

# VENABLE<sup>®</sup> LLP



## US Developments: Native Advertising and Other New Rules for Disclosures in Advertising

January 2015

Amy Ralph Mudge

[www.AllAboutAdvertisingLaw.com](http://www.AllAboutAdvertisingLaw.com)



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# NATIVE ADVERTISING IN CONTEXT



**NATIVE ADVERTISING** refers to a specific mode of monetization that aims to augment user experience by providing value through relevant content delivered in-stream.



## Banner Ads

- Happy 20<sup>th</sup> Birthday banner ads!
- Born Oct. 27, 1994 -- AT&T runs first banner at on HotWired
- Estimated click-through rate in 2000 at 9%
- In 2014, Google estimates .09% click rate



# Native Advertising

Who to follow - Refresh - View all



**Tree Hut** @Tree\_Hut  
Followed by HiggenbloomHoney...

Follow

Promoted



**Waleed Abobakr** Waleed2A

Follow



**Ian Huckabee** WeejeeMedia  
Followed by Christine Green and ...

Follow

Popular accounts - Find friends

Trends - Change

#CopperTV Promoted

Lil Mama

Ace Hood

Trinidad James

#BETAwards

Menace II Society

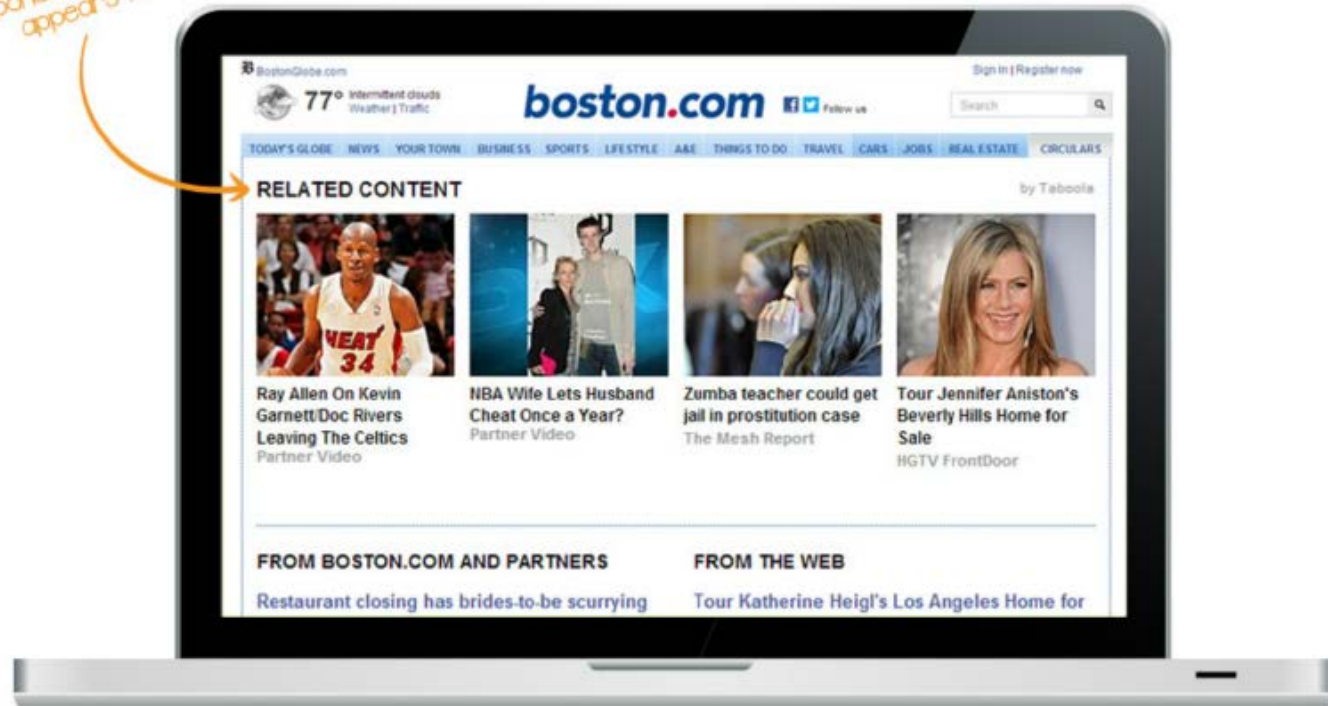
Angela Simmons

Bow Wow





Interesting  
sponsored content  
appears here





## 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

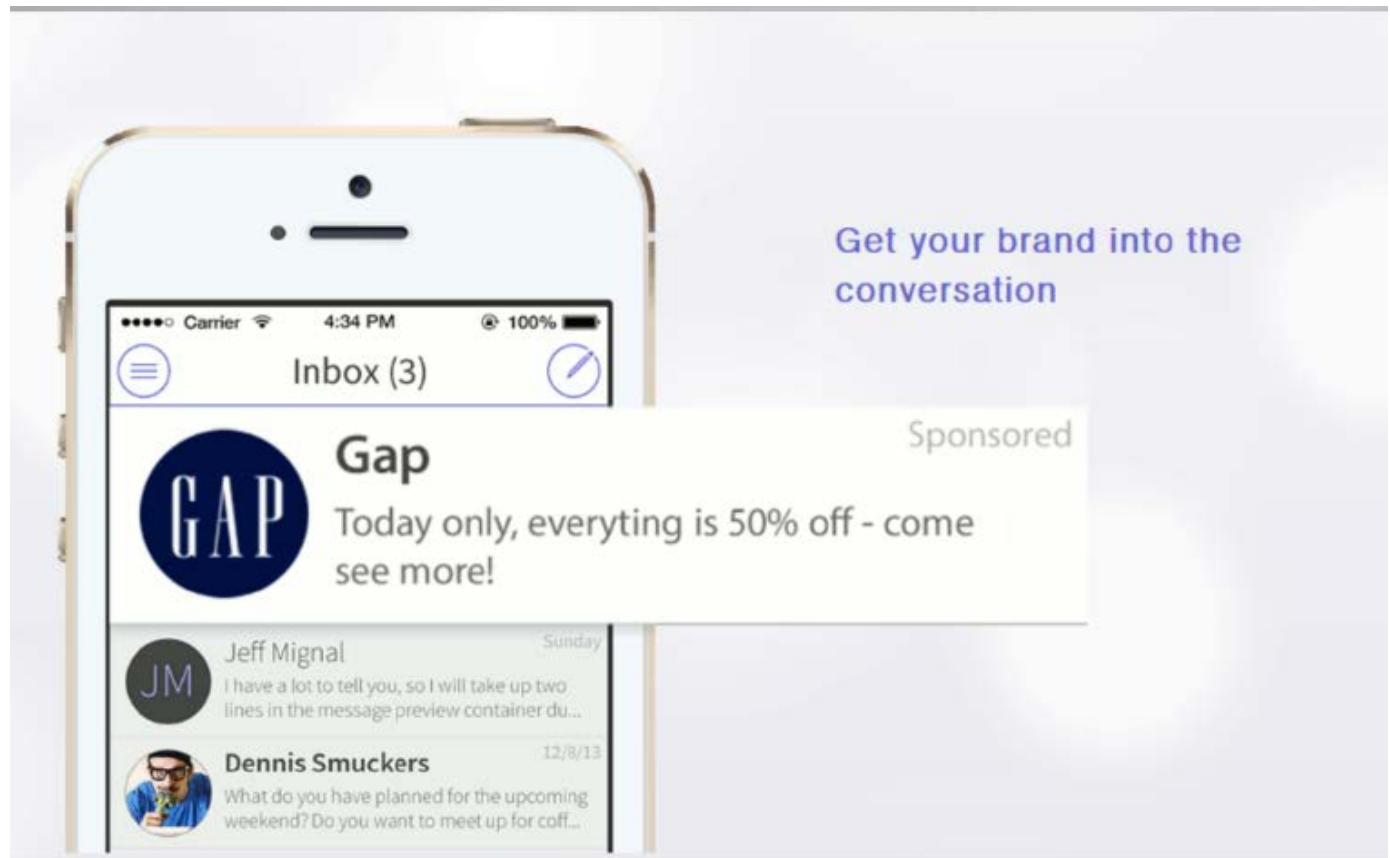


