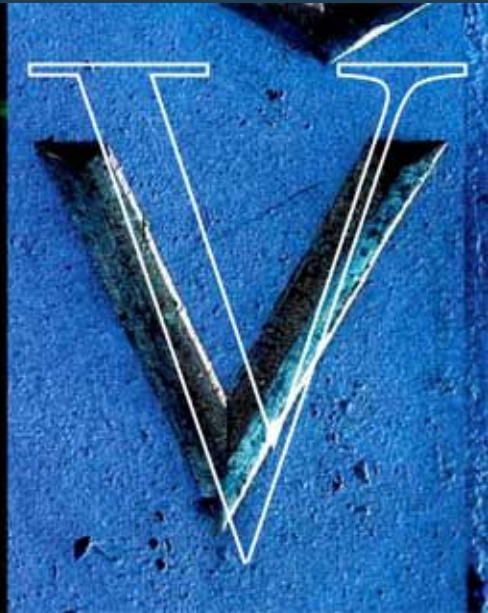
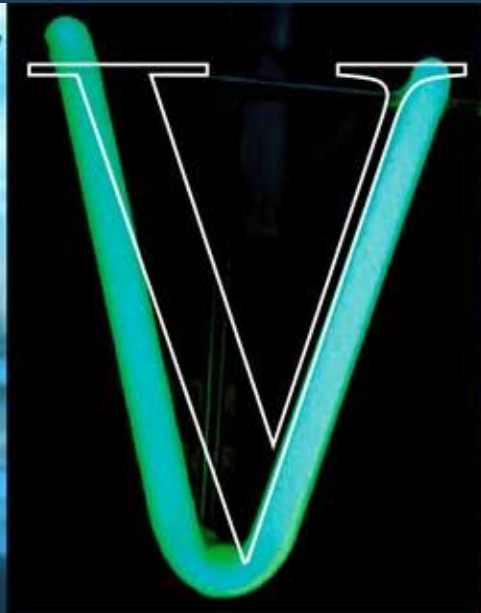
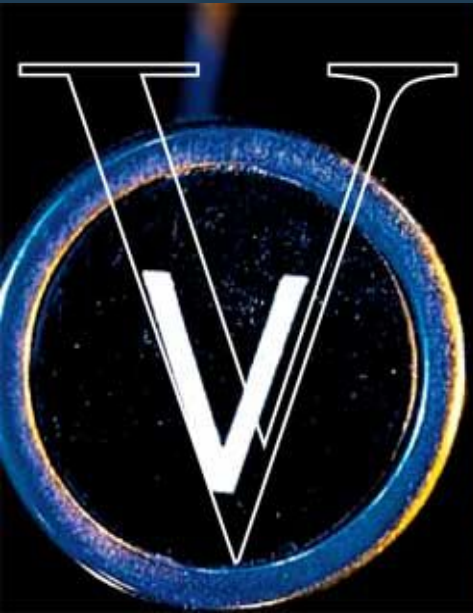


VENABLE[®]_{LLP}

Connecting the Dots: An Advertising Law Symposium

March 11, 2014

New York City



Connecting the Dots: An Advertising Law Symposium

Agenda

TUESDAY, MARCH 11, 2014

8:00 am - 8:30 am **Registration**

Concurrent Session Option I

8:30 am - 9:30 am **Eggs and Ethics**
Randal M. Shaheen, Esq.

Concurrent Session Option II

8:30 am - 9:30 am **Bagels and Broadcasters**
Amy Ralph Mudge, Esq.
Ndidi A. Oriji, Esq.
Chyrsse Spathas, Esq.

9:30 am - 11:30 am **Litigating an Advertising Case**

Honorable Timothy C. Batten, Sr.
Roger A. Colaizzi, Esq.
Randall K. Miller, Esq.
Jessie F. Beeber, Esq.

11:30 am - 1:00 pm **Lunch Keynote with David C. Vladeck**

David C. Vladeck, Esq.

1:00 pm - 2:00 pm **The Regulatory Road Ahead in 2014**

Leonard L. Gordon, Esq.
Tom Cosgrove, Esq.
Jane M. Azia, Esq.
David C. Vladeck, Esq.



Connecting the Dots: An Advertising Law Symposium

Agenda continued

TUESDAY, MARCH 11, 2014

2:00 pm - 2:45 pm **Studies, Surveys and Substantiation –
Oh My**

Randal M. Shaheen, Esq.
Richard Cleland, Esq.
Dr. Gary Ford
Tom Rosholt

2:45 pm - 3:00 pm **Break**

3:00 pm - 3:45 pm **Navigating your Way through Social
Media**

Amy Ralph Mudge, Esq.
Laura Brett, Esq.
Claudia A. Lewis, Esq.
Suzanne Fay Garwood, Esq.
Maura A. Marcheski, Esq.

3:45 pm - 4:15 pm **Advertising with the Stars**

Penelope Barnett, Esq.
Melissa Landau Steinman, Esq.

4:15 pm - 4:45 pm **Some Direct Talk about Direct
Marketing**

Xenia “Senny” Boone, Esq.
Ellen Traupman Berge, Esq.

4:45 pm - 5:15 pm **This Panel is brought to you by...**

Po Yi, Esq.

5:30 pm - 7:00 pm **Cocktail Reception**

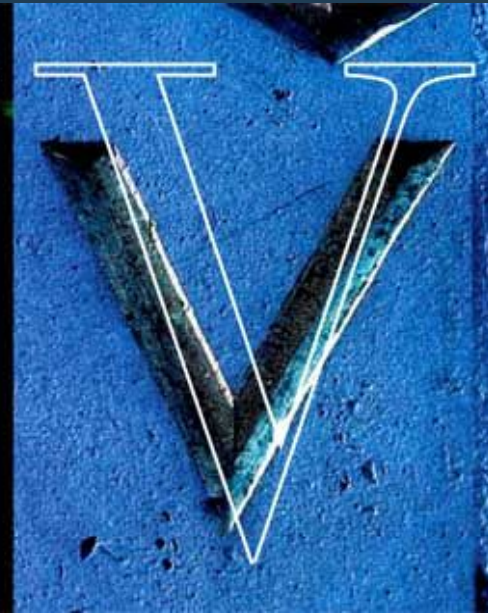


VENABLE[®]_{LLP}

Eggs and Ethics:

Social Media and Ethical Considerations

Randal M. Shaheen, Partner, Venable LLP



Social Media and Lawyer Advertising

- Restrictions regarding lawyer advertising may apply to social media sites
 - Different states may have different rules but principles to consider
 - Are you communicating with just “friends” or the general public?
 - Are you simply reporting a result?
 - Are you soliciting prospective clients?
 - Are you promoting an event or article?



Social Media and Lawyer Advertising

- If you are engaging in advertising then various restrictions apply depending upon state
- Things like firm websites, blogs must be labeled as “advertisements”
- Note that this differs from FTC guidance – Company website does not have to label itself as an “advertisement”
- See California Ethics Op. 2012-186 for good discussion



Avoid False or Misleading Statements

- Rules in this regard apply in full force to social media
- If you post about winning a case or verdict, make sure you comply with state rules governing “typicality”
- Beware of social media sites (LinkedIn, Avvo) that may allow you to claim a “specialty.” (NY Ethics Opinion 972)
- Beware of answering online questions as an “expert” (South Carolina Ethics Op. 12-03)



Social Media and Client Solicitations

- As noted earlier, social media posts can constitute prohibited solicitations
 - Some states recognize exemptions for communications to other lawyers, family members, close friends, prior clients, etc.
- What about sending “friend request” or LinkedIn invitation?
 - California ethics op declined to address
 - Your daughter’s piano teacher?
 - Does it depend how you use the site and your connection to the individual you’re seeking to “friend?”



Social Media and Disclosing Privileged or Confidential Information

- Privilege Considerations
 - Avoid making casual comments about client
 - Imply guilt, breaking law, etc.
 - What about posts that might disclose work for a particular client
 - Posting pictures (town or client building)
 - Geolocation or otherwise disclosing where you are
 - Should common sense prevail – saying you're in NYC versus Smithfield, Virginia



Social Media and Disclosing Privileged or Confidential Information

- Confidential Information
 - Even if information is not privileged there may be restrictions on disclosing information about clients (and some clients may also include that in their retainer agreements)
 - ABA Formal Op 10-457 (client consent before posting info about clients on websites)
 - However, Virginia Supreme Court held that 1st Am. Allows lawyers to post about events that actually took place in the courtroom (Hunter v. Va. State Bar)
 - Cautionary tale re confidential settlements



Social Media and Connections

- Friending Judges
 - ABA – Judges may engage in social networking (NY too)
 - Evaluate on case by case basis
 - Other states – don't friend/connect with lawyers who appear before you
 - Suggests they are in special position to influence judge
 - Are Facebook friends really “friends?”
 - What about regular social interaction with judges
 - Is the problem that social media memorializes it?



Social Media and Connections

- Communicating with represented parties
- Avoid attempting to connect with opposing parties represented by counsel
- For companies, San Diego Bar says this includes high ranking employees
 - Primary concern is preventing access to private social media
- What about pre-existing connections – do you have to “unfriend?”
- Ok to access publicly available social media



Social Media and Connections

- Unrepresented Third Parties
- Arises most commonly with 3rd Party Witnesses
- Attempt to gain access to private social media
 - Some jurisdictions can't use false pretenses
 - Other jurisdictions, affirmatively disclose reason for connection request
- Publicly available social media is fair game
 - Perhaps encourage clients to make their social media private



Social Media and Practice of Law

- Beware of inadvertently creating attorney-client relationship
- Responding to tweets, blog post comments, etc.
- Might give rise to Attorney-client relationship
- Many legal blogs disable comments
- Also disclaimers re not forming AC relationship
- Disclosures, though, must be clear and prominent



Social Media and Practice of Law

- Guard against unauthorized practice of law
- Social media has no geographic boundaries
- Conduct that may be okay in your own jurisdiction can land you in trouble elsewhere
 - Blogs, etc.



Social Media – Testimonials and Endorsements

- Using client testimonials on social media – same rules apply to testimonials generally
 - Beware of retweeting, etc.
 - Consider typicality rules
- Endorsements can also trigger material connections requirements
 - Clients
 - Relatives
 - Colleagues



Questions?



Contact Information

Randal M. Shaheen

rshaheen@Venable.com

t 202.344.4488

f 202.344.8300

www.Venable.com





VENABLE[®]_{LLP}

Litigating an Advertising Case

Hon. Timothy C. Batten, Sr., U.S. District Court, Northern District of Georgia

Roger A. Colaizzi, Partner, Venable LLP

Randall K. Miller, Partner, Venable LLP

Jessie F. Beeber, Partner, Venable LLP



Recent Developments

Two Lanham Act cases are going to the Supreme Court this year:

- Static Control v. Lexmark (6th Circuit)
- Pom Wonderful v. Coca-Cola (9th Circuit)



Recent Developments

Static Control v. Lexmark (6th Circuit)

- Issue is standing to bring false advertising claims
- Not a Direct Competitor: Does Static Control have standing to bring false advertising claims against Lexmark?
- Resolve 3-way Circuit Split:
 - Only actual competitor (Seventh, Ninth, Tenth)
 - AGC (antitrust) test (Third, Fifth, Eighth, Eleventh)
 - Reasonable interest test (Second, Sixth)



Recent Developments

Pom Wonderful v. Coca-Cola (9th Circuit)

- Direct Competitors: Pomegranate Blueberry Juice
- Issue is whether Pom's claims of false advertising on product label are limited by the FDCA
- If name and label comply with FDA, can a competitor still bring a Lanham Act claim?
- How do we reconcile overlapping statutes?



Hypothetical

- Acme (Plaintiff) sells household steam irons
- Beta (Defendant) sells competing steam irons
- Beta advertises “More Powerful Steam vs. Acme at half the price”



Beta Co.

Ultimate Professional
Maximum Steam Power



POWER & PRECISION
FOR ULTIMATE PERFORMANCE

**MORE
POWERFUL STEAM**
vs. Acme ®† at half the price

*Offers more grams per minute (extended steam burst mode before water spots appear) when compared to leading competition in the same price range at time of printing.

†Based on independent comparative steam burst testing to Acme Co. AE1234 (grams/shot).

