advertising are liable for statements made during the course of advertisements.
True.
False.
- 13.** Whether a celebrity is an endorser or merely a paid actor depends upon the compensation and indemnification provisions in the celebrity's contract with the advertiser.
True.
False.
- 14.** The Ninth Circuit held that Steve Garvey was not liable for statements he made as a paid endorser for the product Enforma, in part because the FTC failed to prove that Garvey lacked substantiation for his claims.
True.
False.
- 15.** The rapper 50 Cent and the actor Ashton Kutcher were charged by the SEC and FTC for allegedly failing to disclose material connections to advertisers in statements they made via Twitter.
True.
False.
- 16.** The FTC's recent enforcement action against Dannon for allegedly exaggerating the health benefits of its products, also named its spokesperson, Jamie Lee Curtis, as a defendant for her on-camera statements.
True.
False.
- 17.** Celebrity endorsers may be liable for what they do not say.
True.
False.
- 18.** An NFL football player participating in an interview is not required to disclose to the audience that he is being paid to wear the clothes of an athletic wear company.
True.
False.
- 19.** Once an endorsement is secured, the advertiser should consider periodically checking that the opinions of the celebrity about the product remain the same.
True.
False.
- 20.** An actor performing a voice-over in a commercial is always required to disclose that he or she is an endorser of the product.
True.
False.

MCLE Answer Sheet #214



RULES OF ENDORSEMENT

Name _____

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- 2.** Answer the test questions opposite by marking the appropriate boxes below. Each question has only one answer. Photocopies of this answer sheet may be submitted; however, this form should not be enlarged or reduced.
- 3.** Mail the answer sheet and the \$20 testing fee (\$25 for non-LACBA members) to:

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ANSWERS

Mark your answers to the test by checking the appropriate boxes below. Each question has only one answer.

1. True False
2. True False
3. True False
4. True False
5. True False
6. True False
7. True False
8. True False
9. True False
10. True False
11. True False
12. True False
13. True False
14. True False
15. True False
16. True False
17. True False
18. True False
19. True False
20. True False

After obtaining a consent order from Boone, however, the FTC withheld from bringing another action against a celebrity until 2000, when it filed suit against Steve Garvey, a former first baseman for the Dodgers, in connection with his appearance as a paid spokesperson in infomercials for weight loss supplements sold as the Enforma System.²⁹ During the infomercial, Garvey told the audience that “with Enforma you trap the fat from food before it can go to your waistline,” that “it’s all natural, safe, and it works,” and that it enables users “to enjoy all those delicious foods that you crave without the guilt while losing weight.”³⁰

The FTC’s complaint alleged that Garvey, serving as a paid endorser for the Enforma System, undertook deceptive acts or practices in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.³¹ In affirming the decision of the district court, however, the Ninth Circuit in 2004 held that Garvey was not personally liable or liable as an endorser. In its decision, the court explained that Garvey theoretically could be held liable either as a “direct participant” in the making of false advertising claims or under the principles of endorser liability. To hold Garvey liable for restitution as a direct participant, the FTC had to prove that he had actual knowledge of the material misrepresentations, was recklessly indifferent to the truth or falsity of a representation, or had an awareness of a high probability of fraud along with an intentional avoidance of the truth.³²

The court found that the FTC did not meet its burden in showing that any of the three elements were met, noting that Garvey and his wife used the system and lost 8 and 27 pounds respectively, Garvey reviewed two booklets containing substantiation materials for the product, and he spoke with several individuals who had experienced positive results using the product.³³ The court held that this substantiation “was sufficient—at least for someone in Garvey’s position—to avoid participant liability.”³⁴

With respect to the endorser liability prong, the FTC premised its theory of liability on the guides.³⁵ The Ninth Court observed that the guides were not binding law, but even if they were, Garvey would not be liable under them.³⁶ For one thing, the FTC failed to prove that Garvey provided a true “endorsement” as defined in the guides; i.e., an advertising message that consumers were likely to believe reflected the opinions, beliefs, or findings of a party other than Enforma.³⁷ The court also held that the FTC failed to prove that Garvey’s statements lacked substantiation, explaining that his claims “that he and his wife lost a certain number of pounds clearly pass any substantiation

requirement for celebrity endorsers.”³⁸

Five years after the *Garvey* defeat, the FTC published the revised guides.³⁹ Not surprisingly, in its notice announcing adoption of the revised guides, the FTC made clear that *Garvey* did not foreclose “participant” liability for celebrities.⁴⁰ Perhaps with *Garvey* in mind, the FTC specifically noted that a celebrity reading a script should not be granted immunity from liability for misrepresentations made in the course of that endorsement. The FTC wrote: “The celebrity has decided to earn money by providing an endorsement. With that opportunity comes the responsibility for the celebrity or his or her legal representative to ensure in advance that the celebrity does not say something that does not ‘reflect [his or her] honest opinions, findings, beliefs, or experience.’”⁴¹

