



2nd Annual Venable Advertising Law Symposium

**Case Study: Building a Cross-Platform
Promotion for Entertainment Properties:
Negotiations, Advertising, Promotions,
Social Media, and Experiential**

April 29, 2015

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Product Launch Ad





Product Claims (Part I)

- Introducing Teen Fone
- Designed by Teens for Teens
- Extra Large Screen
- More of Everything You Need
- Truly Integrated Video Calling to Connect with All Your Friends and Network
- Best Mobile Gaming Platform Allowing Instant Connectivity
- Teen Tuff





Integrated Media Campaign

- \$5 million media buy on BH Network and its digital properties, including BHN.com and BHN Go.
- BH Networks to provide the following value-added elements:
 - Custom video featuring the stars of *Beavercreek High*
 - UGC video contest on BHN.com and BHN Go, which will include fan voting and judging by the stars and producers of *Beavercreek High*
 - Social media promotions by the stars and producers of *Beavercreek High*



Custom Video





Product Claims (Part II)

- Extra-Large Screen
- “Swag money” graphics allowing group play against student in detention
- More of Everything You Need, including popularity
- Immediate uploads to social media
- Video Calling
- Teen Tuff or Unbreakable Like Laura’s Heart
- Large capacity for music



VENABLE



UGC Promotion

- Open to 13-18-year-olds.
- Entrants must submit a 30-second video taken with a smartphone.
- The videos must be about all the cool things that you can do with a TeenFone.
- The videos will be uploaded onto the contest page on BHN.com and will be displayed in a video gallery for the contest on the website, the show's Facebook page, and BHN Go.
- Fans of the show will be asked to vote. Voting is done through a "like" wherever the video is displayed or by forwarding or retweeting the video.
- The top 25 votegetters will be selected as semi-finalists and will be judged by the stars and the producers of *Beavercreek High*.
- One grand prize winner will have a cameo appearance on an episode of *Beavercreek High* and receive an all-expense-paid trip to Hollywood for two people.

Social Media Posts



Wenning @wenning77



Follow

Love my new Teenfone! Check out the Unbreakable Contest and this great entry I found: <http://bit.ly/1s9kDoV>. #teenfone #unbreakablecontest

Reply Retweet Favorite



Kristen B @kristenB



Follow

Love my new #teenfone – so big I don't need an ipad anymore

Reply Retweet Favorite



Phoney D @Phoneydude14



Follow

Vote for this video I just posted on Facebook so I can win me a trip 2 California 2 be on Beaver creek High! <http://bit.ly/1s9kDoV> #teenfone #unbreakablecontest.

Reply Retweet Favorite



Mark G @Gamerguy27



Follow

RT @phoneydude14: Vote for this video I just posted on Facebook so I can win me a trip 2 Cali 2 be on Beaver creek High! <http://bit.ly/1s9kDoV> #teenfone #unbreakablecontest

Reply Retweet Favorite

Social Media Posts



Social Media Posts



teenfone

1h



356 likes
teenfone Celebrities love the new #teenfone!



teenfone

1h



279 likes
teenfone Miley loves her new #teenfone!
#toughenoughforthepaparazzi



UGC Video Entry





Campaign Results

- 17-year-old from Ohio is selected as winner and will appear in the final episode of the season
- SP Tech will edit the winning video and turn it into a commercial to distribute on TV and online



Credits

Special thanks to:

Director & Executive Producer – Randy Shaheen

Cast of *Beavercreek High* –

*Laura Arrendondo-Santisteban

*Kristen Brown

*Rob Hartwell

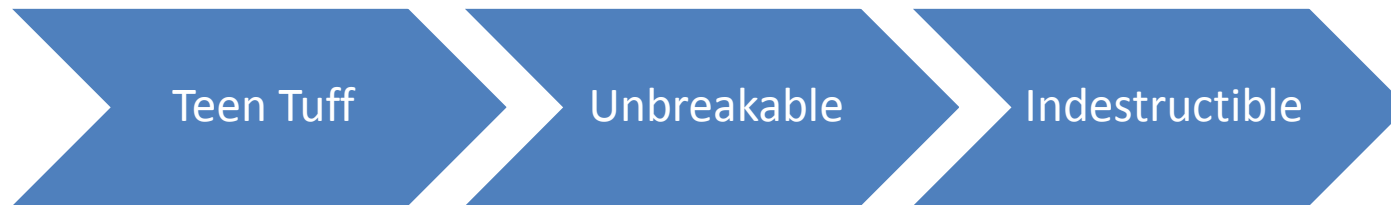
*Mark Goodrich

*Wenning Xu

UGC Contest Entrant – Ehren Weyman



Summary: Claims Substantiation/Avoiding Claim Creep



- Marketers responsible for all reasonable takeaways in advertising, not just intended promises
- All involved in the creation, approval, or dissemination of advertising are responsible
- Tips to prevent claim creep:
 - Create advertising claims dos and don'ts for agencies and third-party partners
 - For “red flag” claims, require final legal approval by marketer before airing
 - Set parameters for UGC or be prepared to disclaim if you adopt
 - *e.g.*, “Do not set hot pot on Teen Fone. It will break.”



Summary: Disclose Unexpected Material Connections

- FTC's Testimonial and Endorsement Guides not just for disclosure of free product to mom bloggers or payment to celebrities for tweets
- Tips for appropriate disclosures of material connections to marketer
 - Almost any connection is material - *e.g.*, FTC's Cole Haan Closing Letter says a contest entry is a material connection
 - Almost any mention is an endorsement (note: likely some exceptions for product placement)
 - Disclosure should be consumer friendly, such as:
 - #Ad, #Sponsored, #IWorkWithMarketer, #Paid
 - Sponsored by Marketer; Created with Marketer; Written by Marketer
 - Disclosure should be clear & conspicuous
 - Within content
 - In close proximity to content



Summary: Key Issues in Media Integration Deals

- Content production
 - If UGC is involved, determine who is handling moderation of UGC and rules for such moderation, as well as submission guidelines for UGC
 - UGC videos referencing an advertiser may be subject to SAG Commercials Contract
 - Who has final creative approvals
- Talent clearance/rights clearance
 - Who is responsible for clearance
 - Determine whether advertiser needs a separate agreement with talent
- Ownership of content, format, derivative rights
 - Who owns the content, program format
 - Restriction on producing similar content/no restriction on format exploitation by either party
- Distribution/usage rights - during and after the term
 - Advertiser's and media company's distribution/usage rights during and after term
 - Distribution through same media player allows for easier content management
- Sponsorship, marketing & promotional rights
 - Inclusion of proper disclosure
 - Review of social media posts
- Payment
 - Production budget, marketing budget, talent fees
 - Early termination payment obligations



Summary: Structuring Social Media UGC Promotions

- **Consideration:**

- Asking entrants to use your product in a video may be consideration in states that prohibit consideration even in contests (e.g., AZ, MD, CO). May be necessary to exclude residents of those states or offer a sample or free AMOE.
- How do you plan to use the entries and what kind of rights are you asking for (entrants and/or winners)? May raise consideration issues as well.

- **Disclosures and Consent:** How do you need to disclose rules? Get IP consents? How best to do this may depend on how you plan to use the entries.

- **Voting:** Are voting contests games of chance or games of skill? Adding a judging element serves multiple purposes—adds skill element with clearly defined judging criteria, adds moderation and additional control over winner selection. Voting rules must be clear.

- **Minor entrants:** Even if you are restricting promotion entry to 13+ (avoiding COPPA/CARU), must consider potential issues with allowing minors to enter: e.g., travel, IP releases.

- **Prize:** Specific prizes may raise special issues, e.g., travel prizes, appearance in TV commercial may trigger child labor issues.



Questions