Preliminary Injunction Standard

- a likelihood of success on the merits;
- moving party will suffer irreparable harm if the injunction is denied;
- granting relief will not result in even greater harm to the nonmoving party; and
- the public interest favors entry of the preliminary injunction



Winter v. Natural Res. Defense Council, 555 U.S. 7, 22 (2008)

Elements of False Advertising Claim

- 43(a)(1)(B): misrepresentation in commercial advertising
- Beta has made false or misleading statements about Acme's product
- Actual deception or at least a tendency to deceive
- Deception is material (likely to influence purchasing decision)
- Interstate commerce



Three Kinds of Claims

- Literally false
- Implied falsity (technically true but misleading)
- “False by necessary implication”



Literally False (Acme's Argument)

- Express Claim: “More Powerful Steam vs. Acme at Half the Price”
 - Specific attribute
 - Objectively provable (don't need consumer perception survey)
 - Material



Implied Claim

- Technically true, but misleading

- Example: “Made from real peaches” but product has less than 1% peach juice.
 - Literally true: there is peach juice in it
 - BUT: implying it is made only from peaches?

- Need a consumer survey to show what takeaway is



False By Necessary Implication

- Claim is literally true, but there is only one meaning it can have, which is false.
- Don't need a survey.
- Example: would have to show that “more powerful steam” can only mean one thing, such as a greater amount of steam comes out per shot (not hotter, or faster, or something else)



Hypothetical

- Whether the “more powerful steam” claim is literally false, impliedly false or false by necessary implication.



Literally False?

- Beta has a consumer survey showing that less than 7% of consumers define “power” as mass of grams per shot.
- 70% think “power” means something else.
- Can Beta use its consumer survey to show that “more powerful steam” is NOT literally false?



Industry v. Custom-made Test

- What substantiation does Beta have for its “more powerful steam” claim?
- Acme has industry-accepted test showing it outperforms Beta in “the *mass* of shot of steam (in grams per shot).”
- Beta has its own custom-made test that shows power, which the expert defines as kinetic energy, velocity and mass.
- Which should the Court accept?



Irreparable Harm

- Acme: irreparable harm can be presumed in this case because it is a comparative ad that names Acme.
- Beta: After *eBay* and *Winter* (Supreme Court cases) Acme has to prove irreparable harm and it hasn't done so.
- If it does have to show irreparable harm, what kind of evidence can Acme use?



Beta Co.

Ultimate Professional
Maximum Steam Power



*Offers more grams per minute (extended steam burst mode before water spots appear) when compared to leading competition in the same price range at time of printing.

†Based on independent comparative steam burst testing to Acme Co. AE1234 (grams/shot).



Contact Information

Roger A. Colaizzi

racolaizzi@Venable.com

t 202.344.8051

f 202.344.8300

Randall K. Miller

rkmiller@Venable.com

t 703.905.1449

f 703.821.8949

Jessie F. Beeber

jfbeeber@Venable.com

t 212.808.5677

f 212.307.5598

www.Venable.com





VENABLE[®]_{LLP}

Studies, Surveys and Substantiation – Oh My

Randal M. Shaheen, Partner, Venable LLP

Richard Cleland, Assistant Director, Division of Advertising Practices, FTC

Dr. Gary Ford, Professor Emeritus, Department of Marketing, American University

Tom Rosholt, Vice President, Analytics and Modeling, Morpace Inc.



Hypothetical



BigtoSmall Products Co. has just launched advertising for its new insomnia relief dietary supplement product. The marketing campaign centers around the claim that the product is “Recommended by more Doctors and preferred or liked by more consumers for Insomnia”



Hypothetical



The Company is relying upon the following to support its claims:

1. Responses by doctors who stopped by the Company's booth at an AMA convention as to which product they most frequently recommend for insomnia.
2. A tally of the number of consumers "liking" or "preferring" leading insomnia products on various leading retail and social media sites.



Hypothetical



The Company is relying upon the following to support its claims:

3. A focus group study of the product where users reported significant improvement in insomnia as well as a very large placebo-controlled clinical study of the active ingredient in the supplement which found that it was effective in eliminating insomnia. The study was published in a peer-reviewed journal along with a general summary of the data and results.

Hypothetical



The Company is relying upon the following to support its claims:

4. The Company, at the advice of counsel, also conducted a consumer survey using closed ended questions to demonstrate that consumers do not infer that a “doctor recommend” claim means that there are clinical studies to support the claim.

Questions/Discussion?

Jessie Beeber, Litigation Partner, Venable LLP

Hon. Timothy Batten, Sr. U.S. District Court,
Northern District of Georgia, Presiding Judge

Randy Miller, Litigation Partner, Venable LLP
Counsel for Plaintiff Acme

Roger Colaizzi, Litigation Partner, Venable LLP
Counsel for Defendant Beta



Questions

1. Are there different considerations that come into play when surveying professionals in terms of representativeness (geographic diversity, age groups, gender, specialization, board certification, etc.)?



2. Should a “doctors recommend” claim be viewed as a form of establishment claim? An “establishment claim” is defined as “a claim that the advertiser has clinical or other test proving that its product will perform a certain way.”
- What about the use of closed ended questions to rebut the existence of an establishment claim?



3. Can a “like” or “preference” claim legitimately be based upon consumers who frequent internet sites? Is it a problem that many consumers still shop at retail or that only certain retailers were included as part of the survey?



4a. What type of substantiation should be required for the insomnia claim? Do Dr. recommended, “likers” and efficacy require different types of substantiation.

4b. Do health-related claims almost invariably require some type of double-blind, placebo-controlled clinical stud(ies)?

1. Can one very large clinical study in some cases be an adequate proxy for 2 clinical studies?
2. Is a company always safe relying upon a study that has been peer reviewed?
3. If the company did not sponsor or conduct the study does it bear some obligation to satisfy itself that the published results are supported by the underlying data?



Contact Information

Randal M. Shaheen

rmshaheen@Venable.com

t 202.344.44881

f 202.344.8300

Dr. Gary Ford

garytford@gmail.com

Tom Rosholt

trosholt@morpace.com

t 262.456.7106

www.Venable.com





VENABLE[®]_{LLP}

Navigating your Way through Social Media

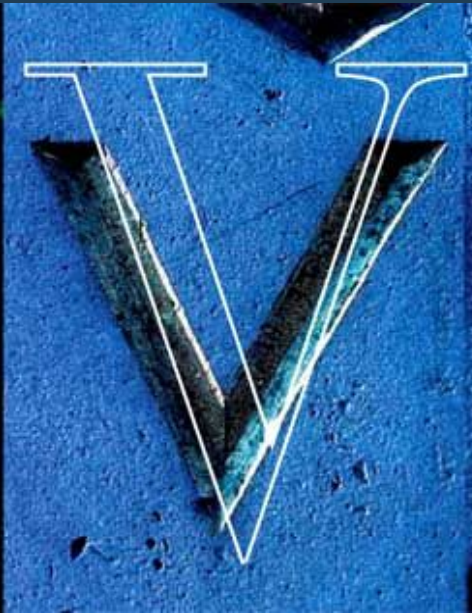
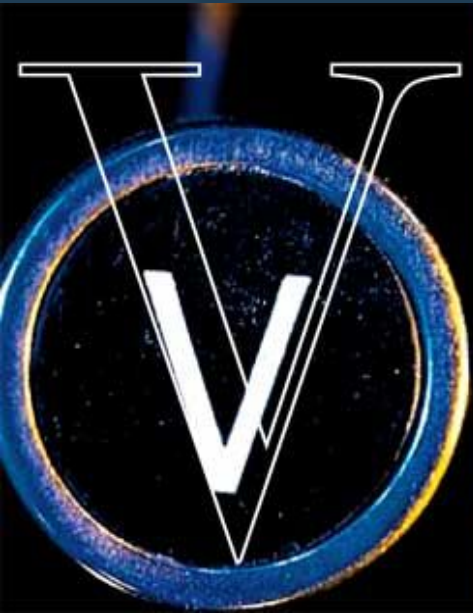
Amy Ralph Mudge, Partner, Venable LLP

Laura Brett, Staff Attorney, National Advertising Division of the Council of Better Business Bureaus

Claudia A. Lewis, Partner, Venable LLP

Suzanne Fay Garwood, Partner, Venable LLP

Maura A. Marcheski, Associate, Venable LLP



Legally Engaging Social Media



@Laura Brett #NAD

@Claudia Lewis #Venable

@Suzanne Garwood #Venable

@Maura Marcheski #Venable

@Amy Mudge #Venable



Erik Kain, Contributor

I write about video games: the industry and the culture.

+ Follow (1,430)

Follow

2k

GAMES | 2/04/2014 @ 5:03PM | 9,223 views

On Its 10th Anniversary, Facebook Isn't Cool Anymore And That's Okay

+ Comment Now + Follow Comments

Facebook turned ten years-old today—sort of ancient in tech years.

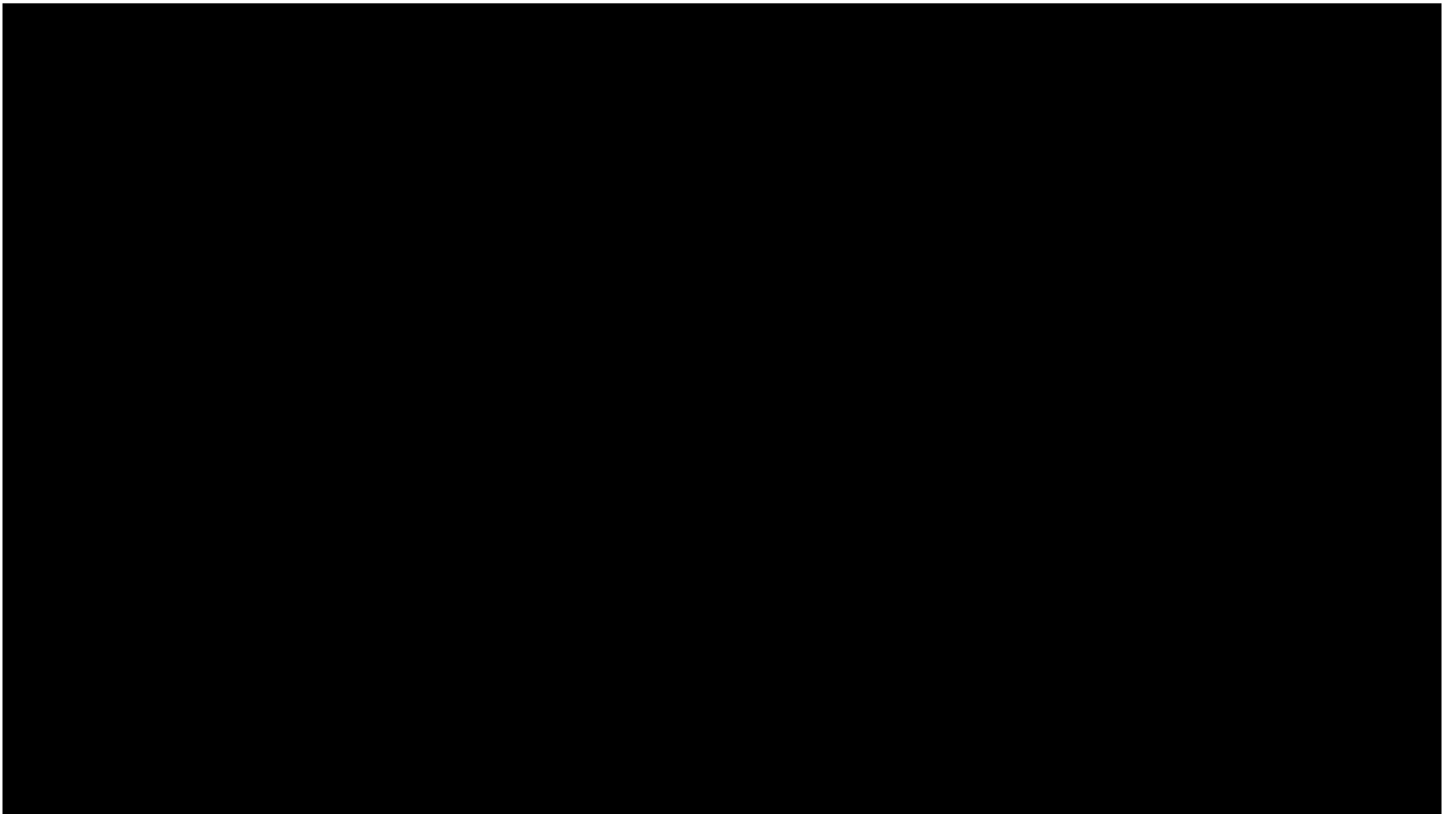
When the social media site launched a decade ago, it looked very little like it does today. It was entering into an internet not yet defined by social media and sharing. And it was the exclusive club of the country's young and elite.

