

Social Media 201

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Social Media 201



Social Media
 - Regulators and Trial lawyers are watching
 - Obstacles of Rules to Live By



Rules to Live (and Succeed) By

- Rules are the same, just the media have changed
- If you can't say something right, don't say anything
- Shouting case
- If the inherent limitations of a method do not permit its use in the way a seller desires, the seller cannot by material misrepresentation compensate for those limitations
- Just because you figured out one form of social media doesn't mean you've got social media figured out
- Rules
- Character and display limitations

More Rules to Live By

- Make Clear That Something is Advertising
- Tell People It's You
- Tell People You've Incentivized Someone to Say Nice Things About You
- Train and Supervise Third Parties
- Have Policies





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Social Media

- Regulators and Trial lawyers are Watching
- Overview of Rules to Live By

Federal Regulators are Tracking Social Media (when they're not shut down)



FTC

Revised Testimonial Guides

Testimonials and Social Media

- Disclose if you or your employees post
- Disclose material connection to others who post
 - Bloggers
 - Enforcement cases
 - Ann Taylor
 - Hyundai Superbowl promo
 - Reverb

Revised Dot.Com Guides

- Awareness of how your promotional materials will look in all forms of media and methods of viewing
- One size does not necessarily fit all

**.com
Disclosures**

How to Make Effective Disclosures
in Digital Advertising

Odds and Ends

- Apps Covered by COPPA
- Native Advertising Workshop
- FDA and Facebook "likes"

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Social Media Litigation

Here comes the Judge!

Courts -- increasingly weigh in on social media issues



New rules and best practices may be gleaned from seeing how disputes are waged in courts (and at NAD)

Courts: increasing source of guidance for advertisers trying to discern the social media rules.



Recent Events

Yahoo! and LinkedIn Sued for Violating Privacy (October 16, 2013)

"Clicking the 'like' button on a Facebook page qualifies as speech."

Bland v. Roberts. 2013 WL 5228033 (4th Cir. Sept. 18, 2013)

Inviting UGC

Subway / Quiznos
 • advertiser may become responsible for the content of the consumer videos and lose CDA immunity if involved in shaping the discussion



Inducing "Likes"

"most liked" "more liked"

• may be deceptive if "likes" were induced (by giving away product or entry to contest) (Coastal Contacts, NAD, 2012)



Showcasing Consumer Success

• Advertiser created Pinterest account to showcase "Real Customers' Real Success"

• Account failed to prominently disclose that results were atypical



Common fact patterns

Look whos blogging!

• Your agents blog about how great your product is without disclosing the affiliation

• You induce social media without protecting privacy/ children

• Defamation and trademark litigation against "gripe sites"



Rules from the non-advertising context:

Social media (like Facebook wall posts) -- now defined as "document" for Rule 34

Newest sources of "smoking guns" that DRIVE THE RESULT of lawsuits)



Take away

Social media legal landscape is uncertain and rapidly changing

Monitor court decisions in social media area

Capture lessons learned / best practices



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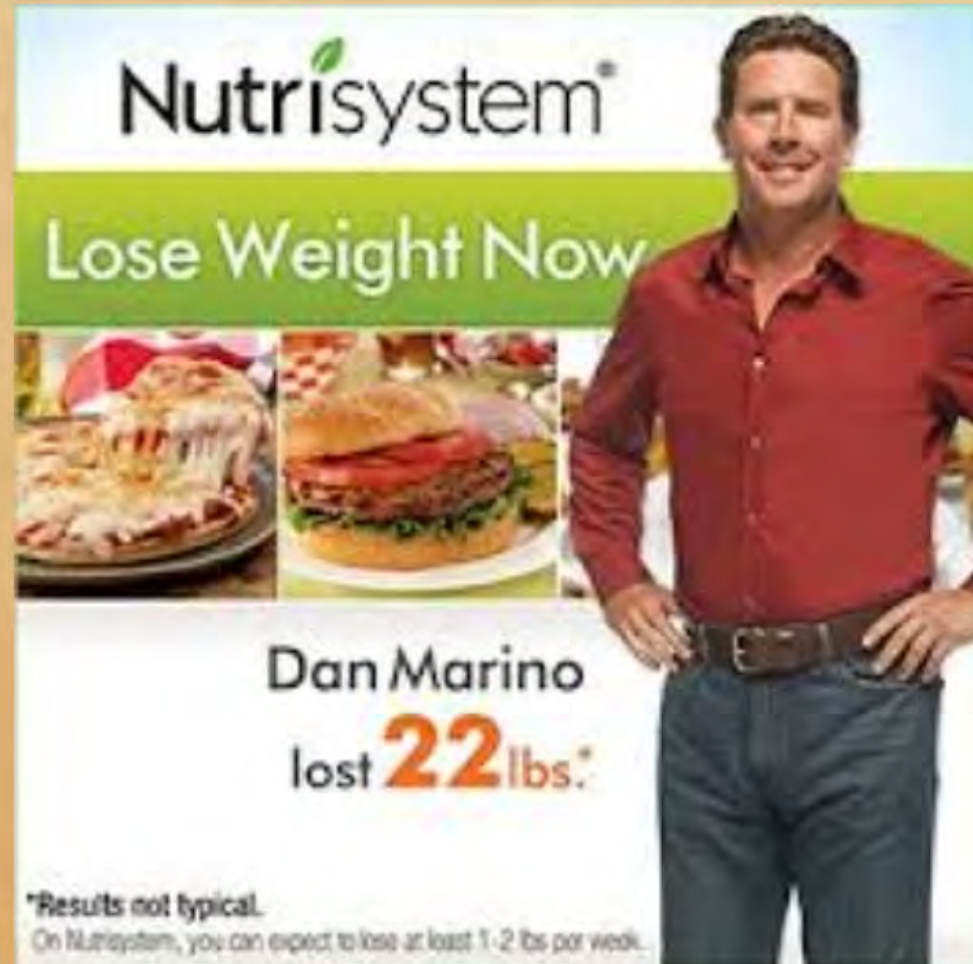
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Nutrisystem®

Lose Weight Now

Dan Marino
lost **22** lbs.*

*Results not typical.
On Nutrisystem, you can expect to lose at least 1-2 lbs per week.

The advertisement features a man in a red shirt and blue jeans standing with his hands on his hips. To his left are two images of food: a pizza and a burger. The background is a light blue and green gradient.

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