Current Enforcement

Actor, comedian, and entrepreneur Ashton Kutcher was the first person to reach one million followers on Twitter in 2009. Since that time, he has used his Twitter handle (which now has nearly nine million followers) to promote causes. Among celebrities employing new media, he may be the savviest, yet he recently drew criticism in the media and the attention of the FTC after he guest-edited an online version of *Details* magazine that was initially released through Facebook, Twitter, Flipboard, and Tumblr.⁴² Of the 12 technology companies that were profiled in the magazine as recommended products, it was later revealed that eight are his investments and at least two others have business entanglements with the actor.⁴³ The only disclosure of such material connection could be found in the introduction on the first page, which read, “And as an investor, he puts his money where his mouth is, backing many of the companies he champions here.”⁴⁴

After the magazine’s release, Richard Cleland, assistant director of the division of advertising practices at the FTC, said in a phone interview that with respect to Kutcher’s actions, “[I]t’s certainly a possibility that a case like this could be investigated....[I]f you’re out there promoting individual products that you have a specific investment in, it needs to be disclosed. If you have a significant economic investment that is not otherwise apparent, that may potentially affect the credibility of your endorsement, and I see that as a potential problem.”⁴⁵

Kutcher is not the only celebrity to engage in questionable tweeting. In 2011, rapper 50 Cent found himself in the news after encouraging his nearly four million Twitter followers to purchase a penny stock without disclosing that he was a major investor in the company.⁴⁶ Although the company (which sells 50 Cent’s line of headphones) was nearly

\$3.3 million in debt, two days after his tweet promising “BIG MONEY,” 9.24 million shares in the company were traded, causing its share value to soar.⁴⁷ 50 Cent later deleted his original tweets and wrote: “I own HNHI stock. Thoughts on it are my opinion. Talk to financial advisor about it.”⁴⁸ Many predicted that 50 Cent would soon be facing an investigation from the FTC for violating the guides or from the SEC for improperly manipulating the stock price.⁴⁹

The FTC has yet to penalize Kutcher or 50 Cent. David Vladeck, the director of the FTC’s bureau of consumer protection, backed away from Cleland’s interpretation of Kutcher’s magazine and tweeted that “the FTC is not and has no plans to investigate Ashton Kutcher.”⁵⁰ Further, Peter Kaplan, deputy public affairs director at the FTC, said in an interview, “Rich Cleland mis-spoke.”⁵¹

Focus on Advertisers

Why has the FTC been reluctant to penalize celebrities who fail to disclose to consumers their material connections with the advertiser? The answer may be found in its notice of adoption of the revised guides.⁵² In responding to commenters who were concerned with the ramifications the revised guides would have on advertisers who use celebrities, the FTC (referring to itself as the Commission) stated:

The commenters are correct...that an advertiser does not have control over what a celebrity says in an interview. Nor can the advertiser prevent the producers of that program from editing out of the final version of the interview a disclosure that would have been sufficient to inform viewers of the celebrity’s contractual relationship with the advertiser. However, if the advertiser has decided that it is advantageous to have the celebrity speak publicly about its product or service, the Commission believes that the advertiser has the concomitant responsibility to advise the celebrity in advance about what he or she should (and should not) say about that product or service, and about the need to disclose their relationship in the course of the interview. Evidence that the advertiser did so would provide a strong argument for the exercise of the commission’s prosecutorial discretion in the event the celebrity failed to disclose his or her relationship with the advertiser or made unauthorized claims about the advertiser’s product, or if the celebrity properly disclosed the relationship but that disclosure was ultimately

edited out of the program. Because the commission considers each advertisement on a case-by-case basis, the particular facts of each situation would be considered in determining whether law enforcement action would be appropriate.⁵³

Further guidance is found in the FTC's FAQ for the guides, titled *The FTC's Revised Endorsement Guides: What People Are Asking*.⁵⁴ In response to the question, "Are you monitoring bloggers?" the FTC's reply states: "We're not monitoring bloggers and we have no plans to. If concerns about possible violations of the FTC Act come to our attention, we'll evaluate them case by case. If law enforcement becomes necessary, our focus will be the advertisers, not endorsers—just as it's always been."⁵⁵