There was nothing else like it—and it was cool, basically, because you weren't allowed in. You saw *The Social Network*. Savvy nerds made something all the cool kids couldn't live without.

At first, only college kids at select universities could sign up, and then any college kid could get an account, and then so could your weird aunt and your grandparents and ex-boyfriends and girlfriends who you hadn't seen in years.

As of 1/28/2014

	Twitter	Facebook	LinkedIn	Google+	StumbleUpon
1. Profile picture is a link to the user's profile page	0	1	0	0	0
2. Profile picture is a link to the user's profile page	0	0	0	0	0
3. Profile picture is a link to the user's profile page	0	0	0	0	0
4. Profile picture is a link to the user's profile page	0	0	0	0	0
5. Profile picture is a link to the user's profile page	0	0	0	0	0
6. Profile picture is a link to the user's profile page	0	0	0	0	0
7. Profile picture is a link to the user's profile page	0	0	0	0	0
8. Profile picture is a link to the user's profile page	0	0	0	0	0
9. Profile picture is a link to the user's profile page	0	0	0	0	0
10. Profile picture is a link to the user's profile page	0	0	0	0	0





Pharrell Williams @Pharrell

03 Mar

Thank you to whoever bought my Grammy hat on @eBay for \$44,100. Your donation benefits From One Hand To AnOTHER. ☐



Arby's

@Arbys

Follow

.@Pharrell You're welcome. We're HAPPY to support a great cause & get our hat back. Good luck at the #Oscars tonight! pic.twitter.com/2oA7qDPX9z

8:17 PM - 2 Mar 2014

Item number: 181329060057



Pharrell Williams' Vivienne Westwood "Mountain" Hat worn at the 2014 GRAMMY's

Winning bid: **US \$44,100.00**

Shipping: **Free -- Standard Shipping (FedEx Ground or FedEx Home Delivery).**

Bidders: 21 Bids: 131 Time Ended: Mar-02-14 17:00:22 PST Duration: 10 days

arbysrestaurantgroup, you're the winner!

10,054 RETWEETS 7,477 FAVORITES





Miller Lite ✓

@MillerLite

Follow

Miller Lite. The official beer of award winning actor's dads.

11:56 PM - 2 Mar 2014

2,014 RETWEETS 1,343 FAVORITES



Mucinex ✓

@Mucinex

Follow

How come no one ever thanks their cold medicine?

11:48 PM - 2 Mar 2014

4 RETWEETS 2 FAVORITES





"While we were a sponsor of the Oscars and had an integration with ABC, we were delighted to see Ellen organically incorporate the device into the selfie moment that had everyone talking. A great surprise for everyone, she captured something that nobody expected. In honor of this epic moment and of course, the incredible response of nearly 3 million re tweets, we wanted to make a donation to Ellen's charities of choice: St Jude's and the Humane Society [of the United States]. Samsung will donate 1.5 million dollars to each charity."

**That viral made me LOL so
hard, I think I'll buy
the car that was in it.**



Social is Many Things Lawyers Do Not Like

spontaneous



messy



uncontrollable



noisy

Social Media

Risks Are Significant:

- Damage to reputation
- Legal violations/potential for litigation
- Exposure of trade secrets/leaks
- Forum for complaints
- Distraction
- Even simple # campaigns can go wrong












But There Are Benefits to Social Media Too:

- Exposure/PR/advertising
- Member networks
- Collaboration opportunities
- Real time customer service
- Collection of information
- Interactive contests and promotions





“Social Media” in a nutshell Donut

- 
- Twitter  I'm eating a #donut
 - Facebook  I like donuts
 -  This is where I eat donuts
 - Instagram  This is a vintage photo of my donut
 - YouTube  Here I am eating my donut
 - LinkedIn  My skills include eating donuts
 - Pinterest  Here's a recipe for making donuts
 - Last FM  Now listening to “Donuts”
 - Google+  I've joined a circle of donut-eating enthusiasts
 - Reddit  There's a conspiracy around donut eating

Source: Many

@stephendale

Collabor
n8w!



#Hashtags



- Clicking on #s show what other people on social media are saying about that particular topic.
- “Trending” topics increase brand exposure
- Facebook introduced hashtag function similar to other services like Twitter, Instagram, Tumblr and Pinterest

#hashtag
mania



HashTag Fails: Entenmann's

Entenmann's[®]



Entenmann's @Entenmanns

5 Jul 11

Who's #notguilty about eating all the tasty treats they want?!

Expand



HashTag Fails: Entenmann's



Entenmanns Entenmann's

Our #notguilty tweet was insensitive, albeit completely unintentional. We are sincerely sorry.

1 hour ago



Entenmanns Entenmann's

Sorry everyone, we weren't trying to reference the trial in our tweet! We should have checked the trending hashtag first.

1 hour ago





HashTag Fails: Qantas



To enter tell us 'What is your dream luxury inflight experience? (Be creative!) Answer must include **#QantasLuxury**.TCs qantas.com.au/travel/airline...

22 Nov via web

Retweeted by [WillemSmit](#) and 46 others



HashTag Fails: Qantas

 **Javier_Wpg** Javier Schwersensky
Social-media marketing gone bad, really bad. Try [#quantasluxury](#) and learn what not to do. [#fb](#)
26 Nov ☆ Favorite ↻ Retweet ↩ Reply

 **PuppyOnTheRadio** PuppyOnTheRadio
BREAKING NEWS: Qantas introduce [#QantasLuxury](#) class. Same as standard class, but the plane leaves the ground
25 Nov ☆ Favorite ↻ Retweet ↩ Reply

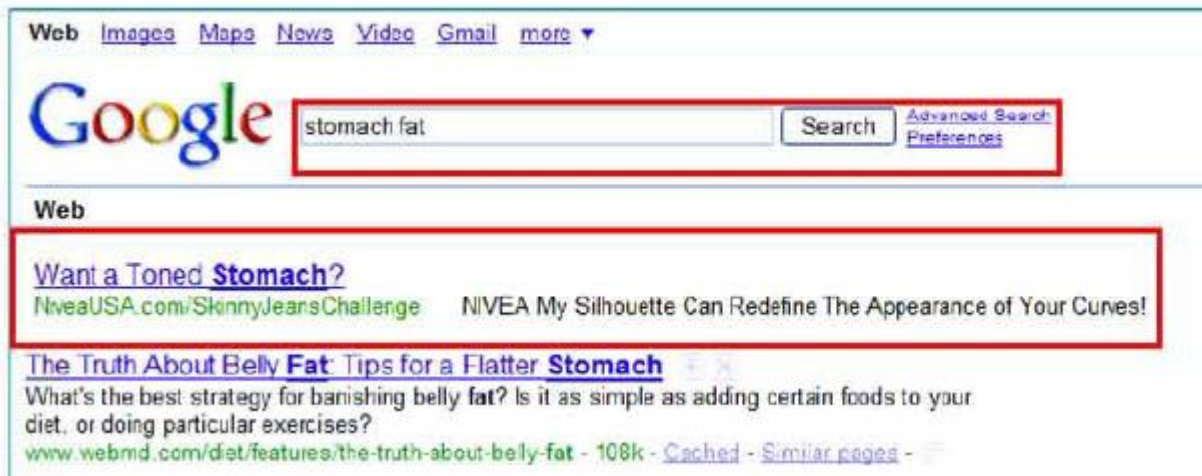
 **Jeditutor** Angel
[#QantasLuxury](#) fly qantas but be warned the CEO might just cancel ur holiday.
25 Nov ☆ Favorite ↻ Retweet ↩ Reply

 **JoeJHughes** Joe Hughes
is it reasonable to say the quantas PR man is looking for a new job [#quantasluxury](#)
25 Nov ☆ Favorite ↻ Retweet ↩ Reply



Can Hashtags Be Claims?

- FTC 2011 settlement with Nivea included allegation that sponsored search terms were impermissible claims



Sponsored Link

General Legal Standards in Social Media



- Same rules apply to social media as traditional media
 - viral nature of social media and the limited space available for messaging
- Material terms & rules must be disclosed
 - FTC's .Com Disclosures guide – Revised March 2013
 - FTC's Endorsements and Testimonials guides
- Other agency guidance depending on the product
- For social promotions/contests, CAN-SPAM, postal/, mobile/telemarketing, privacy laws, platform compliance

Social Media Compliance

- How do you take a legally-vetted appropriately risk-balanced campaign designed for television and print and cover your bases in
 - 140 characters?
 - 6 second videos?
 - Boards of pins?
 - Square shaped photos?
- Can I trust my social media agency to handle?
- Am I covered as long as I have a social media policy for our employees and third party agents?



Process Not Policy

- Is there a regular check-in to understand which platforms your brands using and how?
- How is “official” brand social media reviewed?
- How is spontaneous/live/unplanned activity monitored?
- What is your take down policy for posts with false or unsubstantiated claims? Unfavorable posts?
- Does your brand reuse unsolicited social chatter and do they have guardrails?
- What is your training on your social media policy and how do you monitor employees and third parties for compliance?

Enforcement: Phony Reviews

NY AG Enforcement against Astroturfing

- AG sweep found several SEO companies using IP spoofing techniques to flood the Internet with fake consumer reviews on Yelp, Google Local and CitySearch



FTC Enforcement – Reverb / Legacy

- Reverb: marketers had employees write and post positive reviews of clients' games in the Apple iTunes Store without disclosing that they were being paid to do so
- Legacy: hired affiliate marketers to write and post positive reviews of a “learn and master guitar” course



FTC Enforcement: Influencer Endorsements

- March 2014 : ADT Settlement
 - Misrepresented that paid endorsements from safety and technology experts were independent reviews
 - ADT paid spokespeople to demonstrate and review the product on blogs but not connection was not disclosed
- April 2010: Ann Taylor Closing Letter
- December 2011: Hyundai Closing Letter
 - Initial enforcement (or lack) shows FTC is reasonable if advertiser has policy, trains on it, and audits for compliance



Regulation?: Native Advertising Issues



Facebook Sponsored Stories



13 Ways To Be "Tough"

England's annual **Tough Guy Challenge** involves an eight-mile run through fire, ice, barbed wire, and tunnels made of tires.

 Alanna Okun  15 minutes ago  3 responses



14 People Making The Best Of Bad Situations

When life gives you lemons, carve them in to tiny helmets for squirrels. Always remember to look on the bright side. Come on. Get happy.



PRESENTED BY

Volkswagen

FEATURED PARTNER



This Guy Saved A Freezing Baby's Life, NBD

And other morning links.

 Raymond Sultan  15 minutes ago  respond

Promoted Tweets



“If a social network were to stream recommended restaurants based on what a particular consumer’s social contacts have enjoyed, it should clearly distinguish as advertising any information feeds included or prioritized based in whole or in part on payments from a third party”



Distinguishing Sponsored Search Hits from Natural Search Hits

- 1) Disclose “Advertisement”
- 2) Luminosity or contrasting background or borders
- 3) Popping on different devices and different lighting conditions
- 4) Text cue in prominent font directly above or to the left of an ad

December Native Advertising Workshop

- Three panels examining
 - Examining how sponsored content in digital publications is used
 - Reviewing consumer perception research to date
 - Disclosure obligations in context of specific hypothetical examples
- Next steps
 - Likely staff report later this year
 - NAD issuing decisions in meantime
 - Competing self-regulatory guidelines

ASRC

A service of the advertising industry and Council of Better Business Bureaus

www.asrcreviews.org



ASRC

A service of the advertising industry and Council of Better Business Bureaus

NAD

Resolves issues as to the truth and accuracy of national advertising claims

NARB

The appellate body of the self-regulatory forum

CARU

Analyzes and evaluates advertising directed to children under 12



ERSP

Resolves issues as to the truth and accuracy of claims made in direct response marketing



What Is NAD?

