

## Octavia Spencer's Tweets at Center of Endorsement Lawsuit (Exclusive)

9:52 AM PDT 8/28/2013 by Eriq Gardner



Photo Credit:

**The Oscar-winning actress alleges that a diet company walked away from paying her when, among other things, she insisted upon using a hashtag.**

For those who believe that a Hollywood actress would do practically anything in an endorsement deal, **Octavia Spencer** has filed a lawsuit that suggests otherwise.

Spencer, who won an Academy Award for best supporting actress in 2011's *Help*, says that when she agreed to endorse Sensa Products, she made it clear that she would only promote a "healthier lifestyle" and not significant weight loss. She says she passed up a \$3 million offer from another weight loss company to take Sensa's \$1.25 million one (with an additional \$100,000 going to charity) because the company agreed to various stipulations, including that the ad campaign wouldn't focus on significant weight transformation, wouldn't use before and after photographs and wouldn't be placed in tabloid magazines or on gossip websites.

**VIDEO: Octavia Spencer and the Cast of 'Fruitvale Station' Discuss the Film Fest Favorite**

But according to a breach-of-contract and fraud lawsuit filed on Wednesday in L.A. Superior Court, the ad campaign didn't go so well, and at some point, after the actress had lived up to her side of the agreement by losing the contractually required amount of weight, Sensa began "scheming" to extradite itself from paying the actress.

Among Sensa's alleged actions was sending the actress a termination notice dated Aug. 6 that claimed Spencer was in breach of her agreement by insisting upon adding the hashtag "#spon" at the end of her tweets for the diet product company.

"Sensa manufactures and markets a diet product designed to trick one's brain," says Spencer's lawsuit. "Therefore, it's not surprising that it would manufacture allegations against its most prominent spokesperson, Octavia Spencer."

To understand the allegations concerning the tweets, it's necessary to know that in October 2009, the Federal Trade Commission promulgated **new guidelines** that made it clear that "celebrities have a duty to disclose their relationships with advertisers when making endorsements outside the context of traditional ads, such as on talk shows or in social media."

**STORY: Settlement Reached in Lawsuit Filed by NFL Star Fired as Pitchman for 9/11 Conspiracy Tweets**

Since then, some careful celebrities on Twitter have been using hashtags like #spon or #paid so as to avoid confusion over tweets that stem from promotional relationships. There is, of course, a downside to doing this: Labeling tweets as sponsored might make for less effective product pitches.

In Spencer's endorsement agreement with Sensa Products, which is provided in part in the complaint, there's a provision that's titled "Social Media Legal Compliance," that is meant to "ensure that all social media content created and/or published by [Spencer] comply with all relevant laws, regulations and rules including, without limitation the Federal Trade Commission (FTC) Guidelines concerning the use of endorsements and testimonial in advertising (i.e., including disclosure language such as #SPON) ..."

And so, Spencer posted tweets like the following: "Bet you've seen my @SensaWeightloss commercials & wondered if it's the real deal? I'm here to say it works! #spon"

In the termination letter that was sent to Spencer last month, she was allegedly blamed for the failed advertising campaign. Her failure to get a half-dozen tweets preapproved and her insistence on using "#spon" were said in the letter to have constituted a material breach of her endorsement contract.

**STORY: L.A. Lakers Player Beats Strange Defamation Claim Over TMZ-Related Tweet**

But the lawsuit implies that this was some kind of pretext for getting out of paying the \$700,000 remaining on her million-dollar contract.

Orit, the company that renders Spencer's services, executed a sponsorship agreement with Sensa in August 2012, after the actress had tried out the product and lost five pounds.

Over the next several months, Spencer says she lived up to the agreement, making good-faith efforts to participate in the marketing and sales of the company's products. During this time, her activities were said to have been praised by Sensa. The actress says she went "above and beyond" her obligations by allowing the weight loss company, despite her reluctance, to use before and after photographs and have advertisements placed in tabloids.

But in April 2013, Sensa executives acknowledged that the ad campaign was not living up to expectations, according to the complaint. Spencer's agent and publicist were brought in and one of the brand agency execs allegedly stated that "Sensa would probably walk away [from] this if it could."

"Sensa admitted that Spencer's social media posts generally received less likes than the brand saw with their normal posts," says the lawsuit. "Although the reactions to Spencer's posts were all positive, Sensa felt that her use of '#spon' at the end of her tweets, which is a requirement under the Agreement and by the FTC, did not benefit her performance."

The lawsuit goes on to cite research that was presented during a brand meeting in May.

"Sensa stated that its research showed that Spencer was only relevant to its target audience when her awareness in the media was high," continues the complaint. "Sensa further admitted that its research indicated that while some consumers recognized Spencer's weight loss success, many did not recognize who she was or that she had lost weight."

In other words, being an Oscar winner doesn't guarantee fame.

The parties attempted to push things forward with new ideas, but Spencer's legal team suspects that the company was beginning to "manufacture a way out of the agreement."

Her contract had mandatory weigh-ins to determine if she maintained the 20-pound weight loss that was required.

"On information and belief, the Spencer parties allege that Sensa wanted Spencer to fail the weigh-in so it could terminate the Agreement," says the lawsuit.

But the actress had a successful weigh-in, allegedly causing the company to look for another way to cancel her deal. That's when payments stopped and the controversy over the sponsored tweets came up.

Spencer is being represented by **Bryan Freedman** and **Brian Turnauer** at Freedman & Taitelman.

We've reached out to the defendant and will update with any comment.

*Read the complaint below.*

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