## This Guy Saved A Freezing Baby's Life, NBD

And other morning links.

Raymond Sultan 15 minutes ago respond





Get your brand into the conversation



## 17 Dogs That Will Bring A Smile To Your Day

ADD YOURS

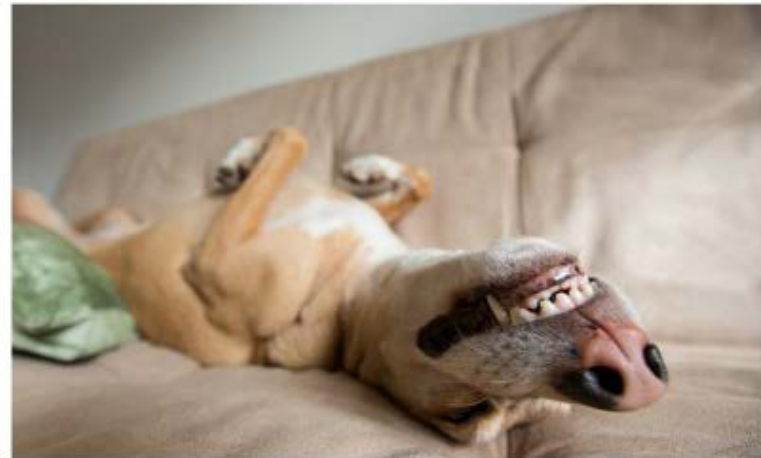
Having a ruff day? Cheer up. These pups enjoy the simple pleasures in life, and you should too. Treat your furry friend with [Natural Balance Dental Chews](#) to keep their chompers pearly and fresh.

posted on February 10, 2014 at 8:54pm EST

[Natural Balance Pet Foods](#)  
Brand Publisher



1. Have you ever seen someone so chipper for couches?



Find us on Facebook



Dick Van Patten's Natural Balance Pet Foods, Inc.

Like



Dick Van Patten's Natural Balance Pet Foods, Inc.

Does your dog or cat have play dates? Show us a pic!



6 hours ago

Dick Van Patten's Natural Balance

288,464 people like Dick Van Patten's Natural Balance Pet Foods, Inc.



Follow @NaturalBalance 11.1K followers

Tweets

Follow



Cinnamon @CinnamonNSCD 30m  
@NaturalBalance This is me @CinnamonNSCD playing with my buddy Miles @5280Miles in front of 500 people last month.  
[pic.twitter.com/789dKP7LW2](#)







How to Protect Workers From the Rise of Robots

'Sons of Apes and Pigs': Where Is the Reaction?