- **NAD provides** an effective, successful self-regulatory mechanism for resolving false advertising claims. The self-regulatory forum insures that advertisers are held responsible for their claims and practices. Rigorous review serves to encourage consumer trust.
- **NAD's forum is a quick, private and low-cost alternative to litigation**
Companies can bring advertising challenges and expect they will be resolved while the ad campaign is still running. NAD keeps confidential all data it receives in reviewing a case. NAD's decision, including a summary of the challenger's and advertiser's positions, and a statement by the advertiser are made public.
- **NAD helps to ensure a level playing field**
NAD has earned the respect of consumers and regulators alike for providing an effective, successful self-regulatory mechanism. Advertisers' willingness to support NAD and voluntarily adhere to its decisions helps to ensure an honest and open playing field in advertising.

NAD Jurisdiction

NAD monitors national advertising for truthfulness and accuracy.

Cases can be brought by a competitor challenge or through NAD's routine monitoring program.

NAD will not exercise jurisdiction if the advertising claims are:

- The subject of pending litigation;
- The subject of a federal government agency consent decree or order;
- Permanently withdrawn *prior* to the date of the challenge and the advertiser represents in writing that the claims will not be used in future advertising.

Social Media and the Role of Industry Self-Regulation

Are You Advertising?

Advertiser's Commercial Messages in Social Media Are Advertising.
Advertiser's presence on

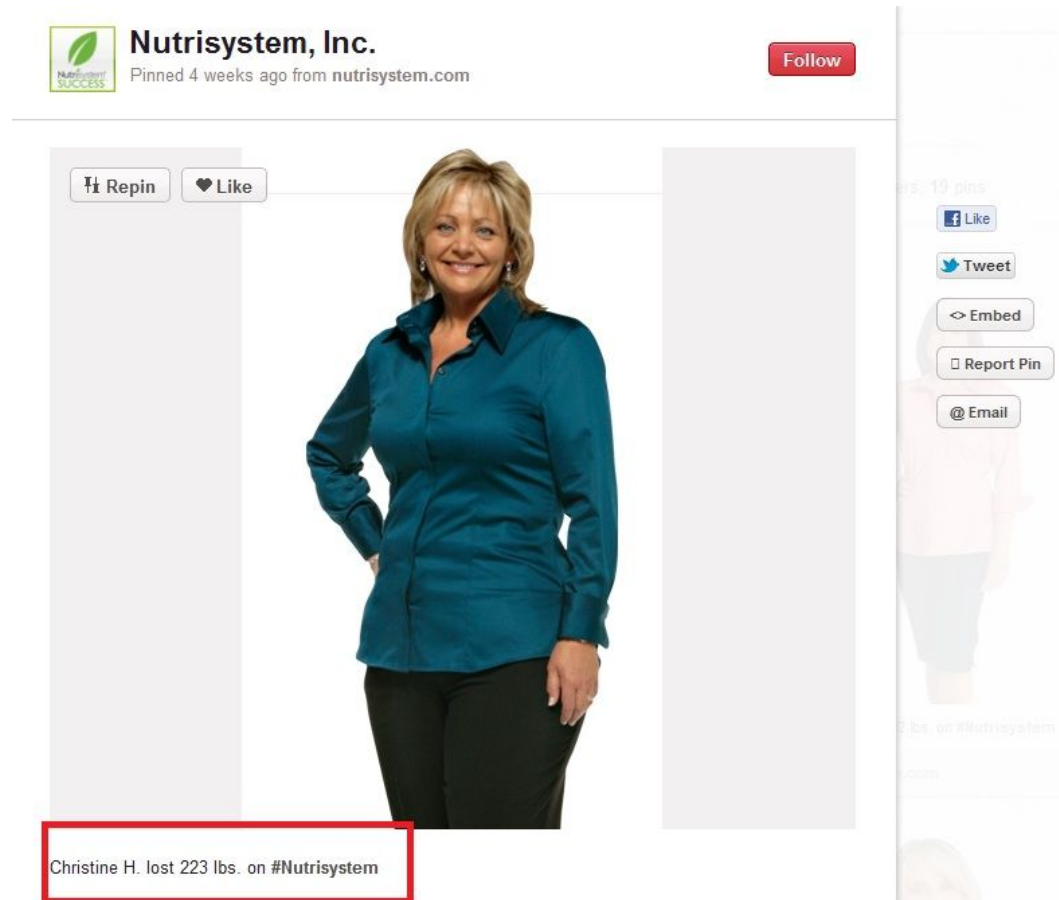
- Website
- Facebook
- Twitter
- Pinterest
- You Tube

Maybe:

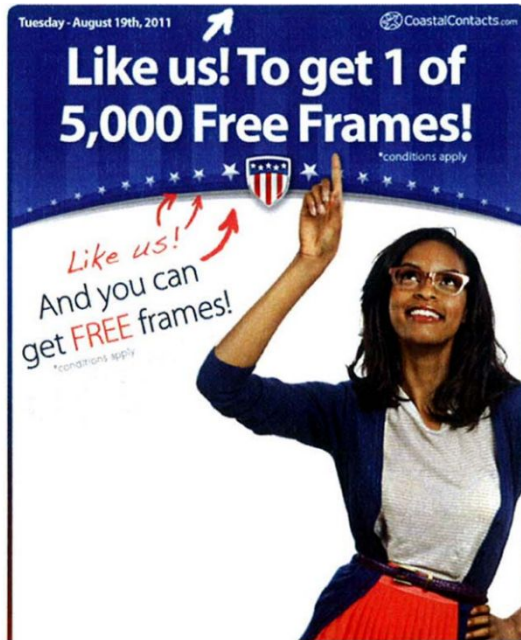
User generated content in Social Media

Same rules in Social Media as in Traditional Media

- Advertising must be truthful, accurate and not misleading.
- Disclosures required to prevent a claim from being misleading must be clear and conspicuous and in close proximity to the main claim.
- Endorsements must disclose the connection between the endorser and the advertiser.



What is a “like” on Facebook



The promotion offered a free pair of glasses by “liking” the Facebook fan page but failed to disclose material limitations of the offer.

Do the “likes” from the promotion have to be removed?

Terms & Conditions: Offer valid on Tuesday August 19, 2011 starting at 9am EST until midnight or until 5000 frames have been given away. Lenses, upgrades and shipping & handling extra. Coupon eligible frames only. Valid for first time free recipients only. Limit one per household.

Coastal Contacts, Inc., NAD Case #5387

Facebook Likes



Not the End of the “Like” Question...

- FDA sent a warning letter to a dietary supplement maker asking them to discontinue “liking” testimonials on Facebook related to unapproved uses of its product.
- Facebook policy change allowing “likes” to be used by advertisers as though they were an endorsement.
- Will companies be held liable for user-generated content on their websites or social media sites?
- Will companies be liable for re-tweeting or promoting user-generated content?

User-Generated Content

- Blogs, in general, are presumed to be user-generated content – not advertising.
- If a blog is not consumer generated (but rather, used as a form of advertising) that fact must be clearly and conspicuously disclosed.
- When a blog endorses a product – blogger must disclose any material connections between the blogger and the product.

Herbal Groups, Inc., NAD Case #5005

The screenshot shows a blog page for "Prostate Health Blog". At the top, there is a teal header with the blog name. Below it, the page number "Page 1 of 3" is visible. The main content area features a post titled "Summer special!" dated "WEDNESDAY, JULY 30, 2008". The post text, which is highlighted with a red border, reads: "We're put together a summer special package to get the word out that prostate health is very important. Maybe you know a guy that isn't too hip on his health. Send him to prostalexplus.com and encourage him to get a summer special and give it a shot. The package includes a 30 day supply of Prostalex Plus, one Longlife Solutions Multivitamin, and a diet and exercise booklet that has great tips and recipes for boosting health overall. Click here to visit the order page." To the right of the post, there is an "About Me" section with a small profile picture and fields for "Name: Prostalex Plus" and "Location:". Below the main post, there is a sidebar with a "Summer special!" section containing a list of links: "Summer is right around the corner!", "New Years Resolutions", "Your health matters", "News: Prostate Test Flaws Prompt New Strategy", "Natural Products Expo West", "Your health", "Media Buzz", "Exercise prevents cancer", and "Prostatitis". At the bottom of the page, there is an "Archives" section with links for "January 2008", "February 2008", and "March 2008".

Links to User Generated Content

NAD noted that Advertisers can be responsible for false or misleading claims conveyed through 3rd party content where the advertiser promoted the content in its own advertising.



The image is a composite of three elements. On the left is a sign with a cartoon cow and text: "NON-DAIRY CREAMER: ARTIFICIAL AND DISRESPECTFUL TO COWS. Use an item below the non-dairy cow to find out why." In the center is a video player showing a large explosion with a play button overlay. On the right are three blue buttons: "SHARE THE TRUTH.", "LEARN ABOUT LA CRÈME.", and "POST ON FACEBOOK." The first and third buttons are circled in red.

NON-DAIRY COW TIP:

Some ingredients in non-dairy creamers are hot.
And by hot we mean flammable.

[SHARE THE TRUTH.](#)

[LEARN ABOUT LA CRÈME.](#)

[POST ON FACEBOOK.](#)

LALA-USA, Inc., NAD Case #5359

Search

...ger mentioned that in her blog about us: "This was the most PERFECT process EVER! Everything I needed was provided. And most importantly, I LOVE MY COLOR! I couldn't stress to you more that if you color your own hair or if you pay at a salon, you must try eSalon!" Read her review at: [tryingtobeafugal...](#)

1 repin 1 like

Uploaded by eSalon Hair Color

Gorgeous Hair Color for Less from eSalon

from Good Housekeeping

Gorgeous Hair Color for Less from eSalon - eSalon.com for at home hair color that's mixed specially for you!

Pinned from goodhousekeeping.com

This eSalon client says: "When I rinsed the extra color out, I was left with a beautiful head of hair. The color was multi-dimensional, covered ALL my gray, and wasn't flat at all!" Read more at: [www.discountqueen...](#)

1 repin

Pinned from discountqueens.com

The fabulous Geri at FabOverFifty reviews why #eSalon #hair #color is truly better than a salon or a drugstore color... [www.faboverfifty.... #cover #gray](#)

Pinned from faboverfifty.com

eSalon client Kristey shared her great review of eSalon on her blog! Read it here: [kristey-thezookee...](#)

1 repin

Pinned from kristey-thezookeeper.blogspot.com

Bristol Palin and dance partner Mark Ballas checked out eSalon's new hair products at a recent Dancing with the Stars event! Read about it here: [www.radaronline.c... #haircolor #DWTS #eSalon](#)

Pinned from radaronline.com

Finally, achieve salon quality hair color results yourself! Hair color made just for you. Save your wallet & your hairline.

My eSalon color is exactly what I

"From now on, I'm definitely going to be getting my hair colour from eSalon, and if you colour your hair I highly recommend that you give them a try." Read the review here: [canadianbeauty.co... #haircolor #hairstyle #grayhair](#)

2 repins

Pinned from canadianbeauty.com

The fabulous Geri at FabOverFifty reviews why #eSalon #hair #color is truly better than a salon or a drugstore color... [www.faboverfifty.... #cover #gray](#)

Pinned from faboverfifty.com

"eSalon is the best! I use it and I am very pleased with it. Great instructions and the color is

This eSalon client says: "Ladies, you need to head to eSalon the next time you're in the market for a dye job. You still get personal attention and you get a hair color designed just for you. Now, all of my fellow frugalistas can breathe a sigh of relief." Read more at: [www.discountqueen...](#)

1 repin

Pinned from discountqueens.com

eSalon client Kristey shared her great review of eSalon on her blog! Read it here: [kristey-thezookee...](#)

1 repin

Pinned from kristey-thezookeeper.blogspot.com

Pinterest – Required advertiser to disclose connection to its sponsored content and, if incentives were provided, to user-generated content.

Sponsored Content

- Native Advertising and Sponsored Content
- What is it?
- What do I have to disclose?


No Company Name – Is It Advertising?