In short, despite the FTC's bold proclamation that "endorsers also may be liable for statements made in the course of their endorsements,"⁵⁶ the brunt of the burden appears to remain with the advertiser to ensure compliance with the guides. To illustrate this approach, consider the recent FTC enforcement action against Dannon for claims that allegedly exaggerated the health benefits of its Activia yogurt and DanActive dairy drink in a marketing campaign featuring actress Jamie Lee Curtis.⁵⁷ According to the FTC's complaint, Dannon claimed that DanActive prevents colds and the flu, and that one daily serving of Activia relieves temporary irregularity and helps with "slow intestinal transit time."⁵⁸ Featured in the television advertisements for Activia, Jamie Lee Curtis tells viewers that many people suffer from irregularity, that "our busy lives sometimes force us to eat the wrong things at the wrong time," and she reassures viewers that Activia can help.

Dannon eventually settled with the FTC agreeing to modify their advertising campaigns and pay \$21 million to 39 states to resolve their respective state attorney general investigations.⁵⁹ Curtis's name, however, was conspicuously absent from the FTC's complaint, and no liability was extended to her for the statements she made in Dannon's advertisements. Did Curtis use the product and experience the purported benefits herself? Did she inquire as to Dannon's substantiation materials for the product? It is not clear and it does not appear that the FTC ever asked these questions.

The Future of Celebrity Endorsement Enforcement

Marketers certainly know how important it is to include a morals clause in their celebrity contracts, which permits the advertiser to terminate the relationship when the celebrity commits a crime or engages in offensive or

immoral behavior that reflects poorly on the company. But this traditional morals clause, by itself, may be insufficient to protect the advertiser in light of today's emerging social media industry (and the troubles it can get celebrities into with the FTC and the revised guides). As recommended in the guides, marketers and their legal representatives should monitor celebrity client endorsements and advise a celebrity client in advance about what he or she should (or should not) say about the product or service. They should also consider including expanded indemnification and representation and warranty clauses in celebrity contracts. Novel contractual protections, such as a so-called social media etiquette clause governing the use of social media, may also be appropriate. ■

¹ 16 C.F.R. §255 (2009).

² 15 U.S.C. 45.

³ Guides Concerning the Use of Endorsements and Testimonials in Advertising, 73 Fed. Reg. 72734, 72736 (Nov. 28, 2008).

⁴ 16 C.F.R. §255.1(d).

⁵ E.g., Cooga Mooga, Inc., 92 F.T.C. 310 (1978) (consent order); *FTC v. Garvey*, 383 F. 3d 891 (9th Cir. 2004).

⁶ Guides Concerning the Use of Endorsements and Testimonials in Advertising, 73 Fed. Reg. 72734, 72736 (Nov. 28, 2008).

⁷ *Id.*

⁸ Michael Mallow, *Why Celebrity Endorsers Should Watch What They Say*, ADVERTISING AGE MAGAZINE, May 25, 2009.

⁹ 16 C.F.R. §255.0(b) (2009).

¹⁰ *Id.* at §255.1 (Example 4).

¹¹ *Id.* at §255.1(a).

¹² Guides Concerning the Use of Endorsements and Testimonials in Advertising, 74 Fed. Reg. 53124, 53128 (Oct. 15, 2009).

¹³ Lesley Fair, *When You Wish Upon a Star: Celebrity Endorsements & the FTC's Revised Endorsement Guides*, available at <http://business.ftc.gov/documents/when-you-wish-upon-star-celebrity-endorsements-ftcs-revised-endorsement-guides>.

¹⁴ 16 C.F.R. §255.1(c) (2009).

¹⁵ *Id.*

¹⁶ *Id.* at §255.5.

¹⁷ FTC Facts for Business: The FTC's Revised Endorsement Guides: What People are Asking, available at <http://business.ftc.gov/documents/bus71-ftcs-revised-endorsement-guideswhat-people-are-asking>.

¹⁸ 16 C.F.R. §255.5 (2009) (Examples 2 and 3).

¹⁹ Guides Concerning the Use of Endorsements and Testimonials in Advertising, 74 Fed. Reg. 53124, 53133 (Oct. 15, 2009).

²⁰ *Id.* at 53134.

²¹ 16 C.F.R. §255.1.5 (2009) (Example 3).

²² *Id.*; On Twitter, the FTC has indicated that a simple hashtag following the tweet, such as #paid ad or #ad, will likely suffice. See FTC Facts for Business: The FTC Revised Endorsement Guides: What People are Asking, available at <http://business.ftc.gov/documents/bus71-ftcs-revised-endorsement-guideswhat-people-are-asking>.

²³ Cooga Mooga, Inc., 92 F.T.C. 310, 312 (1978).

²⁴ *Id.* at 316.