Can Ohio Handle the Truth?

Why Social Media Matters to Your Business

Politics | Business | Tech | National | Global | Health | Sexes | Entertainment | Magazine

Special Reports | Video | Photo | Ebook | Newsletters **JUST IN** | Speak, Clarence, Speak! Andrew Cohen

**SPONSOR CONTENT** What's The?

## David Miscavige Leads Scientology to Milestone Year

*Under ecclesiastical leader David Miscavige, the Scientology religion expanded more in 2012 than in any 12 months of its 60-year history.*

Recommended 1.8k 12:25 PM ET



**WRITERS**

- JEFFREY GOLDBERG | A Wonderful New Book About Scientology, By a...
- JAMES FALLOWS | Security Tip: Disable Java Now
- TA-JENSI COATES | More Guns, Less Crime: The Switzerland Example
- DEREK THOMPSON | How Low Are U.S. Taxes Compared to Other...
- ALEXIS C. MADRIGAL | A Big Field Test for 'GeoPush' Ads That Pop Up on...
- CLIVE CROOK | Forward to North American Union, for Europe's Sake
- GARANDE FRANKIE RUTA | Richard Ben Cramer on How He Did It
- STEVE CLEMENS | Officials: Chuck Hagel Was a 'Gift From God' for...

**In Focus**

THE BIGGEST STORY IN PHOTOS





SECTIONS HOME SEARCH **The New York Times** LOGIN

1. Why Do Americans Stink at Math?
2. Inside Man's Best Friend, Study Says, May Lurk a Green-Eyed Monster
3. **PAID POST**  
DAILY MARK WITTMAN: Frothy Food Goes Down
4. Senator's Thesis Turns Out to Be Remix of Others' Works, Uncted
5. NICHOLAS KRISTOF: An Idiot's Guide to Inequality
6. Put

BrandStudio NETFLIX ORANGE ISLANDS

## Women Inmates: Why the Male Model Doesn't Work

As the number of women inmates soars, so does the need for policies and programs that meet their needs

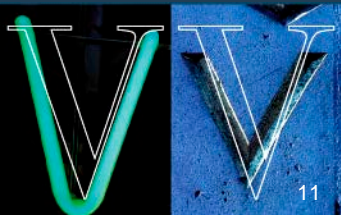
By Melanie Deziel

ILLUSTRATIONS BY OTTO STERNINGER

Over the past three decades, the number of women serving time in American prisons has increased more than eightfold.

## Isn't This Protected Speech?

**THE FIRST AMENDMENT**  
CONGRESS SHALL MAKE NO LAW RESPECT-  
ING AN ESTABLISHMENT OF RELIGION, OR  
PROHIBITING THE FREE EXERCISE THEREOF;  
OR ABRIDGING THE FREEDOM OF SPEECH, OR  
OF THE PRESS; OR THE RIGHT OF THE PEOPLE  
PEACEABLY TO ASSEMBLE, AND TO PETITION THE  
GOVERNMENT FOR A REDRESS OF GRIEVANCES.  
PROTECT THE FIRST AMENDMENT, SUPPORT THE CBLDF







ADVERTISEMENT

## TWIST & SHOUT

Get a look inspired by Shay Mitchell's romantic waves and stylish braid with this easy step-by-step guide:



**1** Give your hair the strength it needs to achieve the look you want and reveal your natural shine with Pantene Nature Fusion Smooth Vitality Shampoo and Conditioner.

**2**

Work Pantene Nature Fusion Smooth Crème through wet hair from root to tip, to help prevent humidity from penetrating the hair and keep frizz from forming.



**3**

Give your wavy hair relaxed definition, spray a light mist of Pantene Pro-V Curl Enhancing Spray Gel onto hair, and then work through from roots to tips. Blow-dry for waves that are light and bouncy, never stiff or sticky.



**4**

Finish the look with a wraparound braid, beginning on the left and working your way toward the right side of your head. Secure with a rubber band, then tuck in and fasten with a bobbypin, leaving the ends hidden beneath your waves. Ensure hold with Pantene Medium-Thick Anti-Humidity Non-Aerosol Hairspray, leaving hair loaded with shine and soft to the touch.



## LOOK OF LOVE

Give a modern day twist to your Valentine's Day look with these foolproof tips and must-have products from Pantene. Whether preparing for a date or simply updating your look, Pantene puts your best tress forward by giving you options to make the healthy hair you love last and last.

**Get the look!** Visit [pantene.com/hairstyles](http://pantene.com/hairstyles) to sort through more hairstyles and how-to guides.





# Of cigarettes and science.

This is the way science is supposed to work.

A scientist observes a certain set of facts. To explain these facts, the scientist comes up with a theory.

Then, to check the validity of the theory, the scientist performs an experiment. If the experiment yields positive results, and is duplicated by other scientists, then the theory is supported. If the experiment produces negative results, the theory is re-examined, modified, or discarded.

But, to a scientist, both positive and negative results should be important. Because both produce valuable learning.

No let's talk about cigarettes.

You probably know about research that links smoking to certain diseases. Coronary heart disease is one of them.

Much of the evidence consists of studies that show a statistical association between smoking and the disease.