YouTube - Popcorn - Cell phones : made by CARDO SYSTEMS Page 1 of 2

Worldwide (All) English (US) Sign Up | QuickList (0) | Help | Sign In

Home Videos Channels Community

Popcorn - Cell phones : made by CARDO SYSTEMS



Rate: 301 ratings Views: 650,560

Share Favorite Playlists Flag

From: Kratz1987
Joined: 2 months ago
Videos: 3
Subscribe

Added: May 30, 2008 (More info)
Saw that today : <http://www.cardosystems.com>.....
Embed:
<object width="425" height="344"><param name="movie" value="http://www.....</param></object>

Search (results displayed below)

More From: Kratz1987

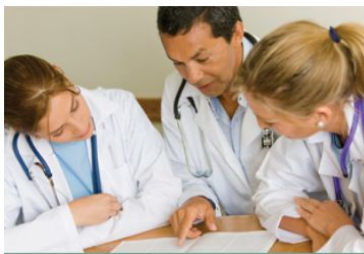
Related Videos

- Pop corn cell phones - The Truth !
00:33 From: passion356
Views: 341,524
- Five cellphones meet popcorn
01:27 From: Balloon&Eclipse
Views: 295,444
- Apple iPhone Popcorn Trick - Uber Creative
00:27 From: uberfoundedotcom
Views: 293,568
- cell phone popcorn myth busted
00:40 From: mvmtiz
Views: 49,894
- Cell Phone Popcorn Debunked
00:54 From: dshaughnessy
Views: 237,654

8/1/2008

- Even without a company name, an advertiser needs substantiation for any objectively provable claims that are communicated.
- In many circumstances a company needs to disclose that it is advertising.

Cardo Systems, NAD Case #4934



Progressing information and research in the treatment of Apraxia

Parental Feedback

[HOME](#)

[UNDERSTANDING APRAXIA](#)

[STUDY GROUP PARTICIPATION](#)

[CLINICAL RESEARCH](#)

[RESEARCH PUBLICATIONS](#)


[PARENTAL FEEDBACK](#)

[HELPFUL HINTS](#)

[CONTACT US](#)

NEW STUDY PUBLISHED!

Syndrome of Allergy, Apraxia and Malabsorption:
Characterization of a neurodevelopmental phenotype that responds to Omega 3 and Vitamin E supplementation.



[Read More](#)

"I started using a patented omega-3 / vitamin E speech supplement three weeks ago for my 5 yr old son, adopted by me at 2 yrs of age, who had always talked in a mumbled, muffled voice. He'd been in speech therapy for over 3 yrs. On his seventh day, taking 2 capsules a day, Robbie began talking more clearly and in full sentences. On his 8th day I began giving him 3 capsules a day. On his 14th day I met with his school teacher as well as his speech teacher. Both wanted to know what we had done to improve Robbie's speech so quickly and so dramatically. I explained to them about the supplement and gave them some literature to review.

Also, Robbie's speech teacher from his preschool days is now working with Rebecca, Robbie's sister. When she was here last week she kept saying over and over how she couldn't believe the change in Robbie's speaking ability. With Rebecca, she is now on three capsules a day. Although she is nonverbal I have noticed an increase in her swallowing ability. This we hope will inevitably lead to her trach being removed. A blessing in itself. Her complexion and appearance look so good. We are also noticing an improvement in her muscle tone and spasticity. In fact, Rebecca's chiropractor commented that she was showing great improvement in her whole body since she has started the patented omega-3 / vitamin E supplement. He was impressed.

A friend of mine, whom I gave some of the supplements to 5 days ago, now has had her 5 yr old grandson on 2 capsules a day. This morning she reported that Brahan was moving his mouth muscles attempting to speak and that his spasticity had greatly improved. She was thrilled. She will move him up to 3 capsules once a day starting Sunday.

We have seen remarkable results in a very short period of time. This is truly a blessing. In fact, Rebecca's Neurologist at Vanderbilt Children's Hospital inquired about the patented omega-3 / vitamin E formulation and we gave him a brochure. This supplement has, in a short period of time, greatly exceeded our expectations. Thank you so much. I will keep you informed.

- The advertiser maintained website promoting benefits of Omega-3 and Vitamin E supplements without disclosing its relationship to the website.
- Advertiser required to disclose its connection to the website.

What's Inside



Use your < > keys to browse more stories PREV 10 / 20 NEXT

The Tech That Makes the Pebble Watch Tick

1.4k
SHARES

140	817	9	41	342	6
Share	Tweet	Share	in		



Sponsor label removed from sponsored series after contractual sponsorship period ended.

Factors:

- Content did not mention advertiser or products.
- Advertiser did not create, plan or post content.

WATER WORKS!

Quenching your thirst keeps you healthy and energized, but sometimes plain water is just so, well, plain. Here's a tasty (and nourishing) new way to be certain you're getting ample H₂O.

It gets short shrift, but staying hydrated is just as important as the rest of your health and beauty regimen: About 60 percent of your body is water, and being even mildly parched—a likely possibility, considering that fluid loss occurs throughout the day—may lead to problems such as fatigue, headaches, and weight gain.

People who are active need to be extra diligent about sipping. The American College of Sports Medicine warns that failure to drink up before, during, and after prolonged exercise puts you at risk for heat exhaustion. Losing just 2 percent of your bodily weight from fluid, which can even happen during the cooler months, impacts speed and endurance.

Drink more, slim down

Regularly wetting your whistle may also help you reach your goal weight. Researchers from Virginia Tech found that people who downed two glasses of water 20 to 30 minutes before eating consumed 75 fewer calories during each meal and shed pounds more quickly than dieters who didn't pre-hydrate. German researchers have also shown that water slightly boosts metabolism because it requires energy to process it.

Other good reasons to hit the (water) bottle include banishing bloat, warding off constipation, beating fatigue, and clearing out toxins (including those found in alcohol).

So, are you getting enough?

It's unlikely. Although the exact amount of water you need varies from person to person (dark urine is a sign you're lacking), the Institute of Medicine (IOM) suggests that women aim for nine cups a day. (For guys, it's 13 cups because of their higher muscle mass.) But 43 percent of adults get less than four!

The IOM guidelines don't strictly refer to plain H₂O; water-rich foods like soup and fruit count too, as do other beverages. But if you rely heavily on sugary drinks, your waistline is going to pay the price: A 20-ounce "single-serve" bottle of soda contains 240 calories (similar to a candy bar). And about 7 percent of the total calories in the typical American's diet come from soft drinks alone, according to the Center for Science in the Public Interest.

The obvious solution is to stick with water, but about 20 percent of Americans reportedly don't like the taste. If that sounds like you, check out the new **SHAPE Water Boosters** (\$8; CVS, Rite Aid, and



drugstore.com). Just a single squeeze (equal to a half-teaspoon) adds delicious flavor—but not calories—along with a concentrated punch of nutrients that offer some important bonus benefits. The portable packaging and great taste are designed to meet the needs of the health-conscious woman on the go. Look for them in the following four varieties:

When advertising looks like editorial content:

- What must be disclosed?
- Where must it be disclosed?

Beauty (Grape)



Contains:
• Biotin

• Proprietary blend of herbs, collagen, and fruit extracts

Wellness (Pomegranate)



Contains:
• Vitamin C
• Folic acid

• Açai and other superfruit extracts

Slim (Pink Lemonade)



Contains:
• Chromium
• Raspberry ketone
• Vitamin D

Energy (Black Cherry)



Contains:
• Green tea extract
• Vitamin B12
• Taurine and tyrosine

LARRY SHENBERG/GETTY IMAGES; STILL LIFE: NICOLA GIROSELLI

Case Reports



A service of the advertising industry and Council of Better Business Bureaus

[Home](#) [Supporting Self-Regulation](#) [Events](#) [Press Releases](#) [Today's Must-Read](#) [Contact Us](#) [CARU»](#) [ERSP»](#)
[NAD»](#) [NARB»](#) [The Accountability Program»](#)

[Home » Case Reports](#)

Case Reports



NAD® CASE REPORTS



NARB CASE REPORTS



CARU® CASE REPORTS



ERSP® CASE REPORTS

Archives serve as a research tool offering education, guidance and support; access to NAD/ERSP/CARU decisions and NARB appeals.

Case reports are available via online subscription at:
www.asrcreviews.org

Contact Us

Advertising Self-Regulatory Council
70 W. 36th Street, 13th Floor
New York, NY 10018
212.947.5131 or 866.344.6272
tgomez (at) asrc.bbb (dot) org

Connect With Us



Privacy Policy

We do not collect or use personal information. View our [Privacy Policy here](#). If you require any more information or have any questions about our privacy policy, please feel free to contact us by email at lbean (at) asrc.bbb (dot) org.

Copyright & Trademark

© 2012 Council of Better Business Bureaus. NAD®, CARU® and ERSPO® are registered trademarks of the Council of Better Business Bureaus.



A service of the advertising industry and Council of Better Business Bureaus

Promotions on Social Media

- ***The same rules apply to promotions on social media as to any other type of promotion***
 - **Must comply with criminal lottery and gambling laws**
 - Prize + Chance + Consideration = Illegal Lottery
 - **Follow federal and state sweepstakes and contest laws, general consumer protection/UDTPA statutes**
 - Material terms & rules must be disclosed
 - **Follow other laws and regulations for specific types of promotions**
 - CAN-SPAM, postal/, mobile/telemarketing
 - “refer-a-friend”





Promotions! Platform Rules

- Each social platform has its own set of rules and usage guidelines
- Promotions are subject to the rules and guidelines of such platform
- Some promos are not appropriate for certain platforms
- Violation could result in premature shutting down of the promotion, which could subject the brand to legal and regulatory risks

UGC Issues in Social Promotions

- If promo requires UGC, the rules should include IP releases that allow the brand to pose submissions online
- Ask for a broad right to use submissions
- Can require copyright assignment from winner (which requires separate document)
- Consider prescreening all submissions prior to posting. If not possible, use post-moderation and issue clear take-down policy



Facebook Rules for Promotions

CAN run a sweepstakes or contest directly on *non-personal* Facebook pages/timelines

- **CAN** use an app to run a Facebook promotion
- **BUT, CAN'T** conduct prize promotions on personal pages/timelines

CAN collect entries by having users comment on a picture or post to be entered, having users message page

CAN use Facebook functionality as automatic entry mechanism, except for posting content on personal timelines

CAN use Facebook features (e.g., “Like” button) as voting mechanism

CAN announce winner on page; require entrants to come back to see who won

CAN tag in entries, but a Page may not tag or encourage others to tag themselves in content in which they do not appear

MUST STILL include specific releases/disclosures re: Facebook

- Facebook not affiliated, sponsor of promotion
- Releases/disclose in rules and on entry form
- **BUT NOT** required to disclose that data submitted by entrant is provided to sponsor, not Facebook

But just because now you can run promotions on Facebook timeline, it doesn't always mean you should! You may still want to consider a third party app.



Instagram Promotion Guidelines

Fastest-developing medium for promotions: picture is static but comments can be used for disclosures and communications with entrants.

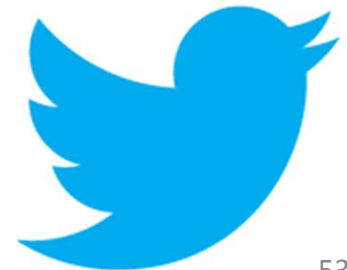
- Current standard practice for entry and winner selection is to have entrant comment on a picture that includes an explanation of the basics of the sweepstakes or contest
- The entrant can include an email address in the comment so he or she can be contacted by sponsor
 - Or the sponsor may notify the entrant using a comment in the same post
- The official rules can be posted:
 - via a static link in the picture,
 - a link in a comment, or
 - a “track-back” reply to any commenters (which is the only reliable way to get consent to the terms and conditions)



Twitter Promotions

- *Link to abbreviated rules and avoid retweets! Not appropriate for complex promotions.*
- Twitter Terms and Conditions discourage creation of multiple accounts; rules regarding retweeting to enter
- Limit on number of tweets/entries to one per day
 - E.g., don't encourage retweets to win
- Recommend including @usernameMention in tweet entries so will be visible in user timeline
- Suggest including relevant “hashtag” topics in tweet entries
 - E.g., #promotion or #companyname

– **Vine Rules: Stay tuned!**

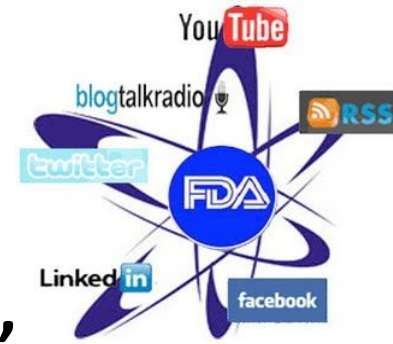


Among the top 50 pharmaceutical companies, half do not engage with consumers or patients on healthcare-related topics through social media, and only 10 companies utilized all three assessed channels. Twitter is utilized by 22 of the 50 companies studied, followed by YouTube which is used by 17 companies, and Facebook is used as a channel by 15 companies. **Engaging Patients Through Social Media** – IMS Health Report (January, 2014 – 47 pages – free but [registration](#)

Another section of the report went into substantial detail around the prevalent use of Wikipedia which the authors suggest ***“is the leading single source of healthcare information for patients and healthcare professionals.”*** They researched the top 100 pages by disease topic and presented this chart relative to the top 25 (“English” language page – globally).

