



Pinning it on Pinterest May Be Pining for Pain

Alan G. Minsk

On September 22 and 23, 2014, the Food and Drug Administration (FDA) (and, in one case, the Federal Trade Commission (FTC) with FDA) issued Warning Letters to three companies for unlawful website promotion. While each case is fact-specific, there are some common themes of interest.¹

1. All products were sold as dietary supplements, but FDA said they were unapproved new drugs.
2. FDA (and the FTC) took exception to product websites and social media accounts (e.g., Facebook, Twitter, Pinterest, YouTube).
3. The companies used paid “consultants” or “wellness advocates” to promote prescription-type products.

While all regulatory enforcement letters are instructional for industry to review, we note some specific issues that caught our eye.

1. One letter is from FDA and the FTC. While the two regulatory bodies work together at times, a joint letter is not common. It is too early to say whether such correspondence is a sign of things to come, but the recipient must respond to both agencies.
2. We have seen FDA issue letters based on promotional claims on Facebook, YouTube, and Twitter, but we believe this is the first time the agency has cited Pinterest posts. Different venue – same problem.
3. FDA noted in two enforcement letters the use of paid consultants, and how they are extensions of the company. One cannot hide behind another party to do one’s dirty work.
4. While the enforcement letters were for egregious violations, we continue to remind FDA-regulated clients that:
 - a. all social media materials must be reviewed internally (and externally as needed) to ensure regulatory compliance; and
 - b. use of consultants or advocates to express views and opinions about products does not absolve the company of its regulatory obligations.

¹ The enforcement letters can be assessed at:
www.fda.gov/ICECI/EnforcementActions/WarningLetters/2014/ucm415809.htm;
www.fda.gov/ICECI/EnforcementActions/WarningLetters/2014/ucm416051.htm.

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