But statistics themselves cannot explain *why* smoking and heart disease are associated. Thus, scientists have developed a theory: that heart disease is *caused* by smoking. Then they performed various experiments to check this theory.

We would like to tell you about one of the most important of these experiments.

## A little-known study

It was called the Multiple Risk Factor Intervention Trial (MR FIT).

In the words of the *Wall Street Journal*, it was "one of the largest medical experiments ever attempted." Funded by the federal government, it cost \$115,000,000 and took 10 years, ending in 1982.

The subjects were over 12,000 men who were thought to have a high risk of heart disease because of three risk factors that are statistically associated with this disease: smoking, high blood pressure and high cholesterol levels.

Half of the men received no special medical intervention. The other half received medical treatment that consistently reduced all three risk factors, compared with the first group.

It was assumed that the group with lower risk factors would, over time, suffer significantly fewer deaths from heart disease than the higher risk factor group.

But that's not the way it turned out.

After 10 years, there was no statistically significant difference between the two groups in the number of heart disease deaths.

## The theory persists

We at R.J. Reynolds do not claim this study proves that smoking doesn't cause heart disease. But we do wish to make a point.

Despite the results of MR FIT and other experiments like it, many scientists have not abandoned or modified their original theory, or re-examined its assumptions.

They continue to believe these factors cause heart disease. But it is important to label their belief accurately. It is an opinion. A judgment. But *not* scientific fact.

We believe in science. That is why we continue to provide funding for independent research into smoking and health.

But we do not believe there should be one set of scientific principles for the whole world, and a different set for experiments involving cigarettes. Science is science. Proof is proof. That is why the controversy over smoking and health remains an open one.

R.J. Reynolds Tobacco Company

© 1997 R.J. REYNOLDS TOBACCO CO.



# Why Do We Need to Be Told It Is Advertising?

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## The Tech That Makes the Pebble Watch Tick

1.4k

140 217 9 41 342 6



BY CHRISTINA  
WARRICK  
FEB 26, 2012

The Pebble smart watch is the most successful Kickstarter project in history, raising more than \$10 million from more than 69,000 backers.

At CES 2013, the company revealed final details of the device, and showed off the shipping device to the public.

SEE ALSO: Hands On With Pebble, the Internet's Favorite Smart Watch

Now that the device is shipping to Kickstarter backers, we have a much better idea of how the watch works from the inside out.

*"[S]ponsored content can convey an explicit or implicit message about a product, the benefits of using the product, or the disadvantages of a competing product. In such circumstances consumers have a compelling interest in knowing the sponsor of the content because the content conveys a commercial message that benefits the advertiser."*

**Qualcomm, Inc. (Snapdragon Processors),  
Case Report #5683**





## FTC Policy Statement on Deception

FTC POLICY STATEMENT ON DECEPTION  
Appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984).

FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

October 14, 1983

The Honorable John D. Dingell  
Chairman Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This letter responds to the Committee's inquiry regarding the Commission's enforcement policy against deceptive acts or practices.<sup>1</sup> We also hope this letter will provide guidance to the public.

Section 5 of the FTC Act declares unfair or deceptive acts or practices unlawful. Section 12 specifically prohibits false ads likely to induce the purchase of food, drugs, devices or cosmetics. Section 15 defines a false ad for purposes of Section 12 as one which is "misleading in a material respect."<sup>2</sup> Numerous Commission and judicial decisions have defined and elaborated on the phrase "deceptive acts or practices" under both Sections 5 and 12. Nowhere, however, is there a single definitive statement of the Commission's view of its authority. The Commission believes that such a statement would be useful to the public, as well as the Committee in its continuing review of our jurisdiction.

We have therefore reviewed the decided cases to synthesize the most important principles of general applicability. We have attempted to provide a concrete indication of the manner in which the Commission will enforce its deception mandate. In so doing, we intend to address the concerns that have been raised about the meaning of deception, and thereby attempt to provide a greater sense of certainty as to how the concept will be applied.<sup>3</sup>

### I. SUMMARY

Certain elements undergird all deception cases. First, there must be a representation, omission or practice that is likely to mislead the consumer.<sup>4</sup> Practices that have been found misleading or deceptive in specific cases include false oral or written representations, misleading price claims, sales of hazardous or systematically defective products or services without adequate disclosures, failure to disclose information regarding pyramid sales, use of bait and switch techniques, failure to perform promised services, and failure to meet warranty obligations.<sup>5</sup>





# FTC Deception Policy Statement

- Certain elements undergird all deception cases.
- First, there must be a representation, omission or practice that is likely to mislead the consumer.
- Second, we examine the practice from the perspective of a consumer acting reasonably in the circumstances.
- Third, the representation, omission, or practice must be a “material” one. The basic question is whether the act or practice is likely to affect the consumer’s conduct or decision with regard to a product or service.



522

FEDERAL TRADE COMMISSION DECISIONS

Complaint

111 F.T.C.

IN THE MATTER OF

JS&A GROUP, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3248. Complaint, Feb. 24, 1989—Decision, Feb. 24, 1989*

A. Misrepresenting, directly or indirectly, that such product has been independently investigated or evaluated.

B. Misrepresenting, directly or indirectly, that an advertisement is an independent consumer or news program and not a paid advertisement.





## Raspberry Ultra Drops to Help Your Weight Drop

Written By Christine Meyer Published June 28, 2012 Health.com



Christine investigates Raspberry Ultra Drops to find out for herself if this diet aid works.