Rank	Wikipedia Health Topic Page	Visits in millions (last 12mos)
1	Tuberculosis	4.2
2	Chrohn's Disease	4.1
3	Pneumonia	3.9
4	Multiple Sclerosis	3.8
5	Diabetes Mellitus	3.4
6	Gout	3.3
7	Meningitis	3.2
8	Down's Syndrome	3.2
9	Parkinson's Disease	3.0
10	Gastroenteritis	2.8
11	Lymphoma	2.7
12	Lyme Disease	2.7
13	Herpes Simplex	2.7
14	Fibromyalgia	2.5
15	Syphilis	2.5
16	Malaria	2.4
17	Hypertension	2.4
18	Cerebral Palsy	2.4
19	Amyotrophic Lateral Sclerosis (ALS)	2.4
20	Anemia	2.4
21	Cystic Fibrosis	2.4
22	Tinnitus	2.4
23	Psoriasis	2.4
24	Insomnia	2.3
25	Leukemia	2.2

FDA & Social Media



- No “one size fits all policy” applicable to food, drugs, medical devices and cosmetics alike.
- **Agency Monitoring Social Media:**
 - September 2013: FDA contracted with small company of former President Obama campaigners to track public response to FDA’s *own* social media outreach.
 - February 2014: FDA is currently soliciting a contractor to monitor social media chatter about products it regulates and how chatter shifts as a result of agency risk warnings.
 - E.g., FDA wants to track conversation spikes, trends, most-cited news stories, sentiment, and sample verbatim consumer comments.
- **2 Types of Regulatory Action To Date:**
 - *Draft Guidance*
 - *Warning Letters*

FDA & Social Media cont'd...

- **Draft Guidance**

- Issued January 2014.
- Only applicable to prescription human and animal drugs and biologics.
- Company “control” of social media content directly correlated to regulatory responsibility.

- **Warning Letters**

- Issued over the past 2-3 years.
- Applicable to all FDA-regulated products.
- General Takeaways:
 - A company is responsible for its own comments made via social media.
 - A company is responsible for customer comments on the company’s own social media sites.
 - “Liking” or “re-Tweeting” represents an endorsement of the underlying content.





Fantastic! My bank has thrown transmedia storytelling into the mix. Now, that's something I'm willing to pro-actively engage with.

Dos and Don'ts for Social Media and Financial Products

Financial Products

- Mortgage loans
- Automobile loans
- Student loans
- Installment loans
- Credit cards (etc.)

Social Media

- Facebook
- Twitter
- NOT include email and text

Dos and Don'ts for Social Media and Financial Products

FFIEC (Interagency) Guidance

<http://www.fdic.gov/news/news/financial/2013/fil13056.html>

Issued on and effective as of December 11, 2013

Dos and Don'ts for Social Media and Financial Products

Do

- **Embrace social media.** Banks and lenders have been slow to embrace social media as a medium to communicate with existing customers and reach new customers.
- **Monitor Social Media.** Reputation is of the utmost importance to banks, credit unions and other lenders. So it is important for lenders to monitor social networks to identify customer complaints and potential “viral stories” that could be harmful.

Dos and Don'ts for Social Media and Financial Products

Do:

- 3. FFIEC Guidance.** Review the FFIEC Social Media guidance and adopt as a formal policy.
- 4. Review Regulations.** Consider how the medium of social media affects your advertisements. Can you provide all required disclosures under the Truth in Lending Act, the Truth in Savings Act or other applicable laws?
- 5. UDAAP.** Ensure that social media advertisements are not presented in a misleading manner.

Dos and Don'ts for Social Media and Financial Products

Don't

- **Ignore Social Media.** Don't take the position that you can ignore what happens in social media just because your institution does not use it to reach customers. Be on the lookout for brand hijacking!
- **Discriminate.** Don't utilize social media to advertise financial products in a way that discourages minorities and other protected class members from applying for the product.

Dos and Don'ts for Social Media and Financial Products

- 3. Outsource Compliance.** Don't assume that a third party vendor will assume your compliance obligations.
- 4. Privacy.** Don't forget to provide consumers with your privacy policy as well as your privacy notice as required under Gramm-Leach-Bliley

Contact Information

Amy Ralph Mudge

amudge@Venable.com

t 202.344.4743

f 202.344.8300

Maura A. Marcheski

mamarcheski@Venable.com

t 202.344.4523

f 202.344.8300

Suzanne Fay Garwood

sfgarwood@Venable.com

t 202.344.8046

f 202.344.8300

Laura Brett

lbrett@nad.bbb.org

Claudia A. Lewis

calewis@Venable.com

t 202.344.4359

f 202.344.8300

www.Venable.com

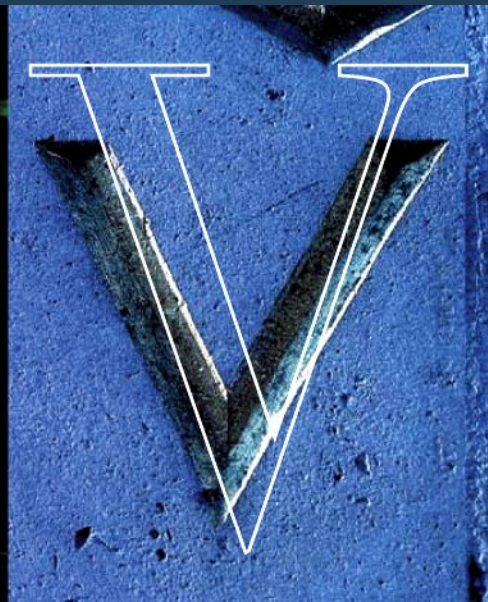
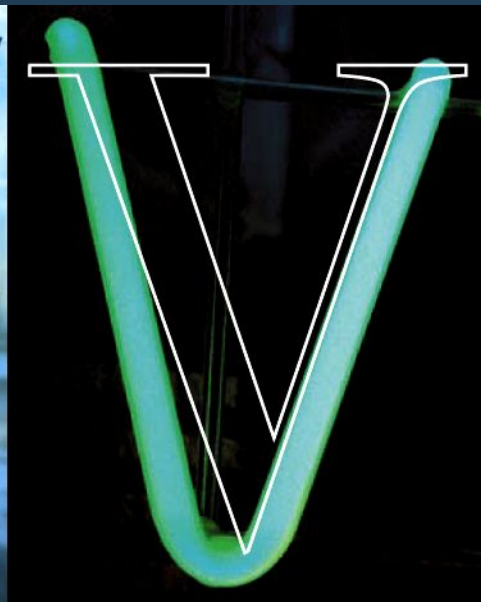




Advertising with the Stars:
Celebrity Endorsements in Advertising and Marketing

Penelope J. Barnett, Associate General Counsel, The Dannon Company, Inc.

Melissa Landau Steinman, Partner, Venable LLP



Law Firm of the Year,
National Advertising,
*U.S. News and World
Report*, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Agenda

- Background: How the FTC Guides on Endorsements and Testimonials Apply to Celebrity Endorsements
- Endorsements and Testimonials in New Media
- Considerations in Making Disclosures in Various Forms of Media
- Authenticity Considerations
- Using Celebrity “Experts” to Market a Product
- Re-Tweeting Celebrity Comments: Right of Privacy/Right of Privacy Considerations
- Developing a Blogging/Social Media Policy for Celebrity Endorsers
- Questions



FTC Guides on Endorsements and Testimonials: Basic Rules

Guides updated in 2009 to clarify application to consumer-generated content and take into account developments in social media. Basic principles:

- Endorsements must reflect honest opinion, beliefs or experience of the endorser; should be from a bona fide user.
 - Endorsements must not contain any false or misleading statement or implication.
 - Advertised portion must reflect the spirit of complete testimonial.
 - Experts providing endorsements must possess the qualifications represented and use their expertise in the evaluation.
 - Material connections that might affect credibility must be disclosed, e.g. payment or other compensation; employment, business or family connections.
 - Testimonials cannot be used to make claims that advertisers cannot make directly.
 - Any testimonial conveying that the results achieved by the consumer are typical require substantiation or a disclosure of typical results.
- *Included new examples explaining when a celebrity's relationship with an advertiser must be disclosed in new media formats.*

Law Firm of the Year,
National Advertising,
*U.S. News and World
Report*, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Endorsements and Testimonials in New Media

- Bloggers or “Word of Mouth” (or other social media) marketers, including celebrities, who receive money or in-kind payments, including product samples, must disclose relationship.
- Celebrity *and* marketer liability.
- Develop policy/procedures to ensure celebrity endorsers disclose their affiliation and monitor compliance, and make sure your agencies are following the rules too.
 - **Ann Taylor file closing:** Initial enforcement (or lack) indicates FTC is being reasonable if advertiser has policy.
 - **Reverb** settlement: FTC brought action against agency employees posting false blog entries for product.
 - **ADT (3/6/14):** ADT paid 3 expert endorsers over \$300,000 to endorse home security products on TV, radio, blogs.

Celebrity Endorsements: What Are the Issues? A Q&A Grab Bag

VENABLE[®] LLP

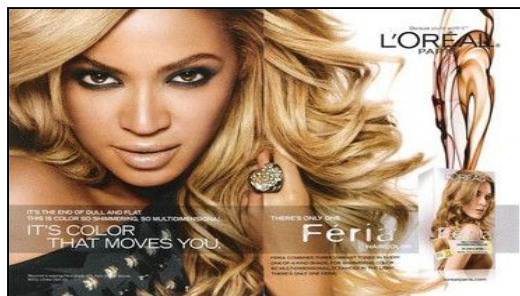
Law Firm of the Year,
National Advertising,
U.S. News and World
Report, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



- When is it an endorsement (and not just an opinion)?
- How do you make the disclosure properly?
- Can I tell a celebrity what to say?
- What if he is a celebrity “expert”?
- Can I retweet a celebrity’s photo if he wears my product?

FTC has indicated it has several investigations open in this area; Dot.com Disclosures, Native Advertising Workshop cases like ADT and public statements suggest we will see more.

Law Firm of the Year,
National Advertising,
U.S. News and World
Report, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Celebrity Endorsements and Testimonials: Examples

- **Miley Ray Cyrus:** Thanks [@blackjet](#) for the flight to Silicon Valley! [#wecantstop](#) Paid???
- **Kim Kardashian:** Pregnancy lips.... [@EOS](#) to the rescue! LOL <http://twitpic.com/ctpyjj> Paid???
- **Michael Ian Black: [For Dos Equis]** I just turned myself into a Most Interesting Person with the new [@DosEquis](#) Legend of You app. Check it out <http://on.fb.me/166xmC6>
 - **Joseph Fink@PlanetofFinks:** [@michaelianblack](#) [#Wow!](#) This looks [#definitelywrittenbyyou](#) and not by [#somemarketingintern](#) who was [#paidnothing](#) to [#doyourshilling](#) for you
 - [@PlanetofFinks](#) No, they wrote it and paid me thousands of dollars to run it. **Paid!!!**
- **Mary Engle, Assoc. Dir. Ad Practices, FTC in NYT Article (6/6/13):** “When it’s not obvious it’s an ad, people should disclose they’re being paid.” Suggests using “#Ad.”

Law Firm of the Year,
National Advertising,
*U.S. News and World
Report*, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Types of Celebrity Endorsements and Testimonials

- According to the Guides, if you're receiving payment of benefit in exchange for endorsement—you must make a disclosure.
- But when is there an endorsement? And how do you disclose?
 - How do you treat a celebrity blog or pictures on the company web site vs. statements about a product on a star's own Twitter feed?
 - What if the celebrity owns an interest in a company (versus receiving a payment)? See Ashton Kutcher's laptop on *Two and a Half Men*
 - What about being paid just to wear someone's clothes, be seen carrying a product (vs. actually talking about it)? *E.g.*, Cameron Diaz for Smartwater.
 - Reverse branding endorsement: *E.g.*, Abercrombie paying *Jersey Shore* cast not to wear its clothes.

