

FTC Seal of Disapproval for “Selfie” Certification Marks

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For many years, consumers have relied on certification marks like the Good Housekeeping Seal of Approval and the UL logo as an assurance of product quality. Administered by independent organizations, consumers reasonably expect that the certification is not biased by a financial or ownership stake in the companies whose products are being certified.

A different type of certification mark has recently become more common, referred to as a “selfie” certification mark by Leslie Fair, Senior Attorney at the FTC’s Bureau of Consumer Protection and author of the FTC’s Business Blog. These are seals of quality or approval created and used by the companies selling the products being certified - like athletes giving themselves their own gold medal. From the FTC’s perspective, these “selfie” certification marks are problematic because consumers are likely to be misled into believing that the seal has been awarded by an independent, unbiased organization.

In several recent enforcement actions, the FTC has cracked down on this practice because it violates FTC guidelines requiring the disclosure of material connections related to product endorsements. In June, we [blogged](#) about a trampoline company that used a Trampoline Safety of America logo and accolades by the Bureau of Trampoline Review to promote the company’s products. Although these endorsements were both represented as originating with independent organizations, in fact, they were just a front for the two brothers who owned the company. A month later, the FTC published a Complaint and proposed Consent Order against [Benjamin Moore & Co.](#) for using a “Green Promise” certification mark to indicate that its paints were environmentally-friendly. And in late September, the agency published a Complaint and proposed Consent Order against [Moonlight Slumber, LLC](#) for selling baby mattresses that were not

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only misrepresented as “organic” and “natural” but also marketed with the use of a “Green Safety” Shield logo created by Moonlight Slumber to promote the environmentally-friendly nature of its mattresses.

In all of these cases, the self-certifying companies were found to have violated the FTC’s Endorsement Guidelines by failing to disclose the material connection between the certification and the company featuring it to promote its products. The FTC’s press release announcing the enforcement action against Moonlight Slumber confirmed its disapproval of “seals or certifications that companies award themselves without clearly explaining that to consumers.” The press release further confirmed that this issue will be a particular focus when misleading certifications “appear to give an independent authoritative A-OK for health, safety, or environmental claims that consumers can’t evaluate for themselves. If your ad features seals or certifications of your own designation, make that abundantly clear to consumers.” During last week’s ASRC advertising law conference in New York City, Leslie Fair highlighted the issue, expressing the concern that, absent full disclosure, consumers are not otherwise in a position to know the origin of the certification.

In the Moonlight Slumber matter, the proposed Consent Order provides that Moonlight Slumber must not make any express or implied representation about a certification or endorsement of a product without clearly and conspicuously disclosing “any unexpected material connection” between the endorser and the company’s product or service. An “unexpected material connection” is defined as “any relationship that might materially affect the weight or credibility” of the certification and that would not reasonably be expected by consumers. To put it even more directly, the proposed Order affirms: “Any certification that is awarded by the Respondent to its own product creates an ‘unexpected material connection.’”

This recent spate of regulatory action against “selfie” certification marks should put marketers on notice – if a company gives itself an award of its own creation, the material connection to the certification or endorsement must be clearly and prominently disclosed.