As part of a new series:  
"Healthy Lifestyles: A look at  
America's Top Diet Trends"  
we examine consumer tips for  
dieting during a recession

### FOLLOW FOX NEWS HEALTH

Follow @foxnewshealth 19.4K followers

### TOP HEALTH CENTERS

- |               |                  |
|---------------|------------------|
| Back Pain     | Digestive Health |
| Beauty & Skin | Heart Disease    |
| Cancer        | Nutrition        |
| Cholesterol   | Pain Management  |
| Cold and Flu  | Pregnancy        |
| Depression    | Sexual Health    |

### HOT OFFER

**4 bottles**  
Weight Loss  
Average Range:  
**57-61 Pounds**



### SUMMARY

Christine Meyer, our Lifestyle reporter, recently put Raspberry Ultra to the test. After four weeks of testing the effects of America's newest diet aid, she was able to achieve pleasantly surprising results. She lost 25 lbs in 4 weeks. The benefits of

Dietary options today can cost a health-conscious American thousands of dollars each year, and the results may be short-lived. And like you have probably already seen, they are all over the internet in blogs and success stories of people who have apparently used diet aids and lost a ton of weight. But we here at Fox News are a little skeptical and aren't sure that we've seen any real proof that these diet aids work for weight loss. So we decided to put these products to the test. What better way to find out the truth than to conduct our own study?

Topic 4



# HFW

Haircolor for Women

by eSalon

HOME

HOT NEWS

STYLING TIPS

HAIR COLORING FAQs

Search...



## HAIR COLORING FAQs

Is Permanent Or Demi-Permanent Color Best For You?

Are you using the right kind of hair color? When it comes to coloring your tresses, knowing all your options will help you get the

[...read more »](#)

## Featured Posts



Your Guide to Rescuing Dry, Damaged Hair  
Aug 18, 2014



Don't Let Humidity Weigh You Down!  
Jul 24, 2014



Hair Essentials for Summer  
Jun 3, 2014



3 Tips for Seamless Hair Color  
May 16, 2014

Advertisers have an “obligation to advise consumers when there is a connection between the advertiser and content that directly or indirectly promotes the advertiser’s product.” *“NAD recommended that the advertiser disclose that it maintains the blog clearly and conspicuously on the top of the landing page of the blog, where it will be easy to notice, read and understand.”*

eSalon (Custom Formulated Hair Color) Report #5645





## Testimonials & Endorsements

- Must be Truthful
- Marketers Cannot Say Through An Endorsement What Marketer Could Not Say Directly
- Must Show Typical Expected Results OR Disclose What is Typical
- Burden Falls on Marketers to Make Sure Endorsement is OK
- Anytime it is not Obvious an Endorser is Being Paid, Must be Disclosed



# Is Some Native Advertising Just Product Placement?





UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D. C. 20580

Mary K. Engle  
Associate Director for Advertising Practices

February 10, 2005

Gary Ruskin, Executive Director  
Commercial Alert  
4110 S.E. Hawthorne Boulevard #123  
Portland, OR 97214-5246

Dear Mr. Ruskin:

On September 30, 2003, Commercial Alert filed with the Federal Trade Commission a Request for Investigation of Product Placement on Television and for Guidelines to Require Adequate Disclosure of TV Product Placement. Commercial Alert asked the Commission to require advertisers to disclose product placements in a clear and conspicuous fashion and specifically to require advertisers to identify product placements when they appear on screen with the prominent superscript "ADVERTISEMENT."

I. Background

Product placement is a form of promotion in which advertisers insert branded products into programming in exchange for fees or other consideration. Commercial Alert raises concerns that product placements may deceive consumers by blurring the line between advertising and programming, and that the appearance of product placement is implicated in diseases such as obesity and Type 2 diabetes in children. In addition, Commercial Alert raises concerns about advertisers' use of paid celebrity spokespersons to appear on programs without disclosing the celebrities' financial ties to the company in question. Commercial Alert contends that the failure to disclose that advertisers have paid for their products' appearances in programming constitutes an unfair or deceptive practice in violation of Section 5 of the Federal Trade Commission Act.

As you know, an act or practice is deceptive under Section 5 of the FTC Act: 1) if there is



Live Healthy

NEWS

# 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 H<sub>2</sub>O.

**I**t gets short shift, 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 body 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 45 percent of adults get less than four!

The IOM guidelines don't strictly refer to plain H<sub>2</sub>O; 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 fl. oz. each, 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:

### Beauty (Grape)



Contains:  
• Biotin  
• Proprietary blend of herbs, collagen, and fruit extracts

### Wellness (Pomegranate)



Contains:  
• Vitamin C  
• Folic acid  
• Acai 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

*"NAD was concerned that the 'Water Works' article was formatted and titled and appeared to be a news article yet it promoted SHAPE Water Boosters as part of the news."*

*"The article was preceded by the headline 'News' and included information about the importance of hydration and recommended SHAPE Water Boosters as a healthful way to stay hydrated."*

**American Media, Inc. (Shape Water Boosters) Case Report #5665**





# How Do We Disclose - - What Are the Right Words?



paidpost.nytimes.com/dell/will-millennials-ever-completely-shun-the-office.html#\_Us2ZbfRDvniK20

Gmail Google+ Calendar Feedly Docs Maps Copybot Readability Library CopyScape AG Church CBM G+ Authority CBM Blog

HOME SEARCH The New York Times LOG IN

PAID POST

1. Best, Brightest and Rejected: Elite Colleges Turn Away Up to 95%  
2. Experts Find a Door Ajar in an Internet Security Method Thought Safe  
3. DAVID BROOKS: What Suffering Does  
4. A Little Pizza Homework  
5.