FTC Guides on Endorsements and Testimonials - Examples

Dannon's Activia® ad campaign—celebrity endorser Jamie Lee Curtis



Law Firm of the Year,
National Advertising,
*U.S. News and World
Report*, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Making Disclosures in Television, Radio, and Print Advertisements

- If the existence of a financial interest will not be clear to an audience from TV or radio, in print ads, or in non-traditional broadcast advertisements about products, services, etc., celebrity paid to endorse a product or service **MUST** disclose his/her interest
- Disclosure must be made in the same format (orally, written, etc.) in which he/she makes his/her claim.
- Disclosures must be made ***every time*** a celebrity appears in an broadcast or print advertisement for a product.
- Disclosures must be easily understood and can be as simple as:
 - “As a spokesperson for Company...”
 - “I was paid by Company.”
 - “I received [name of product or other consideration] from Company to talk about....”
 - Company: “[NAME] is a spokesperson for Company.”
- Several examples in Guidelines address scenarios involving broadcast endorsements, e.g., celebrity endorsing vision surgery on talk show.
- ***Is there a point at which a celebrity becomes synonymous with brand identity?***

Law Firm of the Year,
National Advertising,
*U.S. News and World
Report*, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Celebrity Endorsers' Online Disclosures – Facebook[®], Blogs, and Other Websites

- When it is not otherwise clear to the audience, celebrities must disclose their sponsorship role, or any financial interest, benefit or incentives that they received from a company in their personal blogs, Facebook pages, or other online content or on any company page to which they post content.
- How can disclosures be made clearly and conspicuously?
- Location and frequency of disclosure:
 - On brand page, it is sufficient to make such a disclosure in the posting itself.
 - On celebrity's personal page, disclosure needs to be made frequently enough and in a prominent enough location so that consumers will know about affiliation.
 - Simply disclosing relationship with company in the "About" page is not likely to be sufficient.



Examples of Online Disclosures – Facebook, Blogs, and Other Websites

VENABLE[®] LLP

Law Firm of the Year,
National Advertising,
U.S. News and World
Report, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Master Bath - A Splash of Color
by Katie on May 7, 2012

This was my week to tackle the master bathroom. As you've seen from the "before" photos, it's tiny and very 1950s. I decided to paint the walls canary yellow to brighten the room, but it was very difficult finding the right shade of yellow. I tried eight different swatches on the wall. Some were clearly too pale and some were alarmingly gold! I finally ended up using [PaintWorld's Just One Coat in Canary Sunrisc](#). This paint is amazing. It required no primer and went on smoothly and easily. Believe it or not, one coat provided perfect coverage. I added a shower curtain that I made from a terrific tropical flower print on sale for \$4.99/yard from the [Discount Fabric Factory](#), and replaced the old sink fixtures with new ultra-modern white ones from [HardwareHideout.com](#). In no time at all, my master bathroom was **canary yellow, fresh, and fabulous. I plan to use Just One Coat when I paint the gift-wrapping nook in my craft room next week. By the way, PaintWorld gave me the paint to try out, but it's so terrific I'll buy it myself this time.**

About Us
Hi! I'm Katie Krafty and this is my blog. I live with my husband, Harry, and our son, Grayson. Two years ago, we bought a fixer-upper here in Pittsburgh and we've been fixing it up ever since! Thanks for joining us on our home-making adventures!
[Read more about the Kraftys.](#)

Recent Posts

- [Master Bath - A Splash of Color](#)
May 7, 2012
- [Spring for Window Boxes!](#)
May 1, 2012
- [Mood Boards for Rainy Days](#)
April 22, 2012
- [Laundry Room Makeover](#)
April 19, 2012
- [DIY coffee table](#)
April 15, 2012

- Example from FTC's **Dot.com Disclosures** (updated 3/2013 to reflect changes since first issued in 2002): The blogger in this example obtained the paint she is reviewing for free and must disclose that fact. While she does so at the end of her blog post, there are several hyperlinks before that which could distract readers and cause them to click away before they get to the end of the post.
 - Given these distractions, the disclosure likely is **NOT** clear and conspicuous.

Law Firm of the Year,
National Advertising,
*U.S. News and World
Report*, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Celebrity Endorsers' Online Disclosures – Twitter®

Guidance provided by FTC in Dot.com Disclosures and public statements:

- When posting to forums where there is limited space, as a celebrity endorser you should include an appropriate signal of your connection such as “Ad:” at the beginning of the post, and include a hash tag notation to show sponsorship or payment, e.g., “#paidad,” “#ad,” “#sponsored,” “#IworkwithCompany,” or “#paid.”
- When disclosing a product’s generally expected performance, celebrity endorsers should include a brief disclosure as to the expected results, e.g., “Typical weight loss: 1/lb per week.”
- Abbreviations and symbols may only be used if the average consumer would understand their meaning.

Law Firm of the Year,
National Advertising,
*U.S. News and World
Report*, 2012 and 2014



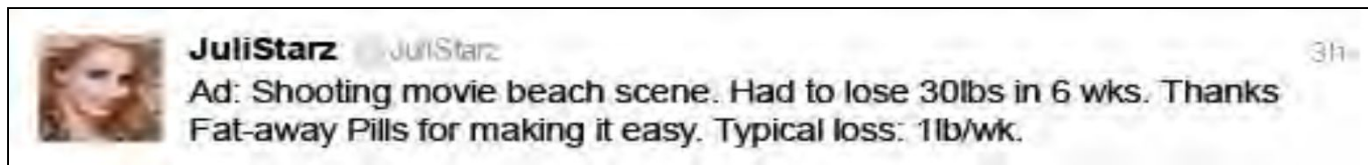
Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Examples of Online Disclosures – Twitter[®]



- This space-constrained message requires two disclosures: (1) that JuliStarz is a paid endorser for Fat-away; and (2) the amount of weight that consumers who use Fat-away can generally expect to lose in the depicted circumstances, which is much less than the 30 pounds Juli says she lost in 6 weeks.
- Message signals that Juli is a paid endorser by beginning with “Ad:” which only takes up four characters. It also succinctly discloses, “Typical loss: 1lb/wk.”

Law Firm of the Year,
National Advertising,
*U.S. News and World
Report*, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Using Celebrity “Experts” to Market a Product

- According to the FTC, an “expert” is a person possessing, as a result of experience, study, or training, knowledge of a particular subject that is superior to what ordinary individuals generally acquire.
- When relying on a celebrity for his/her expertise, the endorser’s qualifications must give the celebrity the expertise that he/she is represented as possessing with respect to the endorsement.
- Although an celebrity expert may take into account factors not within his/her expertise, the endorsement must be supported by an actual exercise of that expertise in evaluating product features or characteristics with respect to which the person is an expert; must be based on something other than conclusions supplied by the advertiser; and must be supported by examination or testing at least as extensive as experts in the field generally would agree would be needed to support the claim made.

Law Firm of the Year,
National Advertising,
*U.S. News and World
Report*, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Dannon's Activia® Advertising Campaign with Travis Stork

In its current advertising campaign for its Activia® brand, Dannon uses Dr. Travis Stork.



Law Firm of the Year,
National Advertising,
*U.S. News and World
Report*, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Can I Tell the Celebrity What to Say?

- Part of appeal of social media marketing is authenticity and real-time conversations marketers can have with consumers about their products.
 - Authoring the copy for Twitter, Facebook or other posts for celebrities to use could threaten to undermine that sense of authenticity; cause a PR issue.
 - FTC guidelines require endorsements to reflect honest opinion, beliefs or experience of the endorser (who should be a bona fide user).
 - If a company writes copy, statements must accurately reflect the celebrity's experience with the product.
- Ideally, companies should (1) provide celebrities with a **clear policy or guidelines** regarding what is appropriate in posts and (2) monitor the postings of celebrities, with appropriate follow-up as required.



Right of Publicity and Privacy Issues: Retweeting Third-Party Celebrity Claims

- Companies that seek to retweet a celebrity's picture or post about a product or service when the celebrity is not a paid endorser for the company could be exposed to right of publicity, right of privacy, false endorsement, Lanham Act and other claims.
- E.g., *Woody Allen v. American Apparel, Inc.* (2009): Woody Allen sued American Apparel for \$10 million for using pictures of him without his permission in its advertising campaign, alleging false endorsements under New York Civil Rights Law and violations of the Lanham Act.



Law Firm of the Year,
National Advertising,
*U.S. News and World
Report*, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Guidelines for Celebrity Endorsements

- Develop policies/procedures to ensure that celebrity endorsers properly disclose material connections, receipt of compensation.
 - Make sure they understand their responsibilities regarding use of product, truthful and nondeceptive statements, as well.
- Monitor compliance by celebrities and other third party influencers such as bloggers and experts
 - Check with your agencies on what they are doing to recruit and maintain relationships with influencers and what their policies are.
- Be careful when using commercial images of celebrities who are not your paid endorsers—you don't want to trigger right of publicity issues!
- Watch for product placement issues, too.
- Think about your employees as well!

Example Guidelines for Celebrity Endorsements

- 1) The law requires you to **clearly and prominently disclose any connections you have with any Company** that could affect the credibility consumers give to your communications about the Company or its products, services or marketing campaigns.
- 2) You should **only make statements that reflect your honest beliefs, opinions, or experiences** with Company and its products, services, programs, or campaigns.
- 3) When your experiences are not the **typical results** a person might expect to see as a result of using a product or service, you must disclose the generally expected performance under similar circumstances.
- 4) **Do not make false, deceptive, or misleading claims** about Company or its products, services, programs, or campaigns, or about competitors of Company.
- 5) **Do not disclose or discuss any confidential, proprietary, non-public information** about Company, its customers, employees, business partners, or suppliers.
- 6) **Do not use any trademarks, logos, advertisements, marketing collateral, or other proprietary materials** that belong to Company without its written approval.
- 7) **Adhere to the posting guidelines** and comply with all other applicable rules on any website or social media platform on which you post content.
- 8) When you blog or use social media, **use common sense**. Remember that anything you say could be on the Internet forever.

VENABLE[®] LLP

Law Firm of the Year,
National Advertising,
U.S. News and World
Report, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



VENABLE[®]LLP

Law Firm of the Year,
National Advertising,
*U.S. News and World
Report*, 2012 and 2014



Top ranked in
Chambers USA 2013



Top-Tier Firm
Legal 500



Questions?



Contact Information

Melissa Landau Steinman

mlsteinman@Venable.com

t 202.344.4972

f 202.344.8300

Penelope J. Barnett

penelope.barnett@dannon.com

t 914.872.8519

www.Venable.com





Some Direct Talk about Direct Marketing Compliance

- Senny Boone, Esq.,
General Counsel, DMA
- Ellen T. Berge, Partner,
Venable LLP



Advancing and Protecting
Responsible Data-Driven Marketing

Orientation to DMA Ethics

- » DMA Resources
- » Overview of Guidelines
<http://thedma.org/compliance/>
- » Details are provided in webinars
- » Highlights & references for key laws

Why DMA Guidelines?

- » Provide generally accepted principles of conduct.
- » Maintain consumer trust.
- » Prevent unnecessary regulation.

Self-Regulation

- » DMA enforces its own guidelines
- » Both members and nonmembers
- » Ethics Policy Committee
- » Ethics Operating Committee
- » Companies “not in compliance” published and referred.

13 Guideline Issue Areas Covered

Updates to Guidelines & Laws

» Will Be Highlighted in Relevant Areas of Presentation:

- REG Updates: TCPA, COPPA, HIPAA
- Mobile Guidance
- Online Notice for Network Advertisers
- Data Security

Terms of the Offer

» All offers have to be:

- Clear
- Honest
- Leave out no material facts
- Consistent

Examples

- » Is it really a “free” airline voucher or a pitch for a vacation rental, aluminum siding or survey?
- » Do you have to pay to receive the prize?
- » Is it a matching scratch off for a free car or a ploy to get consumer to come to car dealership?

Terms of the Offer

» Can't pretend to be:

- Invoices
- Government mailings
- Urgent, if not
- About an existing account, if not

Examples

- » Don't use "official" seals that give overall impression that it's coming from governmental agency.
- » Don't give impression that it's a renewal notice when it's really an initial marketing offer.

