



United States of America
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

Mary K. Engle
Associate Director

March 20, 2017

Mr. John Nosek
President
Kao USA, Inc.
312 Plum Street
Cincinnati, Ohio 45202

Dear Mr. Nosek:

The Federal Trade Commission is the nation's consumer protection agency. As part of our consumer protection mission, we work to educate businesses about their responsibilities under truth-in-advertising laws and standards, including the FTC's Endorsement Guides.¹

I am writing to call your attention to the attached Instagram post by Shay Mitchell.² She posts a video of herself scrubbing her face with Biore products and writes, “I can never perfect the art of the boomerang but this one was a win thanks to @bioreus’s Baking Soda Scrub that fizzes & bubbles when I wash my face almost like a mini spa-day for my pores! [emojis] #TBT BioreAmbassador.”

The FTC's Endorsement Guides state that if there is a “material connection” between an endorser and the marketer of a product – in other words, a connection that might affect the weight or credibility that consumers give the endorsement – that connection should be clearly and conspicuously disclosed, unless the connection is already clear from the context of the communication containing the endorsement. Material connections could consist of a business or family relationship, monetary payment, or the provision of free products to the endorser.

The Endorsement Guides apply to marketers and endorsers. FTC staff guidance makes clear that marketers should advise endorsers of their disclosure responsibilities and should monitor their endorsements to ensure that appropriate disclosures are made.

It appears that Ms. Mitchell has a business relationship with your company. Ms. Mitchell's material connection to your company should be clearly and conspicuously disclosed in her endorsements. To be both “clear” and “conspicuous,” the disclosure should use

¹ The Endorsement Guides are published in 16 C.F.R. Part 255.

² The post is available at <https://www.instagram.com/p/BLZrgpUBp1O/?taken-by=shaym&hl=en>.

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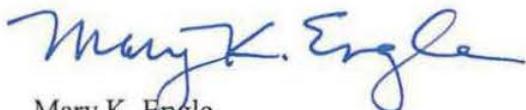
unambiguous language and stand out. Consumers should be able to notice the disclosure easily, and not have to look for it. For example, consumers viewing posts in their Instagram streams on mobile devices typically see only the first three lines of a longer post unless they click “more,” and many consumers may not click “more.” Therefore, an endorser should disclose any material connection above the “more” button. In addition, where there are multiple tags, hashtags, or links, readers may just skip over them, especially where they appear at the end of a long post.

If your company has a written social media policy that addresses the disclosure of material connections by endorsers, you may want to evaluate how it applies to Ms. Mitchell’s post and to similar posts by other endorsers. If your company does not have such a policy, you may want to consider implementing one that provides appropriate guidance to your endorsers.

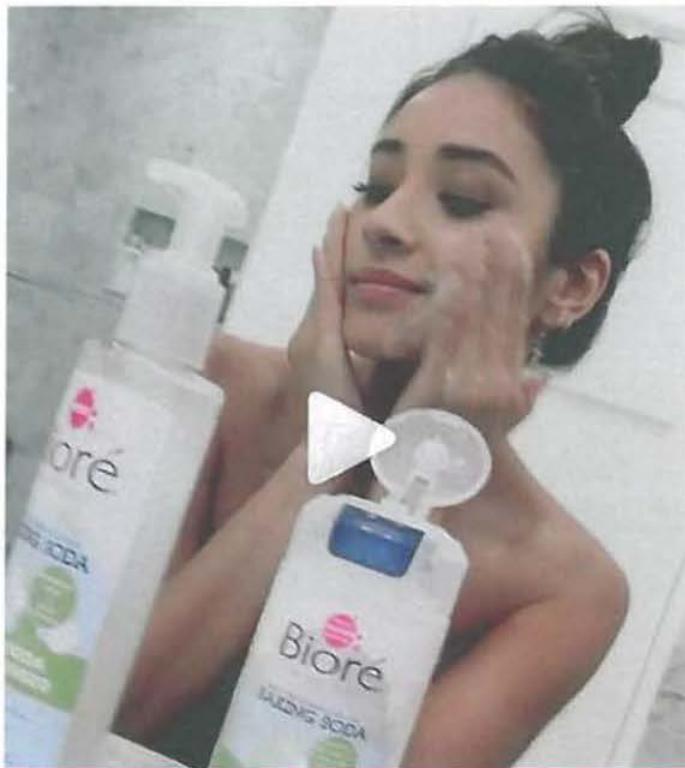
You may also want to review your company’s social media marketing to ensure that posts contain necessary disclosures and they are clear and conspicuous. To assist you, I have enclosed the Endorsement Guides and a recent staff publication, The FTC Endorsement Guides: What People are Asking. (They’re available online at business.ftc.gov.)

If you have any questions, please contact Mamie Kresses at (202) 326-2070 or mkresses@ftc.gov. Thank you.

Very truly yours,



Mary K. Engle
Associate Director
Division of Advertising Practices



shaym

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8w

shaym I can never perfect the art of the boomerang but this one was a win thanks to @bioreus 's Baking Soda Scrub that fizzes & bubbles when I wash my face almost like a mini spa-day for my pores! +
#TBT BioreAmbassador

view all 826 comments

manalbounaaja3 Woow

saarah.siddiqui Wait that was her in the commercial?? WOAH @ssanlyahhh

irem_koca 😍😍

asialena_2003 GOALS

asialena_2003 GOALS

asialena_2003 GOALS

asialena_2003 HOWWW

asialena_2003 ARE

kylemaisine @jadenderry have this