PAID FOR AND POSTED BY DELL

## Will millennials ever completely shun the office?

January 8, 2014

WRITTEN BY  
Kim Anderson

SHARE

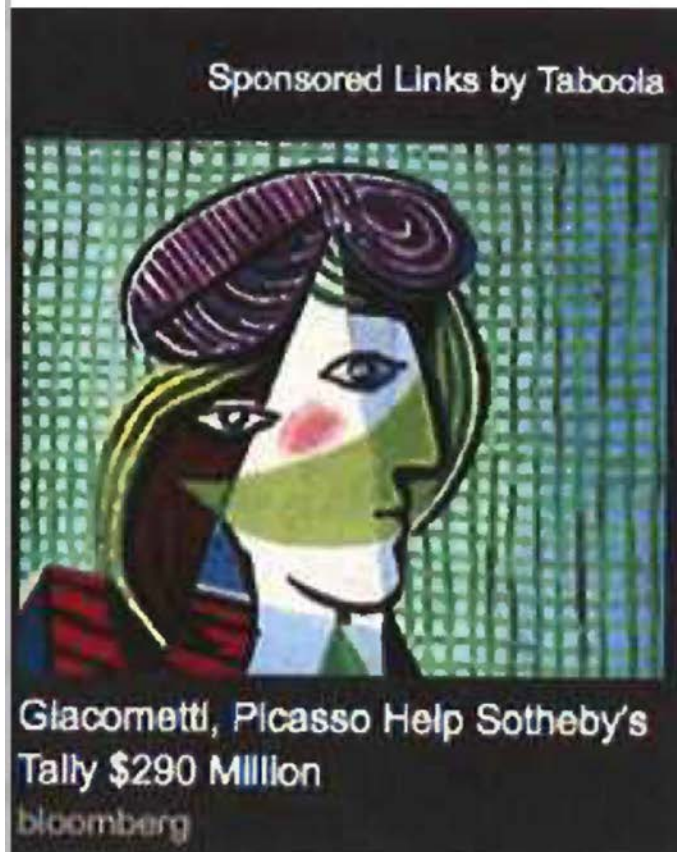


No workplace topic these days, it seems, is as studied, discussed and dissected

More paid posts from Dell

- Can the government become entrepreneurial?**  
By Michael Karler  
New legislation calling for entrepreneurs-in-residence at federal agencies aims to reduce the bureaucracy.
- Reaching across the office from marketing to IT**  
By Kathryn O'Leary  
As customer databases grow, chief marketing and chief information officers are collaborating more often.
- For women entrepreneurs, mentors help bridge the gap**  
By Giovanna Falduto  
Veeva's founder Karley Ruffalo says it's important that women tech entrepreneurs find women mentors.





*"NAD rejected challenger's contention, however, that Taboola needed to use the word 'advertisement' to inform consumers that its links are sponsored."*

*"In the absence of consumer-perception evidence demonstrating that consumers do not understand the words 'sponsored consent' or 'promoted content' to mean the the content is paid, NAD is reluctant to mandate specific words to use for disclosure."*

Taboola, Inc. (Online Advertising)  
Case Report #5708



## How to Disclose: Where? How?







United States of America  
FEDERAL TRADE COMMISSION  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Division of Advertising Practices  
Bureau of Consumer Protection

Mary K. Engle  
Associate Director

June 24, 2013

[Name and Address]

[Name]:

In 2002, the staff of the Federal Trade Commission's Bureau of Consumer Protection published a letter ("2002 Search Engine Letter") advising search engines about the potential for consumers to be deceived, in violation of Section 5 of the FTC Act, unless search engines clearly and prominently distinguished advertising from natural search results.<sup>1</sup> After the 2002 Search Engine Letter was issued, search engines embraced the letter's guidance and distinguished any paid search results or other advertising on their websites. Since then, however, we have observed a decline in compliance with the letter's guidance.

Although the ways in which search engines retrieve and present results, and the devices on which consumers view these results, are constantly evolving, the principles underlying the 2002 Search Engine letter remain the same: consumers ordinarily expect that natural search results are included and ranked based on relevance to a search query, not based on payment from a third party.<sup>2</sup> Including or ranking a search result in whole or in part based on payment is a form of advertising. To avoid the potential for deception, consumers should be able to easily distinguish a natural search result from advertising that a search engine delivers.



Google native advertising

Web Images Maps Shopping News More Search tools

About 229,000,000 results (0.22 seconds)

Ad related to native advertising ⓘ

**What's Native Advertising** - New report details best practices  
[www.localmedia.org/nativeadsreport](http://www.localmedia.org/nativeadsreport) ▼  
 '13 Innovation Mission: Order Here

**Native advertising** - Wikipedia, the free encyclopedia  
[en.wikipedia.org/wiki/Native\\_advertising](http://en.wikipedia.org/wiki/Native_advertising) ▼  
**Native advertising** is a web advertising method in which the advertiser attempts to gain attention by providing content in the context of the user's experience.