Advance Consent Marketing

» What is that?

Marketing plans where consumer gives consent to receive and pay for product in the future on a continuing basis until s/he cancels.

Advance Consent Marketing

» The Basics:

- Need consumer's informed consent.
- Consumers don't have to pay bills prior to end of trial period.
- Consumer's right to cancel should be in initial and renewal reminders.
- Must disclose all material terms and conditions in phone sales where marketer uses pre-acquired account information.

Examples

- » Online shopping clubs used account information obtained via negative option plans to charge consumers without their knowledge leading to a more restrictive law. (*Restore Online Shoppers' Confidence Act 2010*).
- » No third party transfer of account data is allowed.

Marketing to Children

*Updated – New COPPA Regs

- Send ads appropriate for age only.
- Honor parent's opt out requests.

Online: COPPA

- Increased scope for covered entities including mobile apps.
- PI now defined broadly (such as the online persistent identifier, video of a child or their voice.)
- “Direct notice” for parents.
- Parental controls for their child's information. strengthened/verifiable parental consent is required.
- Prevent child's posting of contact information without parental consent.

Examples

- » Consumers mainly fear that their children's information is being shared and disclosed without permission.
- » Inappropriate material – fashion ads sent to young kids.
- » COPPA was strengthened due to technological advancements since original Act was passed.

Special Offers and Claims

» “FREE”

- all qualifications and conditions should be clear and in close conjunction to the term “free”

Examples

- » “Free” airline tickets
- » “Free” sweepstakes, winnings
- » “Free” merchandise— cars, tvs

Sweepstakes

» What are they?

- Prizes are awarded:
 - By chance
 - Without requiring consideration
 - **No purchase required**
 - Chances of winning are stated

- Disclosure of rules

Examples

- » We have seen many sweepstakes offers, especially targeting the elderly.
- » A small fee is usually “required”
- » Blindingly detailed “disclosures,” having the reverse effect of providing no true contact information.

Collection, Use and Maintenance of Marketing Data

- » Notice of transfer of PII & opportunity to opt out
- » Honoring opt out requests
- » Use preference service suppression lists
- » Disclosure of the source
- » Marketing data should only be used for marketing purposes
- » Sensitivity of Personal Data: certain sensitive data shouldn't be disclosed/displayed, or made available for list rental/sale.

Examples

- » #1 Complaint – company not honoring consumer opt-out. Be sure to provide easy/valid opt-out method.
- » No source name provided: required upon request.
- » Elderly targeted for repeated. solicitations, no opt-out process.
- » “Pass the buck.”
- » List selection criteria: make sure it’s not sensitive info – deceased, victim/rape list, funeral.

Collection, Use & Transfer of Health-Related Data

* Update – New HIPAA Regs

» Involves consumer information re:

è Illnesses/conditions, drugs, devices, treatments...

» New HIPAA Regs:

- è Not meant to prevent data for research or aggregated data that is not PI.
- è Defines protected health info.
- è Now includes business assoc. & subcontractors –expands scope over marketers, requiring “prior written authorization” for use of protected health info.
- è Allows limited fundraising exception to apply for limited health info (demo and dates of care) but with opt-out requirements.

Collection, Use and Transfer of Health-Related Data

» Bottom Line:

Personally identifiable health data gained in relationship between consumer and health care provider should not be transferred for marketing purposes without specific prior, written consumer consent.

Examples

- » Consumers who have specific conditions or have visited a health facility and then receive marketing offers related to that visit.

Promotion of Marketing Lists

- » You must reflect a sensitivity for the consumers on those lists
- » List owners, brokers, etc. should ascertain the intended use of the list for each materially different marketing use prior to use

Examples

- » Poorly named list offers
- » List “owner” should be aware prior to intended usage
- » B2B list issues: number of cases have increased where list promised did not represent actual list.

Data Security

- » Must establish policy and practices.
- » Train staff.
- » Provide physical and technological safeguard.
- » Work with business partners to secure data.

Data Security

* New Updates

- » Increase in Data Security Breaches & Protecting Agst. Criminal Hackers Who Target Companies:
 - è PII protection across organization.
 - è Establish written data security policy.
 - è Train staff, monitor & assess periodically.
 - è Include protections w/contracts to hold stds to protect PII
 - è Data loss prevention technology use; data minimization plan for data destruction & purge processes.
 - è Data security breach plan: to inform law & consumers.
 - è Email authentication protocols to reduce spoofed emails.
 - è Added protection for sensitive data.

Examples

- » Data security breaches occur across industries, government & educational institutions, but fear is that the marketers are responsible and are profiting from identity theft.
- » We've seen security breaches increase over past year: Target, Neiman Marcus, Yahoo!, etc.
- » NSA issue has also increased & heightened consumers' concerns regarding privacy & security of info...even though this was not marketing data.
- » Number of Congressional hearings on data brokers and what info they have etc.

Online Marketing

» Web Sites:

è Every web site needs a privacy policy notice.

è Marketers are accountable for their notice.

Examples

- » Privacy policies that have no terms, no opt-out contact. Or too many terms...
- » Privacy policies that do not fully disclose third party relationships so that a consumer may opt-out of third party uses.

Online Marketing

» Online Marketing – e-mail solicitations:

è Bottom Line – recipients have not opted out after receiving notice

è Every solicitation must contain:

- Opt out for in-house suppress and for exchange
- Marketer's identity
- Honest subject line
- Contact information
- Street address

» New Guidance:

è If you offer mobile application, make sure privacy notice is easy to find, read & understand on mobile screens.

è New notice requirements if using network advertisers.

Examples

- » Non-functioning or difficult to read opt-out.
- » Need physical address.
- » Must honor suppress request within 10 business days. (Can-Spam Act.)
- » Most complaints involved problems unsubscribing from B2B emails.
- » Some claimed to be “DMA-approved” organizations.

Telephone Marketing

- » No communications (without prior consent) to:
 - è Unlisted phone numbers
 - è Cell phones/wireless devices
 - è Faxes
 - è Those on TPS
 - è Those on federal DO NOT CALL list

Telephone Marketing

*New: TCPA Reg

- » Changes made to combat robo-calls (extended to texting, mobile & cell)
 - è Main concern is to obtain a “prior express written agreement,” prior to using any type of auto-dialing equipment, the highest threshold for permission. **(EBR no longer applies for prerecorded voice or text sales messaging.)**

Examples

- » Robocalls
- » Commercial texts without prior permission

Digital Marketing

- » Social Media Marketing: Testimonials & Endorsements:
- » must be accurate, genuine;
- » must disclose any material connection;
- » authorized by individual;
- » provide generally expected results.

Examples

- » Offering “friends” for sale to increase online reputation.

Digital Marketing

- » Online behavioral advertising
- » Not all online ads—just “behavioral” – served to consumers based on browsing history.
- » Third party notice & link.

Online Behavioral Advertising

- DAA (Digital Advertising Alliance) created: notice, choice principles and easily identifiable logo for consumers to know if it's OBA.
- DMA Guides also specify notice & choice.
- Consumers can click on it and opt-out.
- DMA & BBB are enforcement arms of OBA.



TM

» DMA Advancing and Protecting
Responsible Data-Driven Marketing

Examples

- » If behavioral Ad must honor opt-out request.
- » Other online complaints consumers are sensitive about:
 - Is content appropriate? (dating ads, adult content, ads on kid's site)
 - Is Ad blocking content? (Netflix, news, email)
 - Is Ad flashing or too loud? (seizures, medical conditions)

Mobile Marketing

- » This is complex—mobile includes voice, email & online rules.

Examples

- » Mainly, unwanted solicitations & robocalls on cell phones/mobile devices.
- » Mentioned previously: new guidelines requiring notice & choice to be easy to find, read & understand on mobile device.
- » New notice requirements if network advertisers used.

Overview of Resources

- » DMA Compliance Center - <http://thedma.org/compliance/>
- » DMA Preference Services/DMA Choice – www.dmachoice.org
- » DMA Guidelines - <http://thedma.org/wp-content/uploads/DMA-Ethics-Guidelines.pdf>
- » DMA Safe Harbor Program – <http://thedma.org/services/dma-international-safe-harbor/>
- » DAA OBA Website – www.aboutads.info
- » FTC COPPA - <http://business.ftc.gov/documents/bus84-childrens-online-privacy-protection-rule-six-step-compliance-plan-your-business>
- » HHS HIPAA - <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/contractpov.html>
- » FTC TCPA - <http://www.business.ftc.gov/documents/bus27-complying-telemarketing-sales-rule>

Other Resources

- » **Federal Trade Commission - <http://business.ftc.gov/>**
- » **Federal Communications Commission - <http://www.fcc.gov/>**
- » **US Department of Commerce (safe harbor):
<http://export.gov/safeharbor/>**

Contact Information

Senny Boone

sboone@the-dma.org

Ellen T. Berge

etberge@Venable.com

t 202.344.4704

f 202.344.8300

Thank you!

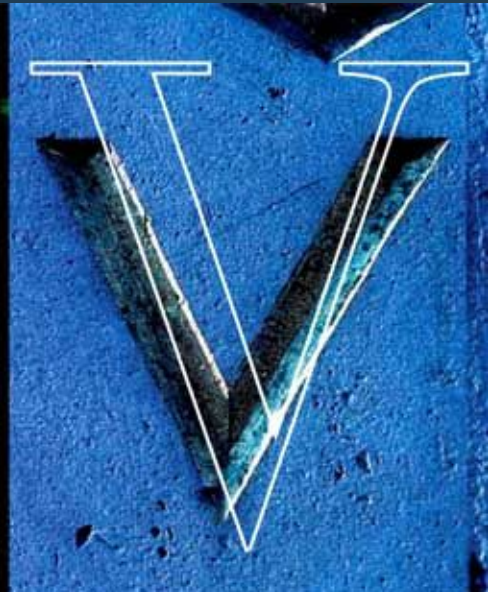
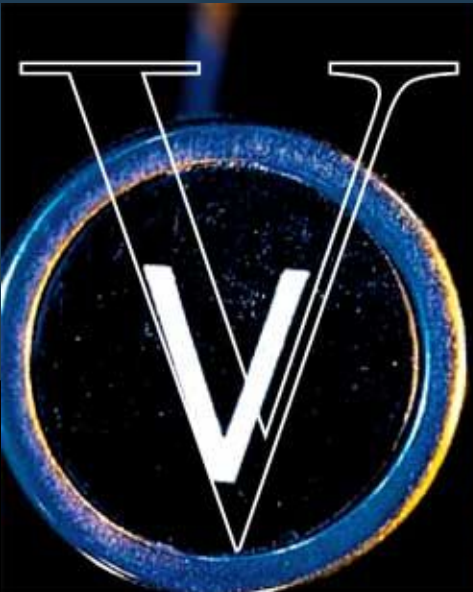


Advancing and Protecting
Responsible Data-Driven Marketing

VENABLE[®]_{LLP}

This Panel is brought to you by...

Po Yi, Partner, Venable LLP



Sponsorship Definition

- The term “sponsorship” is used to describe many different types of relationships, but they all contain the following three elements:
 - IP license
 - Sponsorship assets/benefits
 - Sponsorship fee/consideration



Sponsorship Properties

- Music (e.g., tours, concerts)
- Film/entertainment content
- Sports (leagues, teams, sporting events)
- Industry events/conferences
- Venue (e.g., stadiums, arenas)
- Festivals (e.g., music festivals, film festivals)
- Philanthropic/social causes



Sponsorship Parties

Property Owner

Sponsorship fee

Marketing support
(e.g., access to sponsor's
customers/marketing channels,
paid media support)

Content production support

Sponsor

Brand association with
sponsorship property
(e.g., naming rights, sponsorship
designation)

Sponsorship assets
(e.g., content, tickets, access,
media property)

Activation rights (e.g., right to
launch marketing campaigns,
onsite activations, right to create
new content)



Key Issues

- Designation
- Scope of license & marketing/usage rights
 - Territory
 - Marketing channels
 - Product/service category
- Exclusivity
 - Category
 - Platform/program
- Ownership (e.g., campaigns, new content)
- Third-party clearance (e.g., talent, guilds, music)
- Renewal rights
- Termination rights/exit strategy



Questions?



Contact Information

Po Yi

pyi@Venable.com

t 212.503.0638

f 212.307.5598

www.Venable.com