²⁵ *Id.* at 319.

²⁶ *Show Business: Let the Stellar Seller Beware*, TIME, May 22, 1978.

²⁷ GENELLE BELMAS & WAYNE OVERBECK, MAJOR

²⁸ *Show Business: Let the Stellar Seller Beware*, TIME, May 22, 1978.

²⁹ *FTC v. Garvey*, 383 F. 3d 891 (9th Cir. 2004).

³⁰ *Id.* at 895.

³¹ *Id.* at 896; 15 U.S.C. §§45(a), 52.

³² *Garvey*, 383 F. 3d at 900.

³³ *Id.* at 901.

³⁴ *Id.* at 902.

³⁵ *Id.* at 903.

³⁶ *Id.* at 904.

³⁷ *Id.*; See also D. John Hendrickson, *Garvey Prevails over FTC in False Advertising Case*, Oct. 1, 2004, http://www.admedialaw.com/index.php?mact=News_cmnt01,detail,0&cntnt01articleid=14&cntnt01returnid=43.

³⁸ *Garvey*, 383 F. 3d at 905.

³⁹ Jim Edwards, *New FTC Rules for Bloggers and Celebrities are all Steve Garvey's Fault*, Oct. 4, 2009, available at http://www.cbsnews.com/8301-505123_162-42743159/new-ftc-rules-for-bloggers-and-celebrities-are-all-steve-garveys-fault.

⁴⁰ See Guides Concerning the Use of Endorsements and Testimonials in Advertising, 74 Fed. Reg. 53124, 53129 (Oct. 15, 2009).

⁴¹ *Id.* at 53128 (citing 16 C.F.R. 255.1(a)).

⁴² Nick Bilton, *Ashton Kutcher Could Face Questions about Disclosure*, N.Y. Times, Aug. 18, 2011 (updated Aug. 19, 2011), available at <http://bits.blogs.nytimes.com/2011/08/18/ashton-kutcher-could-face-questions-about-disclosure/>. See also <http://www.details.com/social/201109/best-new-generation-next>.

⁴³ Ryan Tate, *Ashton Kutcher Is a Massive Whore*, Aug. 17, 2011, Gawker.com, <http://gawker.com/http://gawker.com/5831935>.

⁴⁴ See Bilton, *supra* note 42.

⁴⁵ *Id.*

⁴⁶ *50 Cent's Twitter Penny Stock Scheme: Makes \$8.7 Million on H&H Importing by Encouraging Fans to Invest*, Huffington Post, first posted Jan. 11, 2011, updated May 25, 2011, http://www.huffingtonpost.com/2011/01/11/50-cent-makes-87-million-on-twitter-encourages-fans-to-invest-inscheme_n_807327.html.

⁴⁷ *Id.*

⁴⁸ Kathy Kristof, *What 50 Cent Co. Is Really Selling*, CBSnews.com, Jan. 18, 2011, http://www.cbsnews.com/8301-505144_162-36943845/what-50-cent-co-is-really-selling/.

⁴⁹ Kathy Kristof, *50 Cent: Penny Stock Pump & Dump?*, CBSnews.com, Jan. 11, 2011, http://www.cbsnews.com/8301-505144_162-36943822/50-cent-penny-stock-pump-dump/.

⁵⁰ Nick Bilton, *F.T.C. Says It Will Not Investigate Ashton Kutcher*, N.Y. TIMES, Aug., 19, 2011, <http://bits.blogs.nytimes.com/2011/08/19/f-t-c-says-it-will-not-investigate-ashton-kutcher/>.

⁵¹ *Id.* Ashton Kutcher has since turned over his Twitter account to his publicist. See Alexandra Cheney, *Ashton Kutcher Takes a Twitter Vow of Silence*, WALL STREET J., Nov. 10, 2011, <http://blogs.wsj.com/speakeasy/2011/11/10/ashton-kutcher-takes-a-20twitter-vow-of-silence/>.

⁵² Guides Concerning the Use of Endorsements and Testimonials in Advertising, 74 Fed. Reg. 53124 (Oct. 15, 2009).

⁵³ *Id.* at 53135.

⁵⁴ *FTC Facts for Business: The FTC Revised Endorsement Guides: What People are Asking*, <http://business.ftc.gov/documents/bus71-ftcs-revised-endorsement-guideswhat-people-are-asking.pdf>.

⁵⁵ *Id.*

⁵⁶ 16 C.F.R. §255.1.d (2009).

⁵⁷ In the Matter of Dannon Co., Inc., F.T.C. File No. 0823158 (Feb. 4, 2011).

⁵⁸ *Id.*

⁵⁹ *Id.*