**Native Advertising** - Mashable  
[mashable.com/category/native-advertising/](http://mashable.com/category/native-advertising/) ▼  
**Native advertising** is at least some of these things. Top publishers and brands met in Washington, D.C., on Wednesday for an American Press Institute summit to ...

**News for native advertising**

**Native Advertising Sweeps Industry Regulatory Landscape**  
 Mondaq News Alerts (registration) - 1 hour ago  
 16 Oct 2013 - United States - Media, Telecoms, IT, Entertainment - **Native Advertising Sweeps Industry Regulatory Landscape** - Frankfurt Kurnit ...

**Airpush Acquires Hubbl For \$15 Million To Bring Native Ads To Mobile**  
 TechCrunch - by Sarah Perez - 5 days ago

**Yahoo's Native Ads Have an Image Problem**  
 Digiday - by Jack Marshall - 2 days ago

**Native Advertising 101: Understanding the native continuum ...**  
[paidcontent.org/.../native-advertising-101-understanding-the-native-cont...](http://paidcontent.org/.../native-advertising-101-understanding-the-native-cont...) ▼  
 Paid content is the middle ground between native advertising and brand ...

**Ads ⓘ**

**Native Advertising**  
[www.sharethrough.com/](http://www.sharethrough.com/) ▼  
 Sharethrough is the Distribution Platform for Brand Content

**Native Ad Demo**  
[www.triplelift.com/](http://www.triplelift.com/) ▼  
 Use TripleLift's Nativiser to see how images can become native ads.

**Try Google Advertising**  
[www.google.com/AdWords](http://www.google.com/AdWords) ▼  
 Bring new visitors to your website. We'll help you get started - free.

**Boost Your App Revenue**  
[www.nativex.com/Developers](http://www.nativex.com/Developers) ▼  
 Increase revenue by as much as 875 with native in-app advertising.

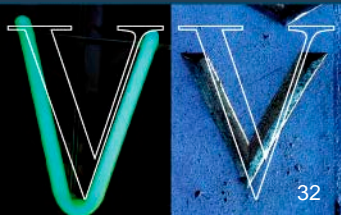
[See your ad here >](#)



# Distinguishing Sponsored Search Hits from Natural Search Hits

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







## FTC Dot.Com Guidance

- Disclose the fact of sponsorship within the content or near to it
- Discourage scrolling
- Discourage hyperlinks for simple disclosure like sponsorship unless industry adopts a symbol that is recognized by consumers
- Disclosure must be clear and conspicuous on all devices and platforms



hs transitioning into  
is



AX CLUB



TICS

SPORTS

BUSINESS

SCIENCE/TECH

LOCAL

ENTERTAINMENT

Q search

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und

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Improve

To A Few

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Away  
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ram

airs To



SPONSORED POST · H&R Block · 04/03/2014



*I hereby approve this commercial endeavor as fit for publication in The Onion news-paper.  
May the ox of journalism always be yoked to the cart of commerce.*

*Yours in avarice,  
T. Herman Zweifel  
Publisher Emeritus, The Onion*

## Woman Going To Take Quick Break After Filling Out Name, Address On Tax Forms



25



36



0



**FUNNYorDIE** BROWSE ▾ SEARCH ▾ Sign In

**Q** **coke Zero** SEE ALL RESULTS Close X

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Coke Zero Rap

Coke Zero

Coke Zero Commercial Jimmy Fallon Pepsi Parody

A Christmas Sweater Carol

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Coca-Cola Zero NANODISK

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Compatish Cola Challenge

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Coke Zero

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Coke Zero

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American Society of Magazine Editors



October 22, 2013

ABOUT ASME	ASME NEXT	INTERNSHIP PROGRAM	EDITORIAL GUIDELINES	MAGAZINE COVER CONTEST	PROGRAMS & EVENTS	NATIONAL MAGAZINE AWARDS
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## ASME INTERN BLOG

Follow ASME's Magazine Internship Program 2013 Summer Interns as they navigate the world of magazine interning

[Sara Gentzier: A Small-Town Girl Who Can Travel the World](#)

[The End](#)

[Never Underestimate the Power of a Woman ... or a Magazine](#)

## SOCIAL MEDIA

## Editorial Guidelines

### ASME Guidelines for Editors and Publishers Updated September 2013

The ASME Guidelines for Editors and Publishers codify longstanding practices governing the relationship between editorial and advertising content. The guidelines ensure that practices commonly used by editors and publishers to prevent or resolve editorial-advertising conflicts are clearly understood and consistently applied throughout the consumer-magazine industry.

In a rapidly changing media environment, no set of rules can anticipate every issue, but these are the basic principles behind the ASME Guidelines for Editors and Publishers:

- Every reader is entitled to fair and accurate news and information
- The value of magazines to advertisers depends on reader trust
- The difference between editorial content and marketing messages must be transparent
- Editorial integrity must not be compromised by advertiser influence

ASME believes that adherence to these principles enhances the value of print and digital publications for readers and advertisers and protects the independence of magazine media.





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## **D2. Marketer-Provided Content and Native Advertising**

- a. Marketer-provided content, including native advertising, should be prominently labeled as advertising, and the source of such content and the affiliation of the authors should be clearly acknowledged. The term “Sponsor Content,” already in use on some websites, can be used to label native advertising.
  - b. Native advertising should include a prominent statement or “What’s This?” rollover at the top of the advertising unit explaining that the content has been created by a marketer and that the marketer has paid for its publication.
  - c. Native advertising should not use type fonts and graphics resembling those used for editorial content and should be visually separated from editorial content.
- 



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Wednesday, December 4, 2013

## IAB Releases Native Advertising Playbook To Establish Common Industry Lexicon, Evaluation Framework & Disclosure Principles

*Provides Guidance for Publishers, Agencies & Marketers on Successfully Leveraging Native Advertising in Campaigns*

NEW YORK, NY (December 4, 2013) – Native has become a hot topic in the advertising marketplace, but for the practice to flourish further, it needs consensus on definitions and structure. In response, the Interactive Advertising Bureau (IAB) and its Native Advertising Task Force has released the “IAB Native Advertising Playbook” to serve as a consistent framework for the discussion surrounding native advertising, identifying it as both an aspiration to seamlessly integrate brand messaging into consumers’ content experiences, as well as a practical suite of ad products that successfully meet that objective. In addition to the task force, senior-level buy-side executives were tapped for their expert counsel on what advertisers need to consider before they add native elements into their digital marketing mix. The IAB Public Policy Council was also consulted for the playbook’s recommendations on sponsorship disclosures.

The playbook highlights six core interactive ad formats that are currently being used within the native advertising landscape:

- In-feed units
- Paid search units
- Recommendation widgets
- Promoted listings
- IAB standard ads with “native” element units
- Custom



Sponsored Content by Taboola



**MLB celebrates Jackie Robinson  
Day 67 years after his debut**  
fox sports

*"Taboola has an obligation to clearly and conspicuously disclose when it is linking consumers to sponsored content"*

*"NAD thus recommended that the advertiser modify its disclosure to increase the visibility of the 'Sponsored Content' or 'Promoted Content' disclosure in terms of font size, font color and boldness, as well as its placement on the page to make clear that the linked content is sponsored"*

Taboola, Inc. (Online Advertising) Case Report #5708



# Content Widgets – Same Rules for Disclosures?



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**Homeowners Are In For A  
Big Surprise...**

Smart Life Weekly

*"NAD cautioned that the combination of the thumbnail photograph, article title, and name of the destination site on Taboola's widget should convey a truthful and accurate message of the content to which consumers are linking. To the extent that a link does not accurately describe the content provided at the link, consumers can be misled."*

Taboola, Inc. (Online Advertising) Case Report #5708



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American Express OPEN

## Federal Trade Commission



Protecting  
America's  
Consumers

### FTC Native Advertising Workshop on December 4, 2013 Will Explore the Blurring of Digital Ads With Digital Content

Interested parties can submit comments and requests to participate

The Federal Trade Commission will host a workshop on December 4, 2013 in Washington, DC to examine the practice of blending advertisements with news, entertainment, and other content in digital media, referred to as "native advertising" or "sponsored content."

Increasingly, advertisements that more closely resemble the content in which they are embedded are replacing banner advertisements – graphical images that typically are rectangular in shape – on publishers' websites and mobile applications. The workshop will bring together publishing and advertising industry representatives, consumer advocates, academics, and government regulators to explore changes in how paid messages are presented to consumers and consumers' recognition and understanding of these messages.

The workshop builds on previous Commission initiatives to help ensure that consumers can identify advertisements as advertising wherever they appear. This includes recent updates to the [Search Engine Advertising guidance](#), the [Dot Com Disclosures](#) guidance, and the [Endorsements and Testimonials Guides](#), as well as decades of law enforcement actions against infomercial producers and operators of fake news websites marketing products.

The FTC invites the public to submit original research, recommendations for topics of discussion, and requests to participate as panelists. The Commission also invites the submission of examples and mock-ups that can be used for illustration and discussion at the workshop. Topics the workshop may cover include:

- What is the origin and purpose of the wall between regular content and advertising, and what challenges do publishers face in maintaining that wall in digital media, including in the mobile environment?

Topic 2









# What Else Do You Need to Know?



# 2014 Top Developments

- **Substantiation** – how will the FTC’s new standards hold up in court – Basic Research, Pom Wonderful – and in the face of continued dissent from some Commissioners (Wright, Ohlhausen)
- **Disclosures** – Has the FTC finally declared war on hard to read disclosures? Warning letters, numerous automobile dealer cases
- **Redress** – Is it becoming “normal” How much is the FTC willing to leave companies/individuals with?



# 2014 Top Developments

- **Chokepoint** – how far will the FTC go in holding third parties liable for advertiser's actions – can they be liable for ordinary course activities or must they have been actively complicit in the fraud – another area where the Commission is divided
- **ROSCA** – have continuity programs become persona non grata?
- **FTC and CFPB** – As the CFPB begins to expand its orbit of operations (e.g. recent *Sprint* case) will the cooperative attitude between the two agencies begin to fray? Will companies be the losers in any turf battle?
- **Privacy** – as data breaches become almost routine, what will happen on the regulatory front? Will “unfairness” have new life?



## 2014 Top NAD Developments

- First Caselaw in Native Advertising (Shape Water, Taboola, Amex)
- Sponsored Search Results can be deceptive (Fareportal)
- Use of Online Reviews in Advertising Claims (Euro-Pro)
- Use of Seals can be deceptive (FuHu)
- Resurgence of Product Demo cases (L'Oreal, Dyson, etc.)





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